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Legal Aspects of the European Union Language Policy

Abstract

The aim of this article is to analyse the legal aspects of the European Union's language policy. In particular, the article attempts to answer the question whether language policy is a source of language rights for the Union citizens. The first part of the article presents key terms of the language policy of the European Union such as linguistic diversity and multilingualism. Secondly, the article examines the meaning of the notion of language policy, presents its components and puts it into the context of the European Union. Thirdly, legal aspects of the language policy of the European Union are presented. Such aspects include the legal framework for EU language policy and the Union's powers in language matters. On this basis, the author presents a catalogue of language rights resulting from the EU language policy.

Key words: European Union language policy, language planning, linguistic diversity, status planning, language regime, acquisition planning.

JEL Classification: K38, K33, K190, Y8.

Introduction

Language policy is a term which appeared in the 1960s and 1970s of the 20th century and was initially used with reference to the language problems of the newly established states and developing nations. The issue of language policy was growing

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in importance, which was confirmed by the fact that at the beginning of the 21st century two new scientific journals in the field appeared, i.e. *Current Issues in Language Planning* (first published in 2000) and *Language Policy* (first published in 2002). The journals triggered broader interest in a variety of language-related issues, such as the linguistic rights of minority members, English as lingua franca, policies concerning the status and form of languages as well as acquisition policies pertaining to teaching and learning of languages or bilingual education. The growing interest in national language policies encouraged an increasing number of governments, governmental agencies, non-governmental organisations and business enterprises to examine the issue (Ferguson 2006: 3).

The European Union language policy has become a subject of many research papers in recent years. So far, the research papers on the EU language policy have included, *inter alia*, studies challenging or criticising the EU language policy and analysing the concept of linguistic diversity in the EU [Robert Philipson (2003), Richard Creech (2005), Xabier Arzoz (2008), Jacek Łuczak (2010), Anne Lise Kjær and Silvia Adamo (2011), Robert Philipson (2011), Susan Wright (2011), Peter A. Kraus and Rūta Kazlauskaitė-Gürbüz (2014), Jaap Baaij (2015)], studies on the EU multilingual law [Bruno de Witte (2004), Agnieszka Doczekalska (2006), Barbara Pozzo and Valentina Jacometti (2006), Mattias Derlén (2009), Theodor Schilling (2010, 2011), Elina Paunio (2013), Magdalena Szpotowicz (2013), Collin D. Robertson (2016)], analyses of educational and cultural aspects of multilingualism [Bruno de Witte (1987, 2008), Hanna Komorowska (2007), Aneta Skorupa-Wulczyńska (2013), Magdalena Szpotowicz (2013), Susan Šarčević (2015)], the impact of the EU language policy on the EU Member States [Bruno de Witte (1991)], the protection of linguistic minorities and language rights [Bruno de Witte (1992, 1993, 2008, 2010, 2011)], Iñigo Urrutia and Iñaki Lasagebaster (2007, 2008), Theodor Schilling (2008), Iryna Ulasiuk (2011)), institutional aspects of the policy, including actions of the EU institutions in the field of languages and their expected results [Michele Gazzola (2006), Anna Ciosek (2015)], building European identity and the impact of the policy on individual and national identity [Bruno de Witte (1989), Roman Szul (2007), Peter A. Kraus (2008)) and possible scenarios of the language policy for the future [Aušra Stepanoviene (2015), Michele Gazzola (2016)]. There are also other research studies on the linguistic situation in Europe [including Lorna Carson (2003), Jan D. ten Thije and Ludger Zeevaert (2007)] which help to gain a wider background to the EU language policy.

Having considered the above, one may have the impression that all has already been studied and said in respect of the EU language policy. This is not true. The EU

language policy is still evolving, and new challenges appear. Hence, new studies in the field are needed, all the more so as the EU language policy is far from ideal. Although in-depth analyses are carried out into different aspects of the EU language policy, still the need exists to examine its legal aspects. The research is justified by the fact that citizens of the EU Member States increasingly often claim their language rights of varied nature, such as the right to education in their native language in a host member state, the right to use the language understandable to them in front of the court or public authorities of the host state, the right not to be discriminated based on language as a worker or an entrepreneur or the right to understand the labels of the product available on the market of their state, to name the key ones. So far, neither the nature of such rights has been established nor their status specified. What is more, the origins of the rights are not straightforward.

This article aims to present, systematise and analyse the legal aspects of the EU language policy. I propose a hypothesis that the EU language policy constitutes the legal grounds for language rights for the Union citizen. In order to prove this hypothesis, I examine the following issues: the interdependence between the concepts of linguistic diversity, multilingualism and the EU language policy, definitions and components of a language policy, the concept of EU language policy and its components, legal framework of the EU language policy as well as EU powers in the area of languages. The article is divided into seven main parts, according to the research problems listed above.

In order to achieve the desired results, I employ formal-dogmatic and historical methods. In my analysis of the features, components and aims of a language policy I rely to a large extent on the analysis of academic achievements of European linguists, such as Haugen, Lubaś, Cooper, Gajda, Bochmann, Pisarek, Ricento and Grucza. With an aim of studying the EU language policy, I examined primary and secondary sources of law of the organisation and conducted research into the EU language policy on the basis of studies carried out by linguists and lawyers (Arzoz, Carson, Creech, De Witte, Gazzola, Komorowska, Kraus, Łuczak, Philipson, Szul, Szpotowicz and Wright). Notably, the literature and legal regulations in the field are extensive, yet due to the interdisciplinary nature of the problem I focused on the most relevant publications.

1. The Concept of Linguistic Diversity in the European Union

The respect for diversity of cultures, customs, religions, convictions and languages has been the cornerstone of the European integration since its very outset. Yet, the principle of respect for linguistic diversity in the Union has been evolving throughout the years. Initially, diversity of languages was of importance mainly for political reasons. With new accessions, as the Union was becoming more and more diverse, linguistic diversity was turning into a significant social, cultural, economic and political fact of life (Juaristi, Reagan, Tonkin 2008: 47–49). Today, the EU recognises 24¹ official languages and approximately 60 autochthonous regional or minority languages spoken over the geographical area of the European Union (Urrutia and Lasagabaster: 479). Certainly, this is not the entire linguistic picture of the Union. The Euromosaic study identified more than a hundred minority linguistic groups in various EU Member States². What is more, the number of languages is constantly growing due to the mobility of Europeans and notable influx of migrants to the EU. All the languages, including national, regional and minority languages as well as the languages of migrants contribute to the linguistic diversity of the European Union.

The EU's appreciation of linguistic diversity stems from a particular concept of language perceived as a cultural phenomenon and a denominator of identity of a community or society (Krauz 2008: 39–43). In order to show this respect, the Union restrains from interference into national identities and maintains cultural diversity of its Member States (Gajda 2007: 7). The co-existence of many languages in Europe became the European Union's aspiration to be united in diversity (European Commission 2005: 3). The motto of 'united in diversity' became the official symbol of the Union, alongside the European flag and the anthem. Through the motto the Union formally confirms that diverse cultures, traditions and languages in Europe are considered positive assets and key values of Europe. The European Commission states that each of the many European languages is to add its own unique facet to a shared European cultural heritage, where no language is superfluous and no European citizen feels that his or her language is marginalised or disrespected (European Commission 2005: 9).

¹ Status as of 28 November 2018.

² The study was initiated by the European Commission in 1992, 2004 and 2008.

2. The Concept of Multilingualism in the European Union

The notion of linguistic diversity within the EU is inseparably connected with the Union's concept of multilingualism. In order to specify the relationship between the two, one should first determine what is meant by multilingualism in the EU. To start with, it must be noted that the plain dictionary definition of multilingualism explains the term as an individual's ability to communicate in several languages (individual multilingualism, plurilingualism) and the co-existence of different languages within a community in one geographical/political area (social multilingualism). Such definition is recognised by scholars in the field, including Carson (Carson 2003), Malinowska (Nikadem-Malinowska 2004) and Zygierewicz (2010), and is commonly accepted by international organisations, such as the United Nations and the Council of Europe. Such understanding of multilingualism is also accepted by the European Union. The European Commission assigns an additional meaning to the term by addressing it as its policy (or strategy) aiming to promote conditions conducive to the full expression of all languages in which teaching and learning foreign languages can successfully develop (Kemp 2009: 11).

With reference to the EU, the meaning of the concept of multilingualism expanded over time. Initially, multilingualism in the EU (EU multilingualism) had a symbolic dimension and was the most prominent symbol of the Union's commitment to cultural and linguistic diversity. With time, the term multilingualism began to be used with regard to a multitude of matters related to language use within the EU, including the public and the private spheres. For this reason, a traditional understanding of multilingualism ceased to suffice to capture the full scope of manifestations of diversity in modern societies, in particular in the EU, where the steady increase in the European mobility entailed many new forms of social multilingualism. Today, EU multilingualism is an interdisciplinary phenomenon which may be studied from various perspectives, i.e. linguistic, educational, social, psychological or legal. Due to its evolving nature, EU multilingualism has received much scholarly attention in recent years (Kemp 2009: 11). The study of the EU law and academic papers as well as the analysis of the doctrine clearly imply that the dictionary definition does not reflect the full meaning of the term multilingualism in the context of the European Union. What is more, the additional meaning assigned to multilingualism by the EC constitutes only some of the matters falling under the

heading of the EU multilingualism. Carson distinguishes three different facets of multilingualism in the EU, i.e. first multilingualism within its official institutions and agencies, second the interface between the EU bodies and the European public, and third multilingualism in the everyday life of Europe's citizens (Carson 2003: 19). Considering the above, it may be stated that multilingualism in the context of the European Union is a multi-layered umbrella term used to describe a multitude of language matters, including, in particular, the Union's language policy, the linguistic regime of the Union's institutions (institutional multilingualism), its multilingual legal system as well as EU actions undertaken to promote multilingualism (EC multilingualism strategy)³.

3. Linguistic Diversity and Multilingualism in the European Union

The protection of linguistic diversity and promotion of multilingualism constitute two chief official goals of the EU language policy (Van Parijs 2008: 21). Within this policy, the Union attempts to protect and, at the same time, to promote languages. First, the policy aims to maintain linguistic balance by preserving linguistic and cultural diversity of the Union Member States and thereby preventing domination of one or more languages, which would lead to the discrimination of some language. Second, the policy strongly promotes multilingualism and aims to create conditions favourable to foreign language learning. Both goals seem to be complementary by nature, yet they give rise to growing tensions between them. The two principal goals of the EU language policy – protection of linguistic diversity and promotion of multilingualism are in fact contradictory in nature. First of all, not all languages are equally promoted, with some languages being favoured. The Report on the Languages in a Network of European Excellence by LINEE research confirms that the Union promotes languages which are assessed high through the prism of their usefulness in the labour market (European Commission 2011: 13). In fact, the spread of some languages, in particular English, which is unofficially considered to be European *lingua franca*, contributes to a decline in diversity (Van Parijs 2008: 21). The

³ Empirical studies of the author carried out based on the research of terminology used in the EU law, publications and recent literature in the field (since 2010).

contradictory goals of the Union language policy encourage analysis of its structure and legal framework.

4. Definition of Language Policy

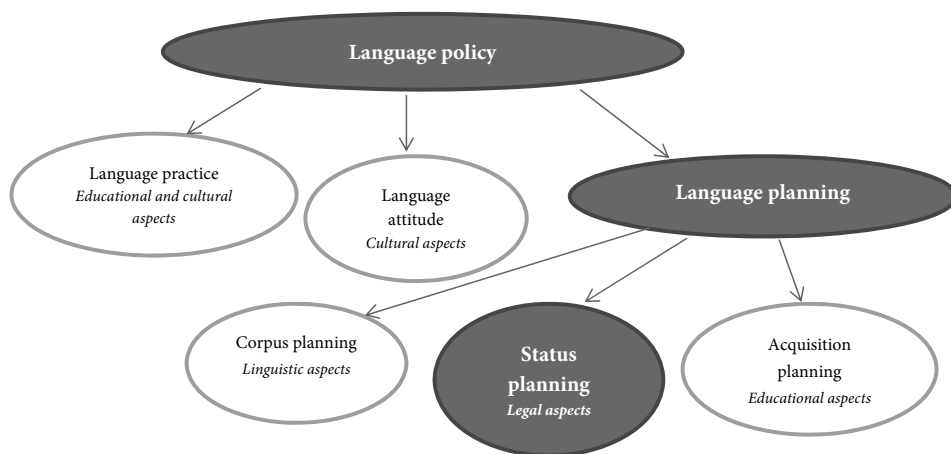
The starting point for my analysis is shaping the definition of the EU language policy which may be deduced from a definition of the notion of language policy, broadly analysed by linguists and sociolinguists⁴. The definitions of language policy introduced so far are not fully consistent and expose different aspects of the term. Nevertheless, a common denominator for all of them is a deliberate and motivated nature of activities, taken by institutions and individuals, which are aimed at shaping and influencing the language situation of a community. A language policy may be kept by both a state and an international organisation. Governments and/or competent authorities authorised to adopt relevant statutes as well as to carry out appropriate information, educational and cultural policies undertake appropriate measures and actions. By definition, a language policy serves two primary objectives: maintaining identity and ensuring effective communication. As language is a fundamental, permanent and intrinsic part of human identity, the language policy is part of an identity policy. Language is also an external creation of a human being and a tool of communication. Hence, language policy is also an inherent part of a communication policy (Grucza 2002: 25). Considering the above, one can definitely state that a language policy is a multi-faceted discipline, which entails three main aspects – legal, cultural as well as educational. The legal aspect of a language policy relates to all relevant regulations imposed by the state or by the organisation in the scope of the language (languages) and its (their) use. The cultural aspect includes the totality of ideas, values, beliefs, attitudes, prejudices, myths, religious strictures, and all the other cultural ‘baggage’ that speakers contribute to the language(s) from their culture(s). It also includes the linguistic standards of a language (linguistic aspect). The educational aspect of a language policy relates to language acquisition and teaching. The three aspects are interrelated and affect one another. The legal and regulatory aspects of a language policy are regarded as the most important in legal

⁴ Definitions of language policy were introduced inter alia by Lubaś (1975, 1977), Cooper (1989), Kaplan and Baldauf (1997), Gajda (1999), Bochmann (1999), Pisarek (1999), Ricento (2000) and Pawłowski (2006).

terms as they determine its shape and form the grounds for any implementation activities. Pisarek also notices that legal aspects of a language policy should be brought to the forefront in all decisions concerning privileging a language or a group of languages and limiting other languages or their variants, which is often the case in international organisations (Pisarek 2008: 42).

Language policy comprises language practice and language attitudes and is inextricably connected with language planning, which constitutes its actual phase of implementation. Language planning is carried out by competent authorities in order to sort out language-related issues within a community and to influence the behaviour of the community members with respect to the acquisition, structure or functional allocation of their language codes. Language planning is broken up into three components: status planning, corpus planning and acquisition planning (terms coined and defined by E. Haugen) (Cooper 1989: 45). In principle, status planning within the language policy constitutes the major level of language planning which affects the social and legal position a language will be assigned. As status planning remains within the competence of the state or organisation statutory institutions, the result of the status planning process is publication of all relevant regulations imposed by the state or by the organisation in the scope of the language (languages) and its (their) use. In the course of status planning, the varieties of a language or languages that become official in a state or organisation and serve as a medium of its institutions are established, and the means for interaction between the state and citizens are determined. Acquisition planning is a derivative of the status planning as relevant regulations adopted in the area of language acquisition must be compliant with the superior legislation specifying the status of languages. Although language acquisition is strictly related to education, it exerts significant impact on status and corpus planning, as it is a powerful tool affecting the shape of any language policy (Łuczak 2010: 30). Corpus planning primarily deals with language standardisation processes, including orthographic, lexical and spelling correctness, harmonisation within the language, pronunciation, changes in language structure, vocabulary expansion and style (Kaplan and Baldauf 1997: 20).

The graph below presents the elements of the language policy, relations between the language planning components and aspects they focus on.

Graph 1: Author's own compilation based on the above analysis

5. European Union Language Policy and its Components

The analysis of the meaning of language policy and the components of language planning leads to the formulation of a definition of the EU language policy which may be described as a policy embodied by deliberate activities of the EU competent authorities aimed at shaping the language situation within the organisation. The European Union competent institutions undertake a series of institutional activities to co-exist in many languages. The language policy of the European Union seems to include the required components, with status planning and acquisition planning taking the lead. As noticed by Darquennes and Nelde, corpus planning in the context of the EU language policy plays a minor role. It is of greater importance at the regional rather than supranational level (Darquennes and Nelde 2006: 61–67). The immersion of the EU language policy in protection of linguistic diversity and promotion of multilingualism entirely affects the component of status planning, constituting its significant legal dimension. Status planning encompasses determination of the status of languages of the EU Member States and results in the multilingual regime of the EU and multilingual law. The EU linguistic regime is a language system which regulates the status of languages within the organisation and specifies the languages which can be used in contacts between the institutions and organs of an organisation and its Member States and their citizens, the rules of language use in the internal communication inside and between the organs as well as the rules regarding the

linguistic arrangements of international law instruments concluded by the Union. The European Union law provides for an equal status of all 24 official languages of the EU, with no language being granted a special privileged status (Schilling 2011: 479). Acquisition planning constitutes another significant component of the EU language policy. Within the framework of this component, called the Union's strategy for multilingualism or multilingualism policy, the Union – in fact the European Commission – takes up relevant initiatives to encourage individuals to improve their language skills and master foreign languages and helps the Member States develop educational tools and gather data to monitor progress in language teaching and learning (European Commission 2005).

6. Legal Framework for the European Union Language Policy

The legal framework for the EU language policy has been evolving throughout the years. The policy development may be divided into two phases: the period preceding the Lisbon Treaty and following the Lisbon Treaty. An element linking the two periods is the institutional regime based on Regulation 1/58, which remained virtually unchanged except for the relevant amendments extending the number of official languages upon every accession. The period of Community language policy preceding the Lisbon Treaty was earmarked by three main factors: prohibition of discrimination based on citizenship, Community competence in the field of education and culture as well as ambivalent minority policy. The Lisbon Treaty was a breakthrough in respect of languages and their protection. Somehow, the transformation of the Union into an international organisation contributed to the reinforcement of multilingualism by making it a political necessity which determined proper development of the Union and the achievement of European goals (Athanasios 2006: 7).

The Lisbon Treaty introduces new legal framework for the EU multilingualism and the basis obliging the Union to respect and promote cultural and linguistic diversity. First of all, the inclusion of the principle of respect for linguistic diversity into the Charter of Fundamental Rights of the European Union (Article 22) changed its status into a fundamental right in the EU. Next, respect for linguistic diversity is also shaped as an aim of the Union. Article 3(3) of the Treaty on European Union (TEU) expressly states that the European Union “shall respect its rich cultural and linguistic diversity, and shall ensure that Europe's cultural heritage is safeguarded

and enhanced". Above that, the Lisbon Treaty includes a number of references to the protection of linguistic diversity. The Preamble to the TEU refers to linguistic diversity as an intrinsic element of cultural inheritance by stating that the Union "draws inspiration from the cultural, religious and humanistic inheritance of Europe". Next, respect for linguistic diversity is entrenched in the values on which the Union is founded, as specified in Article 2 TEU. Such values encompass respect for human rights, including the rights of persons belonging to minorities, equality, tolerance, pluralism and non-discrimination. The Treaty on the Functioning of the European Union (TFEU) also includes direct references to linguistic diversity and provides specific provisions on the promotion of linguistic and cultural diversity. Article 165 TFEU stresses that the Union should strive for "developing the European dimension in education, particularly through teaching and dissemination of learning of the languages of the Member States, whilst fully respecting cultural and linguistic diversity". Moreover, Article 207(4)(a) TFEU, which constitutes the basis of the common commercial policy, expresses respect for linguistic diversity in the context of commercial transactions. It obliges the Council to act unanimously in the field of cultural services if they may bear a risk of exerting adverse effect on cultural or linguistic diversity. Respect for linguistic diversity imposes on the Union a passive obligation not to conduct any policy which would prejudice the existing language diversity (Van der Jeught 2015: 90). Apart from the above, the Treaty provides other language-related guarantees including non-discrimination on grounds of nationality (Article 18 TFEU), respect for national identity (Article 4 TEU) and the right to petition the European Union institutions in one's own language (Article 24 TFEU). From a formal regulatory perspective, the recognition of language matters in the primary sources of law implies their importance in view of the principle of equality. However, it must be realised that the legal weight of the language-related provisions differs. Some of them constitute general principles of the Union [Articles 2, 3(3), 4 TEU, Article 18, 24 TFEU], some create concrete grounds for the Union citizen language rights (Regulation 1/58, Article 22 of the Charter, Article 18) and other impose on the Union institutions certain obligations related to the languages [Article 165 TFEU, Article 207(4)(a)].

The above shows that the EU law includes numerous references to language matters. The legal basis for the pure language policy, including the components of status planning and acquisition planning, must be discovered first of all in the regulations on the status of languages. The EU law provides hard-law regulations in this matter. First, Article 55(1) TEU recognises 24 languages (Bulgarian, Croatian, Czech, Danish, Dutch, English, Estonian, Finnish, French, German,

Greek, Hungarian, Irish, Italian, Latvian, Lithuanian, Maltese, Polish, Portuguese, Romanian, Slovak, Slovenian, Spanish and Swedish). The languages have equal status and the texts of the EU legal instruments are authentic in each treaty language. The principle of authenticity imposes on the EU legislator an obligation to draw up a legal act in all official languages and to treat all language versions as equal and authentic and, consequently, having the same legal effect. The principle of authenticity guarantees uniform interpretation of multilingual law. Obviously, authenticity of all official language versions raises questions of interpretation in the case of linguistic discrepancies as they may constitute the grounds for the member state citizens to challenge a given provision. The major challenge for the UE in this area refers to the expression of the same content in different official languages, thus guaranteeing equal rights to all EU citizens. If, therefore, the expression of the same rights in two languages may be a problem, it is obvious that the difficulty grows proportionately when there are almost thirty languages (Paunio 2016: 13). In this respect, both the Court of Justice of the European Union and national courts of the Member States are obliged to assure proper application of the Union law. Scholars claim that although multilingualism adds a layer of complexity to communication, it does not form an obstacle for assuring legal certainty. In fact, the principle of authenticity of multilingual law creates the conditions for making a uniform and just interpretation of the EU law for all the citizens of the Union (Gajda 2012: 7). The Union institutions have an obligation to treat all EU official language versions as having the same legal force and effect in the course of interpretation (Jedlecka 2019: 144).

Next, Article 342 TFEU includes the primary principle of the EU language regime by delegating the powers to decide about the rules governing the languages to the Council acting unanimously. Although the above Article includes the empowerment of the Council to take decisions in matters concerning the use of official languages and to establish the legal framework of languages in European affairs, it is not a directly effective norm, as it refers to *Regulation 1/58*. Such a solution allows for a flexible approach in a given matter and causes that the formal and factual basis of the language system is actually set out in *Regulation 1/58*, changed at every accession. All official languages are national languages of the EU Member States. Accordingly, currently there are 24 official languages and their joint official status is based on formal equality of languages. This principle reflects the political equality of the Member States and aims to ensure that the EU is transparent for its citizens and to avoid the dominance of one language or some selected languages (Schilling 2008: 481–482).

Language acquisition promoted under multilingualism and educational policy is maintained by the EU in the form of soft law which does not have legally binding force (Grzeszczak 2010: 15). Such law specifies actions of particular institutions aimed at the promotion of multilingualism within the European Union. The catalogue of such acts comprises communications, conclusions, resolutions recommendations, reports and opinions. The legal basis for the EU multilingualism strategy is closely related to the EU education policy. Philipson (2003) even uses the term educational language policy in order to underline the aim of the EU multilingualism, which means ensuring the continued vitality of national languages, rights for minority languages and diversification in foreign language learning and teaching.

It must also be realised that the EU law does not touch upon all the aspects of the EU language policy. One of the key legal dimensions of the EU language policy where the EU is limited by international law includes minority protection. The EU has no explicit jurisdiction in the field of protection of linguistic minorities. In the field of minority languages, the EU speaks of respect and encouragement through the fostering of a commitment to the promotion of culture and language. The EU may only strive to promote regional and minority languages in the EU Member States (Van der Jeught 2015: 94). These are the EU Member States that have a competence to recognise minority languages on their territory, and to ratify or not international agreements in this field. Due to its limited powers in the field of cultural and linguistic matters, the EU cannot guarantee diversity of minority and regional languages (Urrutia and Lasagabaster 2008: 6). The lack of proper regulation in respect of minority languages and language rights of the members of minorities forces the Union to rely upon international law, in particular on the United Nations International Covenant on Civil and Political Rights and the Europe of Council documents, i.e. the European Charter for Regional or Minority Languages and the Framework Convention for the Protection of National Minorities. There are voices in the academic discourse saying that due to the fact that the EU language policy fails to regulate the issue of linguistic minorities, the very existence of the EU language policy should be questioned. They claim that there are no formal and legal grounds for the EU language policy (Komorowska 2007). Today, this is a minority opinion. The majority of scholars agree that the Union as an organisation pursues its own language policy separate from the language policies of its Member States, not being a component of any other policy of the organisation. The fact that the EU language policy is consistent with the policy of the Council of Europe does not question but reinforces the existence of the former (Szpotowicz 2013: 12).

7. Powers of the Union in Respect of Language Matters

The Union is an international organisation acting on the basis of the principle of conferred powers. The European Union does not have an exclusive competence in language-related matters and is not authorised to legislate and adopt legal acts binding upon the Member States in the area of languages. The Member States maintain their language policies and freely determine rules concerning the use of languages in their Constitutions or otherwise, indicate their official language(s) and language policy, including the recognition of regional and minority languages (Van der Jeught 2015: 103). A firm confirmation of the EU Member States' competence to conduct their language policies can be found in the judgement in the *Groener* case (Groener, C-379/87). The Member States are also responsible for making progress in promoting linguistic diversity (at both the regional and local level) and foreign language learning. The Union, in particular the Commission, may take relevant actions falling within its remit to raise awareness in respect of multilingualism and to improve the coherence of actions taken at different levels (European Commission 2005: 3). In practice, the European Union provides general law – mostly in the form of soft law – related to language matters, with specific laws to be provided by the Member States.

Although the competence in language matters is vested in the Member States, it must be exercised by them within the limits of the European Union law, in particular in compliance with the principles of non-discrimination and proportionality. The *Groener* case was a landmark in this respect. In the judgment, the Court put some limits on national competence in the field of languages by combining it with the rights of the Union citizens. The Court specified that the implementation of a language policy must not encroach upon a fundamental freedom such as that of the free movement of workers. The Court added that measures to adopt a policy by a member state “must not be disproportionate in relation to the aim pursued and the manner in which they are applied must not bring discrimination against nationals of other Member States” (Groener, C-379/87, para. 19). The Court stressed that the Member States cannot impose any requirement that the linguistic knowledge must have been acquired within the national territory and that foreign nationals must retake national

language examination as it violates the principle of non-discrimination (Groener, C-379/87, para. 23).

It must also be noted that the general division of competence in language matters between the Member States and the Union institutions does not refer to the status of languages, which is explicitly regulated in hard law and falls within the exclusive competence of the EU. The above demarcation of language jurisdiction between the EU and its Member States leaves space of uncertainty and indicates some conflict areas between the language policies of the EU and its Member States, in particular in the area of language regulation in the internal market, EU freedom of language and national public framework, the aim of social cohesion at the national and regional level, the linguistic organisation of multilingual Member States, language without EU status and restricted language regimes in EU institutions, bodies and agencies (Van der Jeught 2015: 231). All these aspects require extensive research and analysis.

8. The European Union Language Policy and Language Rights

The analysis of the EU language policy and the Union powers in language-related matters leads to a conclusion that the EU language policy is a source of language rights to the Union citizen. It is certain that the rights result from the status of languages (status planning component) and, presumably, from the acquisition planning component. The analysis of language rights of the Union citizen resulting from the strengthening of the principle of respect for linguistic diversity falls outside the scope of this paper.

The status of languages of the EU Member States is specified in hard law – Article 55(1) TEU and Regulation 1/58 – and hence is a source of enforceable language rights. The language rights explicitly enumerated in the Regulation include the right of access to law in a language understandable for the citizen, the right of access to legal procedure in front of the Court of Justice and the right to send documents to the Union institutions and receive an answer in one's own language. The right of access to EU legislation is the primary right for the Union citizen resulting from the Union's legal nature, which imposes direct effect of its primary and secondary law. Every Union citizen should be able to fully understand the content of law that binds them in their own language (European Commission 2008a: 13). Obligation to draft regulations and other documents of general application in official languages set out

in Article 4 of Regulation 1/58 and obligation to publish legislation in the Official Journal of the European Union (OJEU) in all the EU official languages enshrined in Article 5 are a prerequisite to uphold the fundamental principle of legal certainty. In this context, multilingualism is a necessary corollary of the principle of direct effect and the doctrine of the supremacy of the EU law over national laws (Athanassiou 2006: 5–6).

Second, the right of access to legal procedure in front of the Court of Justice provides the Union citizen with the opportunity to enforce their rights using the language comprehensible to them. Article 7 of Regulation 1/58 makes reference to the languages used in the proceedings of the Court of Justice by stating that they are laid down in the Rules of Procedure of the Court of Justice. The Rules read that the applicant is entitled to bring the case to the Court of Justice in any EU official language. The language chosen does not have to be a native language of an applicant [The Rules of Procedure, Article 37(1)]. The language in which an action is brought becomes the exclusive language of the case. If the case is brought by more than one applicant, the applicants must choose a common language or file separate applications. The choice of the language of the case does not mean that this is the only language used in the course of the proceedings. The Court provides translations from and into the languages which are authorised for use during the proceedings. Regardless of the number of languages in which the judgement is published, a judgement is authentic only in the language of the case (The Rules of Procedure, Article 41).

Third, the right to send documents to the Union institutions and receive an answer in one's own language is another language right conferred upon the Union citizen. Article 2 of Regulation 1/58 expressly provides the rights to the citizens of the EU Member States related to language use in communication with the Union institutions. It must be remembered that the Regulation is limited only to the communication with the EU institutions listed in the Lisbon Treaty including the European Parliament, the European Council, the Council, the European Commission, the Court of Justice of the European Union, the European Central Bank and the Court of Auditors, with the linguistic regime of the Court of Justice being governed by separate rules (Article 13 TEU). The language chosen does not have to be a citizen's native language. It might be any other EU official language. It should also be noted that the right to receive an answer in a particular language may be waived. The right of communication in one of the official languages with the EU institutions is also enshrined in Article 24(4) TFEU which states that every citizen is entitled to write to any institution in

one of the languages mentioned in Article 55(1)TEU and have an answer in such a language. Still, communication with a number of EU bodies and agencies may not take place in all EU official languages as they fall out of the scope of the Treaty and Regulation 1/58. Language arrangements concerning communication languages are often governed by internal regimes. The EU agencies and bodies including the European Union Intellectual Property Office, the European Investment Bank, the European Union's Judicial Cooperation Unit (Eurojust), Europol are regulated by their internal procedures (Van der Jeught 2015: 150).

It must also be noticed that the status of official languages in the EU comprises other rights related to language use, including the right of politicians (e.g. members of the European Parliament, representatives of Member States in the Council etc.) to use any official languages in public speeches, the right of EU citizens to obtain information about the Union in any of 24 official languages. The EU portal www.europa.eu, containing most significant information about the EU is also maintained in official languages. The status of official languages also implies that not only legislation, but most important EU documents are published in all official languages. However, no clear and transparent rules exist which specify what type of documents are subject to obligatory translation (in whole or in part) and into what language (Szul 2007: 68). Such state of affairs affects citizens' equal accessibility to the information about the Union and as a result their rights.

As to the acquisition planning component, from the legal standpoint, the Union has no competence to impose any obligations or confer any language rights in terms of language acquisition. The facts are that this area constitutes a significant part of the entire EU language policy as it includes a wide range of activities aiming to promote multilingualism and language learning, in particular by promoting plurilingualism, submitting proposals, developing strategies and creating stimuli for the Member States to prepare national action plans (Łuczak 2010: 118). This component is implemented through the European Commission's multilingualism strategy. What is offered by the Union within its remit is granting language privileges to the Union citizens by undertaking relevant initiatives and running campaigns encouraging foreign language learning. Such actions include *Erasmus*, *Erasmus +*, *Lingua*, *Socrates*, *Youth in Action*. The Member States decide if they ought to follow

the Union's recommendations and they do so based on the subsidiarity principle⁵. Yet, not specific language rights could be inferred in this area to individual citizens of the EU Member States.

Conclusions

The EU is characterised by linguistic diversity entrenched in the Union law as a founding principle and a fundamental right. Taking the above into account, it may be stated that the Union tries to unite its Member States by respecting and protecting their languages and promoting their cultures.

The principle of respect for linguistic diversity puts the Union in front of a difficult task to unite Europeans of diverse languages and cultures. The Union's growing linguistic diversity creates challenges for the Union both at the legal and linguistic level as well as with regard to day-to-day operation of the Union's institutions.

Multilingualism is an umbrella term, used to describe the multiplicity of languages in all aspects of the EU operation.

The EU language policy lacks a full and comprehensive framework for the realization of its objectives. In fact, the policy attempts to maintain balance between protection of linguistic diversity and promotion of multilingualism and thus falls into inner contradictions. The measures taken by the EU institutions to promote and protect languages contradict the Union's declarations on the protection of all languages.

The EU law mostly protects national languages of the Member States as they have the status of the EU official languages. The EU law grants hardly any rights to the users of non-official languages. Therefore, it could be concluded that the scope of the EU concept of linguistic diversity is practically limited to the Union official languages, whose users may enjoy certain language rights.

⁵ Principle of subsidiarity is enshrined in Article 5(3) of the Treaty on European Union (TEU) and Protocol (No 2) on the application of the principles of subsidiarity and proportionality and it constitutes one of the fundamental principles of the EU. This principle defines the division of competences and tasks between the EU institutions and the administrations of the Member States. It states that EU institutions can intervene or take specific actions only if they are more effective and effective than actions carried out by individual Member States.

The Union's approach favours official language users and grants significance to official languages while making regional and minority languages less appealing. This may ultimately contribute to reducing linguistic diversity, which is against the Union's objectives.

Based on the official status of languages the Union grants specific rights to the official language holders. Such rights arise out of the Union's linguistic regime and include the right of access to the EU legislation, the right to address the Union institutions and the right of access to legal proceedings in front of the Court of Justice of the European Union.

The EC multilingualism strategy to encourage EU citizens to learn foreign languages does not grant or protect any language rights. In this area, the Union only grants some privileges to the Union citizens who may take advantage of language learning initiatives and actions promoted by the EU institutions.

Although the change to the shape of the EU language policy is difficult due to the division of powers between the Union and the Member States in the area of languages, growing multilingualism generates increasing language-related problems which need to be dealt with. In this context, the Union should establish a clear set of language rights of the Union citizen based on the existing language arrangements and the case law of the Court of Justice of the European Union

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