

Part III:

Management of language diversity

Ideological positioning in legal discourses on European multilingualism: Equality of languages as an ideology and a challenge

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Introduction

Since its very beginning in the 1950s, European integration has been accompanied by various attempts to implement equality in numerous forms of political activities. Typically, the protection of human rights has always been claimed to aim at equal treatment of human beings. Similarly, the member states, above all, are proclaimed to have equal status in the European Union. The value of equality, therefore, has always played a key role whenever the four pillars of integration, namely, the free movement of people, goods, services, and capital, have been discussed at the various rounds of enlargement or when their violation has been criticized as unjustifiable. This declared equality is manifested in the way language use began to be regulated in the newly-created European institutions. Moreover, since their foundation, the elements of the member states' sovereignty have been interwoven with solidarity (Tichý et al. 2006: 1–19). The principle of equal treatment of the member states – together with the sovereignty and solidarity – is believed to have contributed to peace and stability in Europe. The principle value of equality is decisive not only for the cultivation of power or shaping the relationships among European citizens and member states, but also for the decision-making of authoritative institutions such as the courts. Thus, the equality of languages represents only one of many fields in relation to which the concept of equality is applied in the current European political discourses.¹ This does not mean, though, that the activities of the European Union could be interpreted as absolutely equal or egalitarian. Whether the equality studied is a more or less relative parameter, it always concerns evaluation of the acts of human behaviour, one of which is language use. This will be of essential importance later in this paper.

¹ Equality as one of the key values of Western political philosophy of Modernity can be traced back to the eighteenth century. Wright (2004: 186) argues that the Virginia Bill of Rights from 1776 and the French Declaration of the Rights of Man from 1789, the first articulations of this value, refer to a number of human rights without distinction as to race, sex, language and religion yet.

Equality in European language policy and planning discourse is interconnected with the value of diversity.² Grin (2003: 202) admits that ‘this may be considered by some as a purely ideological belief’. The slogan *unity/united in diversity* is, nevertheless, the concept that still helps to overarch political problems of European integration and supports cultural heritage (Wu 2005: 33 and 36–37).

This chapter deals with the alleged equality of languages in the European political discourse and concentrates on the following questions:

1. How is the concept of equality of languages interpreted in linguistics, and in which sense of the concept can languages be viewed as equal?
2. How is linguistic equality realized in European language policy and planning discourse? Are there situations that demonstrate that equalities in a cognitive-linguistic sense and in a sociolinguistic sense are mistaken for one another by the agents of the discourse without their being aware of this fact?
3. To what extent can the ambiguity of the concept be seen as misleading for an adequate implementation of the ideal of language equity in the practice of the European institutions?
4. Is it possible to find a legally binding solution to the problem of the equality of languages in the European institutions on the basis of a particular court-case?

The discussion of these questions is structured in three steps. First, the conceptual basis of the issue is clarified. This consists of the explanation of how ‘ideology’ comes to be drawn in relation to the equality of language, and to the difference between structural-anthropological and sociolinguistic perspectives on language equality in order to argue for the explanatory power of the Language Management Theory (LMT) (Nekvapil 2009) for the analysis of European language policy and planning discourse on this topic. Second, several selected examples of this language policy and planning discourse are analyzed. These texts are taken from the sources of European law, political declarations, and interpellations in which the European institutions articulate their perception of language equality. Finally, a particular dispute is presented that was taken to the European Court of Justice in Luxembourg, and whose substance was the equality of languages (Christina Kik against the Office for Harmonization in the Internal Market C-361/01 P).

² To cite just one example on behalf of many comparable ones: ‘Language is such a sensitive issue that it is common rhetoric to even loudly praise the EU’s multilingualism as a fundamental and wonderful asset in the first place, before one cares to admit that multilingualism may also imply problems of mutual communication. The view is regularly expressed that the existing multiplicity of languages should at all times be safeguarded and, even, that it should be promoted’ (Van Els 2003: 46). How this happens in political discourse is presented below in example 3 (Resolution of European Parliament of January 19, 1995 – letter I, paragraph 1). For more details discussed particularly in the context of language rights, see also Patten & Kymlicka (2003: 42–48).

The data for the analyses consist of texts that were collected from the websites of European institutions and from the database EUR-Lex in the summer of 2009, that is, before the Lisbon Treaty became effective.³ They include the official documents issued by the institutions (e.g. resolutions of the European Parliament), interpellations submitted by the members of the European Parliament as well as the replies formulated by the addressees, and relevant legal texts – the sources of primary and secondary law such as EC-treaties, regulations, directives (i.e. law in books), or judgments issued by the European Court of Justice (i.e. law in action).⁴ In order to expand the range of perspectives on the legal dispute between Christina Kik and the Office for Harmonization in the Internal Market, the transcripts of a telephone interview is also added which I carried out and recorded in November 2008. These data can be seen as a discursive site linked to a social network of actors, which in my case consist of members of the European Parliament and the Parliament as an institution, employees of the European Commission and the Commission as an institution, Council of the EU, a litigator, and the European Court of Justice as an institution. They collectively produce and reproduce the discourse of language equality. Drawing on Fairclough ([1989] 2001: 18–26), discourse is interpreted as a sum of communicative acts (texts) united by a common topic – equality of languages in the EU from different perspectives as assumed by members of the network. The participants in this type of discourse engage in communicative acts in order to pursue their interests. These acts are observable both at the micro-level of the individual interactions and at the macro-level of the institutions. In so far as the acts are interrelated within the social network of the respective agents (both individuals, and organizations), they constitute the whole of discourse as social practice (Fairclough 2001: 18–26).⁵

Theoretical Framework

The data analyses are based on Language Management Theory (Nekvapil & Sherman 2009, hereafter LMT). This theory is able to describe an extensive range of human behaviour-toward-language as it emerges in discourse. It systematically differentiates

³ The references to the sources of law correspond to the situation of the events from the respective time and are not adapted to the current legislation.

⁴ For the purposes of this paper, the hierarchy of European primary and secondary law can be briefly explained as follows: primary law consists of the founding treaties of the European Communities and their amendments. Among other things, the crucial European institutions were constituted by primary law. Secondary law is created by the European institutions as the product of their legislative activities. For more details see Svoboda (2010: 70–73, 90–93).

⁵ For more details about the structure of the legal discourse see Dovalil (forthcoming).

between the process of the generation of communicative acts on the one hand, and the process of the management of these acts on the other hand (Nekvapil 2009: 1). Language management is conceived of as a sum of metalinguistic activities, although their variability is not infinite.

The actors' behaviour toward language is seen as a process that can be divided into four phases (Nekvapil 2009: 3–5): When people communicate they usually expect that they can achieve their communicative intentions. If a deviation from someone's expectations turns up in a communicative act it may be noted by the interlocutor, or it may not. Provided this deviation is noted, it may be evaluated, or not. If it is evaluated negatively, the interlocutor may design an adjustment to solve the problem, or not. And once an adjustment is designed, it may be implemented, or not. Thus, the theory considers cases in which language management may end at the phase of noting, or evaluation, or adjustment design. In other words, not every process of language management has to reach the phase of implementation under all circumstances.

Not only does the theory classify the types of behaviour toward language within an interaction at the micro-level (simple management), but it also integrates the macro-level of the management processes when institutions and organizations participate in them (acts of organized management). Apart from social networks including institutions, the other features of organized management are the trans-situational character of the management acts, communication about these acts, intervention of theories and ideologies into them, and the fact that the object of organized management can be language itself as a system (Nekvapil 2009: 6). Thus, organized management entails the important aspects of *language and power relations*.

Language Management Theory is a particularly appropriate framework for the analysis of language (in)equality for at least four reasons. (1) Equality of languages is a discursive construct that different actors do not perceive in the same way, and hence, it can trigger language problems. Therefore, the consequent bottom-up approach of the theory is necessary and advantageous. (2) The model is able to incorporate as well as pinpoint the position of evaluation among other forms of behaviour-toward-language as it appears in discourse. An individual's language use may be evaluated when certain deviations from the interlocutors' expectations are noted. The negative evaluation of these deviations may give rise to adjustment designs, which may be implemented if their agents are powerful enough. (3) The theory takes the existence of ideologies into account, which is one of the features of organized language management as mentioned above in the brief overview. (4) The theory considers the possibility of language problems being anticipated before, or solved after the interactions, which leads to the behaviour designated as *pre-interaction* or *post-interaction management* (Nekvapil & Sherman 2009a: 184–185).

Conceptual Framework

Drawing upon the concept of ideology as a discursive construct, language ideology can be defined as ‘a set of beliefs about language articulated by users as a rationalization of justification of perceived language structure and use’ (Silverstein 1979: 193) or as ‘a cultural system of ideas about social and linguistic relationships, together with their loading of moral and political interests’ (Irvine 1989: 255). In Language Management Theory, ideology can be described as social actors’ presuppositions which guide them in the ways they behave toward languages. Language ideology includes content and structural information such as the types of phenomena that are likely to be noted and the ways of evaluating these noted phenomena in discourse. For further phases of the management processes, ideology can be understood as a resource in designing specific adjustment strategies used to solve problems and put implementation procedures in place (Nekvapil & Sherman, this volume). Regarding the equality of languages, the participants in the equality discourse are guided toward the development of a certain sensitivity, which prevents them from overlooking cases of what they interpret as (potential) linguistic discrimination. Such cases will be noted and evaluated negatively. Moreover, provided these actors are sufficiently powerful, they may be able to persuade other actors to join in their negative evaluation and develop implementable adjustments.

The very question concerning the equality of languages is potentially ideological. In which sense of the term can it be declared that English is as valuable as Czech or Low German? The discussion about this issue from the turn of the nineteenth- and twentieth-centuries in relation to the Sapir-Whorf hypothesis brought about an essential change (Coulmas 1992: 79–81). One of the results of this debate was that languages ceased to be evaluated as primitive or more superior: expressions such as *primitive languages* became conspicuous or suspicious, and were gradually rejected (i.e. first noted and evaluated negatively).⁶ Instead, languages have been regarded equal in the anthropological-cognitive sense in dominant expert linguistic discourse. This thesis of equality tends to be formulated from a structural-anthropological perspective:

⁶ Coulmas (1992: 80) makes the point: ‘Qualitätsurteile [...] wurden von der Sprachwissenschaft dieses Jahrhunderts [i. e. the nineteenth century] hauptsächlich deshalb über Bord geworfen, um sich von der eurozentrischen Erblast zu befreien, die vor allem der Anthropologie als Tochter des Kolonialismus anhing, die sich aber auch der Sprachwissenschaft mitgeteilt hatte. Die Beschreibung diverser nie geschriebener Sprachen insbesondere in Amerika hatte den Nachweis erbracht, daß Sprachen sich nicht sinnvoll bezüglich ihrer Gesamtkomplexität unterscheiden ließen und daß außerdem zwischen der Komplexität einer Sprache und dem an europäischen Maßstäben gemessenen Entwicklungsniveau der Lebensverhältnisse ihrer Sprecher keinerlei Zusammenhang bestand.’ A systematic overview of the discussions about the linguistic relativity is provided by Werlen (2002).

[...] all natural languages are on an equal footing in terms of their capacities for human communication. [...] There is no evidence that in terms of the basic machinery of a language considered as a code for transmitted messages, i.e. the phonology, morphology, syntax, or even the overall semantic organization, any one language is inherently superior, more logical, accurate or efficient, or in any way preferable to any other language. [...] No language, by virtue of its inherent structure, bestows any general cognitive advantage on its speakers. (Sankoff 1976: 284)⁷

However, this is merely one aspect of the issue. Since languages do not exist as isolated structures but rather are used in concrete social contexts, the structural-anthropological perspective cannot speak to the whole scope of this question. Languages are not only equal in terms of their structural potential as considered above but they may turn out to be very unequal in a sociolinguistic sense. Different languages are used by different numbers of “native” speakers, for instance, or they are learned by varying numbers of people as “foreign” languages. Being able to use English, French or German may mean having the opportunity to get a job more easily on the European labour market than, for example, being able to use Gaelic or Maltese. English language skills and language-specific commodities are demanded in the European institutions more than, for example, Bulgarian language skills.⁸ European citizens are allowed to request a reply from a European institution in German but not in Frisian. These forms of language (in)equality must be interpreted from a sociolinguistic perspective. Macmillan (1998: 164–179) distinguishes (1) equality of legal status, (2) equality of services, their quality and availability, and (3) equal extent of use.

The equality of legal status of languages means that citizens are entitled to use the languages in their communication with the institutions of the public government. This form of language equality may appear substantial but at the same time it is rather formal. The fact that some languages are recognized as official languages, while others are not, in itself is an important distinction of power; still it does not provide much information about the status of such official languages in actual social practice. The criterion of equality of languages in terms of *the equality of services, and their quality and availability* entails further problems. According to this principle, the same degree and quality of public services should be available to all citi-

⁷ This widely shared thesis may concern primarily the cognitive-structural *potential* of a language, not any language at any stage of its *actual* development. Coulmas (2005: 197–198) expresses this as follows: ‘Nowhere is the inequality of languages more visible than in the field of terminology, but there are many other aspects of language that make for deep-reaching disparities. [...] Judging languages [...] reveals the unequal communicative potential and hence the disparate range of choices they offer their speakers. Only some languages function as effective means of acquiring up-to-date knowledge and getting access to modern life in general.’

⁸ For more details concerning the problems of justice and equity related to the prominence of the English language and critical approaches to the issue see Wright (2004: 165–172).

zens in the official languages. However, this – at least comparable – quality and availability of services is hard to realize consequently, as will be demonstrated using specific examples later in this paper. And the third interpretation listed by Macmillan is even more problematic. Equality of languages in terms of *the equal extent of use of the languages* implicates the principle of proportional representation. It should grant equal opportunity of citizens to participate in public institutions in every official language. This requirement includes not only the principle of non-discrimination, but also the incorporation of the differences related, for instance, to the number of speakers of the respective language. In other words, as German ‘native’ speakers constitute the most numerous language community in the EU (which is nine times larger than the Czech language community, for instance), one may argue then in the name of equal extent of language equality that German should be the most frequently used language in the European institutions (and technically nine times more frequent than Czech). However, such an argument would not take into consideration, for instance, the number of ‘foreign’ speakers of a given language, let alone the status factor that affects the number of such speakers of any given language.

In addition, the European language policy and planning discourse contains a set of further expressions. Apart from *equal languages* or *language parity*, one encounters *equally treated languages* or *equally treated users of different languages*. Although these expressions may be viewed as more or less synonymous overall, the latter two are somewhat more specific in that they bring in the dimensions of *treatment*: languages, European citizens, i.e. the speakers of those languages, or member states are not equal in the sense of some isolated abstract entities. Languages are, or are not, treated equally by their users as agents of language use. Moreover, this equality (or equal treatment) is transferable from the language as an abstract construct to concrete individuals (or institutions). Based on the logic of the saying ‘like language, like speaker’, it would be possible to generate others, such as ‘primitive language, primitive speaker’ or ‘cultivated language, cultivated speaker’. Based on the discourse of ‘primitive languages’ of the nineteenth century, the step from a ‘primitive’ language to a ‘primitive’ language user is a very easy one to make. Its negative consequences, however, can become extreme.

Conceptualization of Equality of Languages in the European Legal and Political Discourse

In this section, I concentrate on the conception of equal treatment of official and working languages in the European political discourse as articulated by some powerful agents who refer to this equal treatment as ‘the fundamental principle’. The European institutions insist on this principle in their political declarations and in the texts of the important sources of law (law in books) and in the various inter-

pellations.⁹ Once I have explored the ideological interventions in the meaning production of the expression in these texts, in the subsequent section I will attend to the question of how consequently the institutions espouse language equality in practice.

Examples from Law in Books

The oldest and the most important source of law in this context is Regulation 1/1958 determining the languages to be used by the European Economic Community.¹⁰ This regulation represents a problem-solving tool and as such corresponds to the adjustment design in terms of LMT. Its aim is to manage language use in the European institutions with regard to equality as the main value. Management here entails above all the establishment of official and working languages as formulated especially in Articles 1, 2, 4 and 5, codifying the equality of legal status of certain languages. All official languages of the member states are recognized as official and working languages of the institutions of the EU. The member states as well as the EU citizens are entitled to address and receive a written reply from the institutions in any of these official languages. Regulations and other documents of general application are to be drafted in the official languages. This requirement of the equality of services and their availability also holds for the publication of the Official Journal of the EU.

According to Article 6 of Regulation 1/1958, however, the institutions of the Community may stipulate in their rules of procedure which of the languages that have been identified as official languages of the member states are to be used in specific cases. The identification of which concrete institutions this article applies to exactly is not indisputable. In addition, Article 7 lays down that the languages to be used in the proceedings of the Court of Justice shall also be established in the Court's own rules.¹¹

Generally speaking, language regulations in international organizations can be organized in several ways (see references to Harald Haarmann's classification in Wu 2005: 29). In a monophone regime, only one language becomes official. This regime is easy to implement but it causes apparent inequalities among the languages involved. In an oligophone regime, only a few languages are considered 'most important' and so they become official. These few official languages are

⁹ For more details concerning the legal discourse, intertextual ties among the types of texts creating this discourse, and its LMT-interpretation, see Dovalil (forthcoming).

¹⁰ Regulation 1/1958 is – like every regulation adopted by the Council – among the sources of the secondary law. This fact will be important to bear in mind for the analysis of the Kik case below.

¹¹ More detailed expert legal comments can be found in Tichý et al. (2006: 200–201) or Streinz (2005: 96–99).

equal in relation to each other, but the inequality in the relation to the majority of the other languages remains as apparent as in the monophone system. The third arrangement is called pantophone. It is based on the equality of official languages of all members and it incorporates the underlying ideology of equality in the most consequent way.¹²

The key European institutions, namely the Council, Parliament, Commission, Committee of the Regions, Economic and Social Committee, and the Ombudsman Institute are more or less consequently pantophone. Unlike them, most of the European agencies apply the oligophone principle, while the European Central Bank, European Investment Fund, European Centre for the Development of Vocational Training, European Environment Agency, European Training Foundation subscribe to the principle of monophone English.¹³ Such provisions make language inequalities possible.

To substantiate my point, I take the example of the partially pantophone/oligophone regime. (This will be relevant later in this paper once more). In Article 115 of Regulation 40/94 on the Community trade mark, the language use in the Office for Harmonization in the Internal Market is regulated in a detailed way¹⁴:

Example 1

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.

If the application was filed in a language which is not one of the languages of the Office, the Office shall arrange to have the application, as described in Article 26 (1), translated into the language indicated by the applicant.

4. Where the applicant for a Community trade mark is the sole party to proceedings before the Office, the language of proceedings shall be the language used for filing the application for a Community trade mark. If the application was made in a language other than the languages of the Office, the Office may send written communications to the applicant in the second language indicated by the applicant in his application.
5. The notice of opposition and an application for revocation or invalidity shall be filed in one of the languages of the Office.

[...]

¹² This is only a brief overview of the basic classification. The issue of alternative fair language policies concerning the official languages in multilingual states (comparable to international organizations in this point) is discussed thoroughly by Pool (1991).

¹³ An overview of the language regulations in numerous European institutions was compiled by Wu (2005: 181–184).

¹⁴ This article is not cited in its entirety.

These measures are expected to represent another concrete problem-solving tool for the language use in communication with the Office. In terms of LMT, they also correspond to the adjustment design. However, their negotiation was far from simple before the Office came into existence. As this regulation is a source of secondary law, it had to be adopted by the member states represented in the Council. The goal of the clause was “to rationalize the communication” in the difficult domain of intellectual property. In order to find out more details about the alternative options discussed in the past, I asked the spokesperson of the Office (EC in Example 2) in a telephone interview. He commented on the process of designing this adjustment, in the following way:

Example 2¹⁵

VD: well and (.) were you interested in (.) why (.) eh just English German French Spanish and Italian eh (.) became the official languages of your office?

EC: it was a political (.) agreement.

VD: mhm. eh eh yeah. and so (.) there is like no background (.) no other documents that (.) would (.) eh like explain that?

EC: no as far as i know it was eh decided by by by the Council of ministers

VD: mhm

EC: and eh (..) they (..) took first of all well **there were the three languages that are also the same regime for the patent (.) for the patent convention in Munich**

VD: mhm

EC: and it was added Spanish and Italian (..) i would say that there is no specific background or eh eh eh it is just a p- political decision i would say.

VD: mhm. ok so (.) like the most influential agents wouldn't be identifiable (.) nowadays (..) any more? (..) for for example Spanish government (.) or (.) Italian government (.) that it would be possible (.) to find out eh their eh (.) eh strategic manoeuvres let's say (.)

EC: for for Spain (.) it is (.) let's say eh (.) well the background could be the fact that the seat of the of the office is here in Spain

VD: mhm

EC: so this is this is an objective factor. and eh (.) there is also eh (.) in the IP world [abbreviation for the intellectual property – author's note] (.) this is out of the European union (.) but that is a world ma- (.) the world (.) intellectual property organization (.) there is some (.) agreement (.) on which i am now talking in particular on on the field of trademarks (.) eh (.) international trademarks

VD: mhm. yes.

EC: an agreement called the protocol on which (.) Spanish has become also (..) eh eh (.) a language in these systems. (.) so th- let's say that it is a priority for the (.) Spanish government as far as we know here (.) the defence of the of the of Spanish as a lan-

¹⁵ The interview was conducted in English used as a lingua franca. Neither the grammatical, nor the lexical forms are corrected. Here I will focus on the content rather than the details of conversational analysis, which is why only pauses and emphasis are recorded in this transcript.

guage used in different eh systems and and and in the IP sector (..) eh eh so this is maybe one of the reasons for the Italian i i i i suppose the the the one of the reasons was Spanish was one of the language regime so we want also

VD: mhm

EC: (to be. to be.) but i eh once again (.) i i i this is only my guess (.) eh eh it was a (.) political decision taken in the Council and we just saw the results

As we learn from the interaction, originally only three languages were considered to become official – English, German and French. This option corresponds to Art. 14 of the European Patent Convention that was referred to by the spokesperson of the Office (as marked in bold in the interview transcript). However, in the end, five languages have become the languages of the Office. This result demonstrates that equality of languages in terms of their legal status could not be a central argument here. What mattered was securing the relative political equality between Spanish and Italian.

The other official languages of the EU are not totally excluded, though. Art. 115/1 determines in this regard that ‘the application for a Community trade mark shall be filed in one of the official languages of the European Community.’ The adjustment designed in the whole Art. 115 has been implemented in the actual practices of the Office like this (data from November 2008 confirmed by the spokesperson of the Office): English is the most frequently used language (42 per cent of the cases), followed by German (19 per cent), French and Spanish (both languages 8.7 per cent), and Italian (8 per cent). As second languages of the proceedings (Art. 115/3), the most commonly used language is again English (53 per cent of the cases), followed by French (21 per cent), German (8 per cent), and Italian (6 per cent). Spanish was the fifth most commonly used second language. If the concept of equality of languages should be interpreted in terms of the ‘equal extent of use’ this time, the data show that apparent inequality can be easily proven.

However, Paragraphs 1, 3 and 4 of Art. 115 cited above allow the participants in the proceedings to use all official languages of the EU. This fact shows the efforts of the Office to find a solution to the problem of the availability and equality of services. As Paragraph 3 articulates: ‘If the application was filed in a language which is not one of the languages of the Office, the Office shall arrange to have the application [...] translated into the language indicated by the application’.

Political Declarations

Unlike the texts of the law in books, the texts of political declarations are not legally binding. Thus, their formulations are oriented towards political goals that may appear to be more or less fair or democratic. As a result, in spite of their official status, they can contain relatively vague definitions of language equity. In comparison with all

other text types in my data, these texts declare and insist on the equality of languages most consequentially. On the other hand, the problem of the implementation of their content receives nearly no attention in this type of text. On January 19, 1995, the European Parliament approved the ‘Resolution on the use of the official language in the institutions of the European Union’ (published in Official Journal C 043, 20/02/1995 P. 0091) shown in example 3 below (emphasis mine).

Example 3

The European Parliament,

- A. having regard to the statement made in December 1994 by Mr Lamassoure, French Minister for European Affairs, on replacing the 11 official languages of the European Union with five working languages,
- B. whereas, according to the provisions of the Treaty, the languages used by the institutions of the European Union are a matter for decision by the Council acting unanimously,
- C. having regard to Regulation 1/58/EEC and amendments thereto putting the official languages and working languages of the Communities on an equal footing ((OJ 17, 6.10.1958, p. 385.)),
[...]
- F. whereas people belonging to a recognized language group must not be relegated to the status of second-class citizens; whereas any proposal to limit the number of languages increases the distance between the public and the European institutions, which has already reached a disturbing level,
- G. whereas technical and budgetary arguments can in no circumstances justify a reduction in the number of languages,
[...]
- I. having regard to the view expressed by the President of the French Republic before the European Parliament that ‘Europe must assert its cultural identity through its diversity’,

The European Parliament,

- 1. Reaffirms its commitment to the equality of the official languages and the working languages of all the countries of the Union, which is a cornerstone of the concept of a European Union, of its philosophy and of the political equality of its Member States, and asserts that the different languages are one of the characteristics of European civilization and culture and an important aspect of Europe’s diversity and cultural wealth;
- 2. Declares its determination to oppose any attempt to discriminate between the official and the working languages of the European Union;
- 3. Urges that the principle whereby citizens of the Union have the right to use their own language, both orally and in writing, in their contacts with all European institutions be respected;
- 4. Takes the view that the right of an elected representative to express himself and to work in his own language is an inalienable part of the rule of democracy and of his mandate;
- 5. Reaffirms its independence and its power to determine its own modus operandi, in regard to languages as in other matters, and recalls its resolution of 6 May 1994 on the right to use one’s own language ((OJ C 205, 25.7.1994, p. 528.)) which strongly reaffirmed the importance of using all the official languages without discrimination as working languages within the European Parliament;

6. Instructs its President to forward this resolution to the Council, the Commission, the governments of the Member States and the Presidents of the other institutions of the European Union.

The problem of language diversity is noted and its reduction evaluated very negatively by the authors of this resolution, as the underlined sections demonstrate. However, there is no argument to support the positive evaluation of diversity itself. The evaluation is merely connected with European civilization, identity and culture (Paragraph 1). Hence, this presupposition of the European Parliament can be understood as a resource in designing the concrete adjustment strategies (especially in Paragraphs 1–6) with which the diversity is believed to be maintained.

The perspective of the negative evaluation of inequalities ranges from the status of a second-class-citizen (letter F) to the clear commitment to the equality of the languages as a cornerstone of the EU, its philosophy and the equality of the member states (Paragraph 1). Economic argumentation in favour of the reduction of the number of the official and working languages is evaluated negatively as illegitimate (letter G). So is any attempt to discriminate between the official and the working languages (Paragraph 2).

Another example of such an adjustment design is the Council Resolution of March 31, 1995, on improving and diversifying language learning and teaching within the education systems of the European Union. In its preamble, it is written (emphasis mine):

Example 4

[...] this resolution aims to provide a basis for reflection on how the educational systems themselves can continue the construction of a Europe without internal frontiers, and strengthen understanding between the peoples of the Union. The promotion of linguistic diversity thus becomes one of the major issues in education. While reaffirming the principle of equal status for each of the languages of the Union, thought should therefore be given to the tools appropriate for improving and diversifying the teaching and practice of such languages, thereby enabling every citizen to have access to the cultural wealth rooted in the linguistic diversity of the Union. (Official Journal C 207, 12/08/1995)

The authors of this document also do not argue in favour of the equality of languages or linguistic diversity. Rather, these presuppositions serve as an argumentative basis for formulating the strategies in the field of foreign language teaching. In terms of LMT, the political declarations represent those texts of the European language policy and planning discourse which correspond to the evaluative phase of language management that includes noting the deviations from the expectations logically. Provided effective communication in multilingual settings in Europe is expected, it is logical that language problems based on the lack of language knowledge are noted in various ways and evaluated negatively. This also holds for interpellations creating another kind of political discourse from the European parliament.

Interpellations

There were various interpellations between 2005 and 2008 in which the equality of languages was the topic of questions raised by the members of European parliament (MEP). These texts represent political discourse with a disposition different from the political declarations. The typical procedure for each interpellation was that first an MEP noted a given deviation and spelt its negative evaluation, then the relevant institution was accountable for a response that usually contained the defense of existing policies as well as their elaboration. In no case did these interpellations lead to the revocation of, or amendment to, political declarations such as those discussed above. One specific example will be examined here concerning the position of German in the EU. On October 27, 2008 Andreas Mølzer, an Austrian MEP, wrote the following question to the Commission (E 5777/08)¹⁶:

Example 5

The importance of native languages can be seen in Regulation No 1/1958, in particular, under which, at present, 23 languages are recognised as official and working languages. Article 3 states the following: 'Documents which an institution of the Community sends to a Member State or to a person subject to the jurisdiction of a Member State shall be drafted in the language of such State.'

According to a Eurobarometer survey published in February 2006, German is the most widely spoken native language in the European Union (spoken by 18 % of the population, or about 81 million people). Furthermore, German is also spoken as a foreign language by 14 % of EU citizens. French and English are the mother tongues of only 14 % and 13 % of Union citizens respectively. Accordingly, setting aside the position of English as the language of business and as the most dominant foreign language in the EU, German must be given top-ranked status and actually used, at last, to the extent commensurate with its importance.

Though, on its homepage, the EU terms multilingualism an essential factor for greater transparency, legitimacy and effectiveness for the Union, the use of German is effectively being neglected (both in external communications and, internally, when EU documents are submitted), supposedly because too few people have a fluent command of German or it would be too costly to use German, which, in the light of exorbitant spending in other areas, can only be a pretext. In practice, if the three working languages German, English and French were used rigorously, close to 90 % of EU staff and a large proportion of the population could be reached.

1. Why does the Commission refuse to take greater account of German for translation of EU documents and thus give it a status equivalent to that of English or French?
2. What does the Commission intend to do about this discriminatory treatment?
3. To what extent is the EU planning to remedy the disregard for German, by comparison with the use of French or English, in its everyday work, but also in external communications (e.g. detailed information on the EU or Council Presidency websites)?¹⁷

¹⁶ To show the style and the arguments in their whole scope in one example, Mølzer's interpellation is not reduced but quoted in its entirety.

Mölzer initially cites a piece of European legislation (Regulation No 1/1958) which, in his view, should imply the importance of native languages. He notes and evaluates negatively the fact that this importance is deviated from the practices of the European institutions by saying ‘the use of German is effectively being neglected’, ‘discriminatory treatment’ of German, ‘disregard for German’. He argues on the basis of the principle of proportional representation (‘German is the most widely spoken native language in the European Union’, it is ‘spoken by 18% of the population’, and ‘German is also spoken as a foreign language by 14% of EU citizens’). That is, if native languages are so important, relevant is the question of why the European institutions do not consider the more extensive use of German, the European language with the greatest number of native speakers. In his further argumentation, he refers to the criterion of availability of services for supporting his position (‘if the three working languages German, English and French were used rigorously, close to 90% of EU staff and a large proportion of the population could be reached’). As a result, there are a great number of speakers who are unable to access documents in their native language in the current circumstances.

Mölzer then proposes a number of open adjustment designs – giving German a status equivalent to that of English or French in the translation of EU documents and addressing and remedying the ‘discriminatory’ treatment toward German. In doing so, as an individual MP (or even as an individual citizen, a speaker of German) he has exhausted his capabilities to manage this language problem – the implementation or non-implementation is in the power of institutions at a more macro-level.

The commissioner for multilingualism, one of the macro-level institutions potentially in charge, (Leonard Orban at the time), gave an answer on behalf of the Commission. Example 5B is taken from his answer (December 4, 2008):

Example 5B

1. The Commission is fully committed to multilingualism and linguistic diversity, the guiding principle being non-discrimination. Under Article 1 of Regulation (EC) No 1/1958 of the Council, which enumerates the official and the working languages of the institutions of the Union, all official EU languages are to be treated equally as far as the publication of legislation and other official documents of general application is concerned. This means that Commission regulations and directives and all legislative proposals and communications formally approved by the Commission and transmitted to the institutions are translated into all the official languages of the Union, including

¹⁷ More interpellations of this kind could be addressed in this context. For instance, a Swedish MP, Per Gahrton raised almost the same question to the European Council on March 15, 2001 (H-0225/01), as did a German MP, Bernd Posselt, on September 25, 2008 (H-0648/08). Both interpellations focused on the status of German. Interestingly enough, Per Gahrton, in reproaching the Swedish government for discriminating against German during the Swedish EC presidency, formulated his interpellation symbolically only in German. Unlike Per Gahrton, Bernd Posselt addressed the Commission, which is the only difference between their acts.

- German. Furthermore, German is one of three languages, together with English and French, in which the Commission usually adopts internal decisions. The Commission is responsible only for the translation of Commission documents, since each institution has its own or shared translation service.
2. The Commission does not treat German differently from English and French, and continues to apply the principle of equal treatment of the official languages of the European Union, including German, as explained above. Therefore the Commission does not intend to take any specific measures in this respect.
 3. The Commission cannot comment on behalf of the other institutions. Each institution has the right to choose its own internal language arrangements to be used in everyday work.
- [...]

Referring to the adjustments designed in the texts of codification, the law in books and to the values of linguistic diversity, Orban focuses on the evaluative part of the discourse – German is somehow the object of discrimination, which he refutes, both based on the discourse of equality (‘Commission regulations and directives and all legislative proposals and communications formally approved by the Commission and transmitted to the institutions are translated into all the official languages of the Union, including German’) and the availability of services (‘German is one of three languages, together with English and French, in which the Commission usually adopts internal decisions’). Thus, the European Commission as an agent with the potential to implement the MEP’s adjustment design does not agree with the MEP’s management summary, particularly as concerns the evaluation phase – the measures in place to support European languages, German among them, do not constitute discrimination or disregard. Thus, as Orban states, ‘the Commission does not intend to take any specific measures in this respect’. The Commission – represented by the commissioner – is the more powerful agent because no measures have been implemented in practice, indeed, as formulated in the second paragraph of his answer.

Language management ends at this stage because the organization with the power to implement the proposed adjustment does not evaluate the practice negatively. To underpin its evaluation, the Commission points out some concrete acts illustrating the practice. However, the starting point is the ideological framework with its guidelines for what exactly should be noted and how this should be evaluated. Both phases of language management which are relevant in this concrete case (noting and evaluation) depend on the decision of the more powerful participant in the end, no matter how well-founded the evaluation of the respective participant may be.

I have explored text types in political declarations and interpellations that are not a legally binding part of linguistic equality discourse – such texts cannot be enforced. What these texts have in common with those of the sources of law, i.e. legal norms as they are codified in the law in books, is the fact that both represent

products of the political discourse. On the one hand, the political debates result in the resolutions and declarations of the European institutions as well as in the parliamentary interpellations that may often be relatively vague, as is demonstrated above. On the other hand, the political discourse results in the sources of law, the examples of which are also presented above. Their common denominator is that the ideology of the equality of languages in the European Union is not questioned.

Example of the Law in Action

The Kik Case: Christina Kik Against the Office for Harmonization in the Internal Market

What is lacking thus far is clear evidence of the extent to which the equality of languages can be proven, or disproven, in the law in action. An answer to this question is provided in the next section. That is, there is one case in the history of the European Court of Justice in which the law in action was tested. This is the Kik case (C-361/01 P), which will be analyzed below.¹⁸

This case was an appeal against a judgment of the Court of First Instance, dismissing an action brought by Christina Kik against the Office for Harmonization in the Internal Market (Trademarks and Designs) in which she essentially sought to bring into question the rules governing the use of languages in this Office.

On May 15, 1996, the applicant, Christina Kik, a lawyer and trademark agent in the Netherlands, submitted an application for an EC trade mark (the word 'Kik') to the Office. In her application (written in Dutch), she indicated Dutch as the designated second language. In a decision from March 20, 1998, the Office dismissed the application on the grounds that the requirement concerning the second language (English, French, German, Italian or Spanish) was not satisfied. The applicant appealed this decision, which she claimed was unlawful as it was based on unlawful legislation. The Board of Appeal of the Office dismissed the appeal in a decision from March 19, 1999 ('contested decision').

The applicant appealed to the Court of First Instance seeking annulment or revision of the contested decision on the grounds that the Office had infringed upon the principle of non-discrimination (Article 12 of EC-Treaty) because it favoured certain official languages and hence certain citizens of the EU. Kik argued that the language regime did not comply with the fundamental principle of equality of languages.

As analyzed in section 3 above, Article 115 of Council Regulation 40/94 determines that the application for a Community trademark can be filed in one of the official languages of the EC. The official languages of the Office for Harmonization

¹⁸ The substance of the dispute is summarized and adapted from the database EUR-Lex: <http://eur-lex.europa.eu>.

in the Internal Market are English, French, German, Italian and Spanish. At the same time, the applicant must indicate a second language, one of the official languages of the Office, the use of which he or she accepts as a possible language of proceedings for the opposition, revocation or invalidity proceedings. If the application is filed in a language which is not one of the languages of the Office, the Office arranges to have the application translated into the language indicated by the applicant. Therefore, by naming Dutch as the second language, Kik was not complying with this regulation.

The principal argument is as follows: The appellant, Christina Kik, noted and negatively evaluated the fact that the given language regime is contrary to Article 12 EC-Treaty because it favours certain official languages and hence certain citizens of the Union. In particular she argued that:

- 1) the language regime discriminated on the basis of language contrary to the fundamental principle of equality of languages enshrined in particular in Article 12 EC;
- 2) such discrimination could not be justified on the grounds of practical convenience and even if the regime could be justified in such a way, it is not proportionate.

Moreover, Greece submitted that insufficient reasons were given in the Regulation for the choice of the regime.

Both the Court of First Instance and the European Court of Justice rejected the negative evaluation of the applicant and dismissed the action. In its judgment from September 9, 2003, the ECJ confirmed the evaluation of the First Instance that Article 115 of Council Regulation 40/94 was not discriminatory. Both courts agreed that the regulation of the language use was adopted for the legitimate purposes of reaching a solution to language problems (in cases of opposition, revocation or invalidity proceedings between parties who do not have the same language preference and cannot agree amongst themselves on the language of proceedings). Thus, the Council was pursuing the legitimate aim of seeking an appropriate solution to such language problems when it determined the official languages of the Community which may be used as languages of proceedings in opposition, revocation and invalidity proceedings. Similarly, even if the Council treated the official languages of the Community differently, its choice to limit the languages to those which are most widely known in the European Community is appropriate and proportionate.

The apparatus of Language Management Theory allows for the following interpretation: Christina Kik expected the Dutch language to have the legal status equal to that of many other European languages and to be used in all possible cases. The Office expected Article 115 to be respected by all potential participants in the proceedings. On Kik's part, an apparent deviation from her original expectation was

noted because she was not allowed to continue with the proceedings. She evaluated this act of the Office negatively, which can be observed from her submitting the action against the Office. This act drives the process of language management further. Kik designed an adjustment according to which the language regime should be changed. In accordance of the ideology of the total equality of languages, all official languages of the EU should always be permitted. What remains open at this phase is the implementation of this adjustment. The result depends on her power as an appellant who is supported by Greece, an EU member state.

From the perspective of the Office, no deviation from the expectations need have arisen. Hence, there was no reason for any process of language management that would differ from Article 115. As the Office was sued, it was forced to note the language problem. Unlike Kik, the Office did not evaluate Article 115 negatively. If it were not for the action, the process of language management could have finished at this phase – there was no language problem according to the Office. This opinion was supported by Spain and the European Council. However, both parties are equally powerful.

As both parties in this dispute evaluated Article 115 differently, the evaluation was transferred to the court. As the independent third, the court has the decisive power to evaluate the case and to decide about the continuation of the process of language management.

As for the infringement on the fundamental principle of equality of languages, the Court of First Instance stated that the appellant had claimed that there was a conflict between Article 115 of the Regulation on the one hand and Article 12 EC-Treaty, read in conjunction with Article 1 of Regulation 1/1958, on the other, in that Article 115 infringed upon an alleged principle of Community law of non-discrimination between the official languages of the European Communities.

The Court of First Instance noted first that Regulation 1/1958 was merely an act of secondary law and that the member states did not lay down rules governing languages in the Treaty, since Article 290 EC simply conferred on the Council acting unanimously the competence to determine the rules governing the languages of the institutions. The rules governing languages laid down by Regulation 1/1958 could not therefore be deemed to amount to a principle of Community law and the applicant could not rely on Article 12 EC in conjunction with Regulation 1/1958 as a basis for demonstrating that Article 115 was illegal.

The ECJ admitted that although the appellant's arguments before the Court of First Instance were brief, she might have invoked Regulation 1/1958 merely as an additional argument supporting her principal assertion that the language regime was discriminatory contrary to Article 12. The assumption appears to be – as is confirmed by the somewhat fuller argument on appeal – that Article 12 itself embodies a fundamental principle that all the official languages have equal status. Greece

supported the appellant on this point. They stated, simply, that the equality of languages is a fundamental principle of Community law, with the appellant adding that the principle is manifested above all in Article 314 EC. Equality of languages is not, however, a fundamental principle. Article 314 merely provides that all the texts of the Treaty are equally authentic. No principle that all official languages of the Community must be treated equally in all circumstances may be inferred from that statement.

The appellant stated further that the importance of the principle that languages are equal was stressed in the case-law of the Court, which has frequently confirmed that Article 12 EC Treaty requires perfect equality of treatment in member states of persons in a situation governed by Community law and nationals of the member state in question and that the protection of the linguistic rights and privileges of individuals is of particular importance. The only cases which concern the right to use a particular language, however, are *Mutsch* and *Bickel and Franz*, neither of which helped the appellant.¹⁹ In neither case was it alleged or held that the restriction on the appellant's right to use his or her mother tongue infringed upon the fundamental principle that all Community languages are equal.

Thus, the Court decided that Kik's negative evaluation of Article 115 was not justifiable, which brought about the end of the language management. As the most powerful participant in this process, it imposed this non-negative evaluation on the appellant.

Conclusion

The ideology of language equality shapes the dominant political discourse in the EU in which hardly anybody seems to question the basic assumptions informing this equality. As the analysis of the various texts has shown, the set of beliefs about the languages in the European Union that are viewed by the participants (particularly the members of European Parliament, Commission and Council) as tools for rationalizing the communication in the EU and justifying linguistic diversity. The political

¹⁹ To sum up the substance of these cases: In the *Bickel & Franz* case (C-274-96), two native speakers of German, one Austrian and one German citizen were not supposed to use German in a criminal proceedings that took place in Bolzano in South Tirol (Italy) because the right to speak German before the court in this province was supposed to be reserved only to Italian citizens who are native speakers of German. As this province is officially bilingual (Italian-German) the ECJ decided that it would have been a case of discrimination against both persons charged if they had not been allowed to use German. The same principal of applicability of originally minority rights extended to the protection of other EU citizens whose native language is the minority language abroad was used in the *Mutsch* case (Rs. 137-84). In this case, the ECJ decided that a Luxembourgish citizen was entitled to use German before the Belgian court in the territory where German is a protected minority language.

discourse, through the impact of its own types of texts (parliamentary questions, declarations, resolutions), is one of the sources of the legislative discourse, i. e. the embodiment of law in books with its own types of texts (textbooks, journals, acts, bills, EC-regulations, directives). The ideology is present in the dominant political discourse as an articulation of its political correctness. That is, nobody ever states in the public space that some languages are, for instance, ‘primitive’, insufficiently cultivated, or too small, and that such languages are not adequate to function as the official and working languages of this or that institution. The equality of official and working languages is turned into a fundamental principle in the political discourse. However, no accessible data provide evidence that the agents of the political discourse would distinguish the conceptions of the equality of languages more finely. This entails that equality is discussed only in one particular sense of the word – the agents are guided by the presupposition of equality as a matter of legal status. It is not surprising that the distinction between the anthropological and sociolinguistic conception is not considered at all.

The commitment of the texts of the law in books to this principle is somewhat weaker, though. In spite of the generally egalitarian formulation of the crucial Regulation 1/1958, its Article 6 underpins the existence of the oligophone (or even monophone) language regulations in some European institutions (mixed forms of the regulation are not excluded).

The discontinuity in the implementation of the adjustment strategies of the law in books, designed for solving the language problems, is caused by socio-economic barriers such as the lack of political power of the agents, limited budget or lack of will to learn foreign languages other than English. The issue of the extent to which the equality can be implemented in the social practice of the EU had to be decided by the European Court of Justice. This court, as one of the most powerful agents, drew upon the legal force of different sources of law (primary law, i.e. EC-Treaty with Article 12, and secondary law, i.e. Regulation 1/1958), and postulated that no principle may be inferred from the primary law according to which all official languages of the Community must in all circumstances be treated equally. Thus, formal features of the sources of law helped decide the substance of the issue.

These relations are identified in the following diagram.

The starting point of this diagram is the ideology of language equality that is articulated in three spheres. (1) It is present in the texts creating the political discourse as it exists in the European institutions (political declarations, resolutions, interpellations, answers to these interpellations). The shape and the size of the rectangles representing the ideological basis and its first application (i.e. the political discourse) are the same, which means that the political discourse reflects the ideology best. Thus, the relation between the ideology and the political discourse is very close. Projected into LMT, the political discourse represents above all the noting and

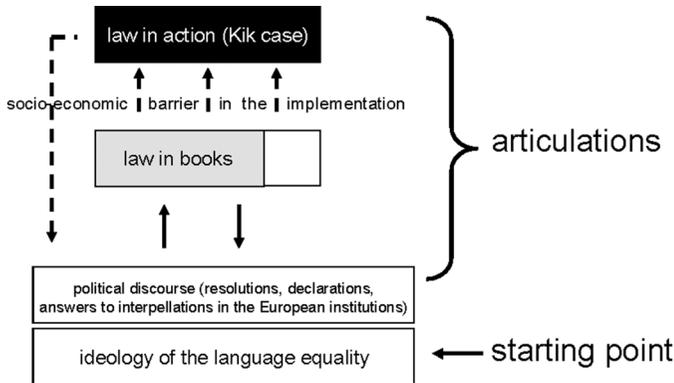


Figure 1: Equality and inequality of languages

Note: white rectangles denote equality, black inequality, and grey that elements of both equality and inequality are present. The empty square added to "law in books" denotes a sphere outside the codification.

evaluation as the first phases of language management of its agents guided by the ideology. (2) The law in books is a specific result of the political discourse. In other words, not all details discussed in politics necessarily become components of the codified law. This relation is reflected in the fact that the rectangle representing the law in books is smaller than the one representing the political discourse. Some provisions from the law in books are formulated in terms of the equality of languages, some others are not, though, as the analysis above has demonstrated (that is, the rectangle does not have a solid colour). Moreover, some questions concerning the equality of languages are not codified explicitly at all (indicated by the empty square in the right part of the rectangle). The arrows between the two rectangles symbolize the fact that the actors in the political discourse influence the actors in the law in books immediately (and vice versa), particularly when they are often the same people. In terms of LMT, the law in books represents the approved adjustment designs for solving language problems as they (that is, adjustment designs) arise from the results of the evaluative political discourse. Logically, the ideological basis is also present in the law in books. (3) The size and the shape of the rectangle representing the law in action correspond to those of the law in books. The relation is not as immediate as the previous one (indicated by interrupted arrows), though. The barrier is represented by circumstances impeding the consequent transformation of the law in books into the law in action. In terms of LMT, the designs adjusted in the legislation do not have to be implemented under all circumstances. The differing colour of the rectangle of the law in action represented by the Kik case depicts the differences from

the other parts of the equality discourse. Although, generally speaking, a relation between the law in action and the political discourse certainly exists, the concrete data representing this tie in any declarations, resolutions or interpellations were not accessible for this research. This relation is not an immediate one in most of the situations.

If a fundamental principle of linguistic equality is to be considered, this can happen, at most, within the structural-anthropological paradigm, as Sankoff (1976) put it. Any transfer or import of this structural-anthropological interpretation into the socio-economic reality is not completely possible. Language Management Theory is able to deal with the issue in the following way: the powerful agents (European institutions) that participate in the discourse at the macro-level note and negatively evaluate the danger arising from language inequality. These participants formulate some adjustment strategies, such as the resolution of the EP from January 1995 or the Council Regulation 1/1958. Yet as soon as these strategies are to be implemented, both people and institutions encounter numerous difficulties. The language management process thus comes to an end before the implementation of particular adjustment designs can take effect.

Based on this schema, it is possible to anticipate potential problems for speakers of smaller languages, specifically those of the new member states which joined the EU in 2004 and later (Czech, Slovak, Polish, Hungarian, Slovenian, Lithuanian, Latvian, Estonian, Romanian, Bulgarian speakers), who have considerably less socioeconomic power than their predecessors to change the prevailing concept of language equity. The relevant parties will need to consider other methods for the management of these problems.

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