The Constitutional Protection of the Linguistic Diversity in the European Union

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Summary: 1. European identity and the multicultural principle. 2. The development of the equality principle and the acknowledgment of cultural rights. 3. The inspirational role played by international laws in the formulation of the European Constitution. 4. The legal significance of Article II.82 of the European Constitution. 5. The protection of cultural differences within European Union member States. 6. The most important devices for the enhancement of linguistic diversity.

1. European identity and the multicultural principle.

Isocrates, the famous Greek philosopher, eloquently compared the Constitution to the “soul of the city”, ideally the best element capable of bonding and molding society, and therefore, of creating an agreeable relationship between the people and the (political) institutions.

The Constitution’s fundamental role is to give legal articulation to the values, principles and rules acknowledged by the associates: in other words, constitutional documents are intended to formalize the ideals expressed by the pact that, on one hand, join all citizens, on the other, unify the State’s different territorial components.

Consequently, it inevitably follows that a European Constitution must contain a preamble, as well as two sections dedicated to the values (Article I-2) and to the purposes (Article I-3) of the European Union.

The first one asserts that the Union is founded on the values of dignity, of liberty, of democracy, of equality, of a rule of law system and on the respect for human rights. Conversely, Article 3 provides for the adoption of welfare state principles, in conjunction with every effort to monitor the protection and development of the European cultural heritage, in appreciation of the multiplicity and variety of its cultural and linguistic diversity.

Section 1, 2, 3 and 4 were prepared by Giancarlo Rolla, whilst section 5 and 6 were prepared by Eleonora Ceccherini.
Said sections reveal the intention of establishing a common foundation of principles and rights shared by all Europeans, while simultaneously making every effort to avoid that their multicultural heritage is somehow overshadowed.

Consequently, the process of constitutional change currently affecting the European Community legal order cannot by any means disregard its innate cultural pluralism.

As a result of this, the European Union - while in the process of shaping its new identity, replacing its primarily economic nature (represented by the single currency policy, by the acknowledgment of the principle of competition, by the stability agreement and by the balancing of prices) with a more constitutional one. - was necessarily required to recognize its countless cultural roots, as well as the continuous contributions of the new and different cultures.

If it is a fact that the cultural heritage of the old continent truly consists of the combination of different populations, languages, religions and traditions, then it is not unreasonable to believe that Europe represents the “precious and difficult agreement in which elements of dissonance merge without dissolving”\(^2\). Should such an objective be accomplished, the European Union will represent an example of “virtuous globalization”, in which the struggle for harmonization will prevail over any attempt to homogenize society by using an osmosis process, on account of which minorities will accept to be one of the building blocks of a larger social structure and majority groups will give up thinking they express the universally-held will.

2. The development of the equality principle and the acknowledgment of cultural rights.

With regard to the development of constitutional legal systems - after the creation of national States and the establishment of multinational States - our century may be identified by the introduction of multicultural legal orders, distinguished by the coexistence of different nationalities, as well as by the appreciation for the values of diversity and tolerance.

Then again, the recognition of cultural rights possesses a particular significance from a historical point of view, given it generally represents the rejection of and the partial compensation for the mistakes and atrocities of past political persecutions. This has evidently occurred, on one hand, in the constitutional legal orders established following the crisis of Colonialism or that were somehow exposed to new forms of political and cultural colonialism. On the other, it is an evident phenomenon in the areas occupied by specific original ethnic groups, to which the Constitution – in light of the historical events – awarded a particular legal status.

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Modern legal orders are gradually becoming aware of the fact that societies are now less homogenous on account of progressively more pervasive economic, social and political differences, in addition to an increasing multiethnic and multicultural social nature: this has brought about a greater awareness towards existing differences. If the existence of a heterogeneous society calls for positive actions aimed at eradicating the grounds for inequality, it follows then that ethnic and cultural multiplicity commands measures directed towards the protection of differences.

This process, focused on the enhancement of the principle of equality, has had an effect also on the development of the European Union cultural rights legislation.

At first, the European Union incorporated the principle promoting the protection of minority cultural identities with the rule against discrimination. For example, Section 13 of the establishing Treaty authorized the European Union to oppose any discrimination based on race, ethnic origin or religion3, grounds which could be challenged by way of positive actions; likewise, Section 14 of the European Convention for the protection of human rights and fundamental liberties banned discrimination on several grounds, such as of race, language, religion, relationship with a national minority, by using a wording that was substantially identical to the relevant Italian, French and German constitutional sections.

Said provisions, on the other hand, are confirmed by Section II.81 of the European Union Charter of Fundamental Rights, which prohibits any kind of discrimination based on race, skin color, ethnic origin, language, religion and relationship with a national minority.

In light of this framework, however, Section II.82 of the European Constitution sanctions the need to respect cultural, religious and linguistic diversity, while introducing an element that interrupts the relative continuity of the legislative tenor. In this case though, the protection of differences takes on a new perspective. In fact, awarding formal (rule against discrimination) and substantial (obligation to remove all inequalities) protection to the equality principle is presumably coherent with the need to create a common system founded on a domestic and unified market, as well as on a single citizenship. Instead, promoting the recognition of diversity satisfies the pluralistic need to safeguard specific, minority group-identifying differences, thus acknowledging them as a fundamental component of Europe’s historical and cultural heritage.

3. The inspirational role played by international laws in the formulation of the European Constitution.

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3 Together with personal opinions, handicap, age and sexual orientation.
The wording of Section II.82 of the European Constitution has apparently incorporated several of the general trends currently supported by international law, which are focused on awarding protection to minority groups so as to avoid their disappearance, as well as on requiring member States to steer clear of any culture-assimilating policy.

Consider for example the Declaration on the Rights of individuals belonging to national or ethnic, religious or linguistic minorities, adopted by the UN General Assembly on 18 December 1992: this document is determined to identify some of the fundamental standards that are necessary to qualify the laws in favor of minority groups 4. Or else, take into account article 27 of the Pact on civil and political rights, adopted on 19 December 1966, which acknowledges the right of all individuals belonging to any ethnic, religious or linguistic minority to freely profess their religion, live out their personal cultural experiences, as well as use their own language 5.

Specifically with regard to Europe, it is also appropriate to recall the 1992 Charter on regional and minority languages, approved by the Council of Europe with the purpose of awarding certain specific rights to minority groups who speak languages that run the risk of disappearing on account of the fact that the use of official and co-official languages is slowly overwhelming them. Among them, for example, there is the right to promote the spoken and written use of the groups’ own language both in public and in private matters; the right to increase the interaction between groups who are fluent in the same language; the right to develop study courses and research projects, as well as to encourage over-the-border exchange programs.

Instead, the 1994 framework-Convention on the protection of national minorities adopted by the Council of Europe demands full cooperation by member States in implementing the measures deemed appropriate, also in light of the principle of good faith, to achieve complete and effective equality between people belonging to national minorities and those belonging instead to the majority community 6.

4 With regard, for example, to the right to use one’s own language, certain prerequisites are: the existence of a linguistic identity; the possibility for minority members to use their own language without any discrimination, in public and private dealings; the adoption of measures to assist them in learning their mother tongue, as well as to develop their traditions and the elements of their culture.

5 Said international obligation has been generally construed in two different ways: on one hand, it requires member States to carry out positive actions aimed at reinforcing the identity of minority groups, while on the other, they must award each minority member the right to live out their own cultural experience within their own minority group.

Besides, the decision to include a section acknowledging cultural differences within the European Constitution had been urged by a European Parliament resolution adopted on 16 March 2000, which emphasized the need to protect different European languages and cultures for the benefit of the Union and of all its member States.7

4. The legal significance of Article II.82 of the European Constitution.

The wording of Article II.82 of the European Constitution can no longer be regarded as a mere intensification of the anti-discrimination rule. Specifically, recognizing cultural, religious and linguistic diversity does not represent a plain specification of the equality principle: in the words of the Italian Constitutional Court, “it represents something different, something more than the principle granting equality among citizens”, given it commands “a different and specific treatment”8. Better still, devoting a specific section to the multicultural principle, immediately following the acknowledgment of equality before the law and the rule against discrimination justifies a systematic interpretation of the entire Section with the purpose of defining the distinct meaning of each article.

In this instance, the distinctive criterion consists in the fact that the protection of differences is directed to preserving the uniqueness of a group acknowledged by the legal order: even if the principle of equality may in some cases be derogated, said protection is never in open conflict with this principle, if we regard the value of equality as being capable of assigning the same worth to all different identities, which join in making each person a distinctive individual, while also simultaneously making each person just like all the others.9

A departure from the general rule is in fact permissible only if it is grounded in the right to cultural, religious and linguistic identity of a group and its members: besides, said exceptions must be founded on the principles of reasonableness and proportionality, as generally held by law commentators and constitutional court cases10.

This reading of the multicultural principle is also supported by a relevant comparative analysis.

7 The European Community takes into account the cultural aspects when acting pursuant to other sections of the mentioned treaty, especially in order to respect and promote the diversity of its cultures.
8 Refer to Italian Constitutional Court, ruling 86/75.
For example, consider Article 27 of the Canadian Charter of Rights and Freedoms, which states, “this Charter shall be interpreted in a manner consistent with the preservation and enhancement of the multicultural heritage of Canadians”\textsuperscript{11}. A similar concept, although differently formulated, can be found in Article 30 of the South African Constitution, which, in an attempt to balance the \textit{Bill of Rights} with the particular local traditions, has provided that “everyone has the right to use the language and live out the cultural life of choice, but they must do so in a manner consistent with the provisions of the \textit{Bill of Rights}”.

Moreover, with regard to the international sources of law, it is worthy to review the Declaration adopted on 18 December 1002 by the UN General Assembly on the Rights of individuals belonging to national or ethnic, religious or linguistic minorities. According to this document, “the measures adopted by the States in order to assure the actual enjoyment of the rights proclaimed in this declaration will not be deemed \textit{prima facie} contrary to the principle of equality included in the Universal Declaration of Human Rights (…) the exercise of the rights proclaimed in this declaration must not prejudice the enjoyment by all individuals of their human rights and universally recognized fundamental liberties”\textsuperscript{12}.

In conclusion, we believe that the multicultural principle authorizes both the legislator and the judge to avoid interpreting equality in terms of uniformity and homogeneity.

However, this will not prevent the European Union from having some trouble in its effort to ensure that this criterion is implemented in connection with the community and national policies.

In fact, it will certainly struggle when trying to identify the groups that are entitled to request the positive actions and guarantees defined by Article II.82 of the European Constitution\textsuperscript{13}. Other commentators fear that awarding such guarantee may eventually make it possible to derogate from the universalistic nature of certain fundamental rights, such as the equality principle. Likewise, according to other opinions, protecting the cultural identity of specific groups brings about new issues regarding the definition of the actual institutional policies that must be implemented in order to govern a society that is progressively more multiethnic and multicultural in nature. That is, given that both nationally supported fundamental strategies – the \textit{melting pot} policy (in favor of diversity


\textsuperscript{12}On the matter, please refer to F. POCAR, \textit{Note sulla giurisprudenza del comitato dei diritti dell’uomo in materia di minoranze}, in S. BARTOLE, L. PEGORARO, N. OLIVETTI RASON, \textit{La tutela giuridica delle minoranze}, Padova, 1998, 31 ss.;

\textsuperscript{13}With regard to the identification of the minority groups, entitled to the safeguards under article 22 of the European Union Charter of fundamental rights, see herein paragraph 4.
in terms of integration) and the “ethnic mosaic” policy (promoting the enhancement of diversity and differentiation) reveal critical problems and contraindications\textsuperscript{14}.

Most of all, it appears challenging to recognize the operative nature of a principle, mainly illustrated by philosophers and sociologists alike\textsuperscript{15}, that has awarded constitutional status to the structurally heterogeneous character of society, thus compelling jurists and politicians to find new regulatory measures, which obviously differ from those defined by liberal constitutionalists and that are employed in connection with homogeneous societies.

It is not merely a matter of balancing the recognition of so-called \textit{group rights} with the acknowledgment of the traditional liberal rights, introduced to protect individual areas of interest\textsuperscript{16}. More exactly, as we have mentioned, it is necessary to bear in mind that societies and communities cannot be governed only by way of the majority principle: in fact, all conflicts may be favorably solved simply if said principle is combined with a tolerance-promoting culture, while still recognizing the pluralism, as well as the autonomy, of all individuals and social groups\textsuperscript{17}.

It represents a significant commitment, given how difficult it is for the value of tolerance to be acknowledged: surely we are aware of the many recent episodes of intolerance, that have deeply affected the history and the soul of Europe, as it represented the prevailing attitude with regard to religion, to linguistic and ethnic diversity, to political opinions.

May it suffice to remind that the rule against discrimination based on race, language and religion is included as a strong warning in the Constitutions adopted after WWII, which proclaimed the downfall of both Fascism and Nazism\textsuperscript{18}, in the Mediterranean Bills created on the ashes of the

\textsuperscript{14} The enhancement of differences may ultimately give life to a new version of segregation, as it could fuel conflicting views and loosen the unitary connective tissue. In addition, a rigid implementation of multiculturalism disregards that fact that society and culture are dynamic, ever-changing entities: they are not unaffected, rather they are continuously influenced by each other. On the other hand, focusing on reaching a condition of integration can in fact result in a state of unnatural homogeneity imposed by the group that managed to prevail. Instead, employing standards that are only apparently equalitarian can actually lead to substantially discriminatory situations.


\textsuperscript{18} Please see Article 3 Italian Constitution, Article 3 German Constitution, Article 1 French Constitution.
totalitarian regimes\textsuperscript{19}, the Constitutions set up by the countries supporting the introduction of democratic legal orders right after the collapse of the communist regimes\textsuperscript{20}.

5. The protection of cultural differences within European Union member States.

A noteworthy clarification must be made in advance: the constitutional legal order does not automatically award protection to every type of minority that currently exists. In fact, not all social differences that are somehow linked to the concept of minority may automatically benefit from the same legal status, as each legal order must retain the power to choose freely and express its unquestionable opinion when identifying the conditions that are deemed eligible for legal protection.

More specifically, the constitutional principle granting protection to minorities cannot be employed arbitrarily: it is each legal order’s right to differentiate the position of the different social groups.

Pursuant to the European Constitution, the only minorities likely to receive specific protection are the cultural, religious and linguistic ones: it will then be up to the Community’s institutions, as well to the national legislators to methodically define the social groups that, according to the subsidiarity principle and on account of their characteristics, can be included among the categories listed by the Charter.

Then again, this delimitation does not imply that the other minorities cannot enjoy different and particular types of recognition and protection. In our opinion, the defining criterion introduced by Article II.82 of the European Constitution can be construed to mean that while ethnic, religious and linguistic minorities must nevertheless be recognized by EU member States, all other minorities may be – generally or specifically – protected within distinct States, given every single legal order may opt for a broader definition of multiculturalism, thus giving legal status even to other kinds of minorities.

However, national discriminatory laws or regulations restricting cultural, religious and linguistic diversity of minorities living within the Community borders would be illegitimate, as they would be contrary to the restrictions deriving from the EU membership.

\textsuperscript{19} Compare Article 14 Spanish Constitution, Article 5 Greek Constitution, Article 13 Portuguese Constitution.

\textsuperscript{20} On the process that lead to the introduction of democracy in Eastern Europe, see: S. GAMBINO (ed.), Costituzionalismo europeo e transizioni democratiche, Milano, 2003; L. MEZZETTI, Teoria e prassi delle transizioni costituzionali del consolidamento democratico, Padova, 2003; E. CECCHERINI, La codificazione dei diritti nelle recenti Costituzioni, Milano, 2000, 19 ss.
The provision set forth by Article II.82 of the European Constitution, then, is subject to different changes and to different degrees of implementation, given the trends actually carried out by each EU Member State.

Very likely, the European Union will delineate the common standards and then each State, in light of the principle of subsidiarity, will determine mode and manner necessary to apply said provision.

Indeed, this approach is certainly the most respectful of the diverse historical and cultural experiences lived out by the member states; besides, it is also the most coherent, given that each distinct legal order adopts very different methods and perspectives when dealing with minorities21.

Then again, implementing the principle of cultural, religious and linguistic diversity unquestionably represents one of the matters in which, as expected on account of the principle of subsidiarity, the most appropriate approach for necessary involvement can be found on a sub-community level22.

Pursuant to Article II.82 of the Charter, each governmental system may choose to recognize minorities by complying with either constitutional or legislative sources of law: likewise, in federal or regional legal orders, said provision may be implemented by way of the federal or national Constitution, as well as through the local Constitutions or Statutes.

The Constitutions of many States include articles mainly aimed at defining the subject matter and the limits applicable to the right to linguistic pluralism.

Normally, the Constitution tackles the linguistic issue from a two-fold perspective. To begin with, seeing that linguistic rights can be regarded as one of the many expressions of privacy, constitutional provisions grant them the very same protection awarded to the principle of equality and to freedom of speech. On the other hand, Constitutions consider language as one of the many manifestations of the right to cultural identity.

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21 This solution also appears coherent in view of the legislative precedents of the European Union, should we consider that earlier the Council of Europe had opted for the adoption of a framework-Convention on the protection of national minorities, which awarded a generous measure of State discretion regarding the methods and manner to be employed in protecting diversity. On this matter, please refer to: S. BARTOLE, La “cittadinanza” e l’identità europea, in AA. VV. La costituzione europea, Padova, 2000,461.

The former argument shows an equally significant, yet rather traditional and historically settled point of view. It is tightly linked with the equalitarian principles that characterized the development of constitutionalism within Europe, beginning with the French Revolution and its ‘Declaration des Droit de l’Homme et du Citoyen’

These approaches reveal the importance of formal equality among European legal orders, which have made it a point to avert from the assumption that individuals are actually different only because of their distinctive group association. By all means, European constitutions are directed to prevent any such difference from becoming grounds for discrimination, rather than the simple expression of individuality. Such a common point of view originates from the consideration that, all through times past, ethnic, racial, religious and linguistic diversities were employed to deny equal moral and legal dignity to all individuals. To be more precise, it should not come as a surprise that a similar partiality towards the ‘equal’ connotation of said rights is to be found mostly in the European Constitutions written up right after Second World War. Many of such drafting countries had in fact lived through the atrocities of dictatorial regimes, an experience that significantly touched them, to the point of inducing them to act in response and codify fundamental rules against discrimination on grounds of any type of diversity, whether linguistic, or due to sex, race and religious beliefs.

However, and especially with regards to the most recent Constitutions, linguistic pluralism is regarded as a treasure to cherish and protect, together with the right to cultural identity.

An example of this is Austria, as Article of the Constitution 8 protects “the rights acknowledged by the Federal legislation to linguistic minorities”; also, Article 3 of the Spanish Constitution states that the abundance of local idioms represents an incredible cultural wealth worthy of exceptional protection, although it establishes Catalan as the official language of the country. Likewise, consider Finland’s Constitution: it expects the State to take care of the cultural and social needs of the Finnish or Swedish speaking inhabitants, yet it also acknowledges the right

23 Just consider that: Article 3.3 of the German Constitution states that no one can be damaged or favored “on account of sex, birth, race, language, nationality or origin, religious belief, personal religious or political opinions”. By the same token, article 3 of the Italian Constitution, as well as article 8, paragraph 2 of the Swiss Constitution prohibit any kind of discrimination on grounds of linguistic diversity. In addition, pursuant to article 19 of the Austrian Constitution, all communities are awarded the same rights and all languages existing within state borders are equally valid in schools, in public offices as well as in public relations. The Spanish Constitution has not expressly provided for the protection of linguistic diversity: in spite of this, similar protection is likely to be inferred from the interpretation of article 10, clause 2 of the same Constitution, as it acknowledges the influence exercised on the national legal order by international treaties and agreements.
of Laplanders, gypsies and of other groups to preserve and develop their own language and culture (article 14). Finally, Article 2, Section I, paragraph 4 of the Swedish Constitution guarantees that all ethnic, linguistic and religious minorities will preserve their culture and their lifestyle within the community.

Similar interesting constitutional provisions may also be observed in some of the legal orders of prospective member States, although they are not generally upheld by effective operative legislation. For example, Article 6 of the Romanian Constitution guarantees the right to identity to all members of ethnic, cultural, linguistic and religious groups; the Preamble of the Croatian Constitution declares that the Republic is the national state of the Croatian people and also the state of all individuals belonging to the autochthonous national minority groups of Serbians, Czechs, Slovaks, Italians, Hungarians, Jewish, Germans, Austrians, Ukrainians and Rutenians. Also, consider Article 3 of the Croatian constitutional law on the rights of minorities: it provides for the necessary support and protection of the rights and liberties of all individuals belonging to national minorities (...), including all positive measures in favor of national minorities. Likewise, the same Constitution lays emphasis on the fact that ethnic and multicultural diversity, together with the determination to understand, respect and tolerate each other, all join in promoting the development of the Republic of Croatia. Additionally, Article 49 of the Estonian Constitution acknowledges the individual right to preserve one’s national identity, while Article 114 of the Lithuanian Constitution guarantees the right to preserve and develop personal language, individual cultural and ethnic identity to all members of ethnic minorities.

Finally, similar provisions can be found in the Slovakian (Articles 33-34) and in the Hungarian (Article 68) Constitutions. The Slovenian Constitution, instead, demands that the rights of the autochthonous Italian and Hungarian communities are protected and guaranteed (Article 5, Section 1), while awarding official status to their respective languages within the municipalities where the majority of the population speaks those idioms (article 11), as it does also for the Rom communities.

In addition, other Constitutions include rather detailed provisions, such as those that recognize the right to representation within constitutional government bodies to ethnic and linguistic communities. For example, the Rumanian Constitution reserves one seat in the Lower House for each of the minority groups; also, Articles 5 and 64 of the Slovenian Constitution allow participation of members of minority groups living on their territory to the local and national elected assemblies.

From this perspective, it is worth mentioning the Belgian Constitution, given that linguistic diversity inspires the country’s entire institutional order.
In fact, linguistic differentiation influences the structure of all organs, legislative, governing and judicial in nature.

With regard to the first, Article 43 of the Constitution states, “the voted members of each House are subdivided in a French speaking group and a Dutch speaking one, as provided by law; the German speaking group, instead, is represented only in the Senate”, as it can appoint one of the 71 Upper House members.

The balance among all linguistic components in the law-making process is guaranteed by way of the “warning” mechanism: should the representatives of one linguistic group believe that the bill being discussed negatively affects their interests, they can submit a motion to the Council of Ministers signed by three fourths of their group, declaring that said bill is prejudicial to the good relations between the communities (Article 54 Constitution). The motion immediately suspends the legislative process until the Council of Ministers makes a recommendation, or offers to introduce amendments to the bill: in both instances, the House must express its opinion.

The way said mechanism is devised actually contributes to the promotion of the French-speaking minority. But there is another mechanism in favor of both communities: according to this, any bill on institutional and linguistic matters (for example, for the definition of minority community borders, or on education issues, or with regard to the competence of the local elected bodies) must be approved with the vote of all the components. Therefore, some laws must be approved by simple majority by both groups in both the Houses, and with a majority of two thirds by the entire assembly. In this way, both the French and the Flemish linguistic group are substantially awarded the right to veto, which instead is not allowed to the German-speaking representatives that are not organized in a group.

The equal representation awarded to the two larger linguistic minorities involves the governing organ as well: article 99 of the Constitution requires the Council of Ministers, exclusive of the Prime Minister, to be made up of an equivalent number of French and Dutch-speaking ministers.

Finally, with regard to the judicial authority, article 152 of the Constitution outlines the Superior Council of Judges’ composition: it must consist of an identical number of French-speaking and Dutch-speaking members. As for the German minority, instead, it is merely required that one of the French-speaking members is familiar with German.

In territorially decentralized legal systems (such as Landers, Regions and Communities), decentralized (legislative) sources are called upon to protect cultural and linguistic rights.
Said distinction is a result of the fact that language is indeed a component of a group’s cultural identity, and for this reason, it represents an individual right, as well as a right of the entire community to which such individuals belong. In light of this, then, each individual can be defined from both a community and a historical point of view: every person becomes part of a greater community, which is given unique individuality by way of its well-grounded, shared, yet distinctive ethnic, linguistic and cultural features.

More specifically, if we agree that linguistic rights are directly correlated to the equality principle, then they are “naturally” regulated and protected by the general rules of the legal order, given that these are applicable to all community members. Conversely, if linguistic rights are regarded as tightly linked to the territorial community’s cultural identity, then they are “naturally” regulated according to autonomous legal sources, specifically, the single Statutes (or Constitutions) and the rules provided by decentralized bodies.

On this matter, a clear example is provided by the Finnish Constitution: Article 120 echoes the 1991 law on the autonomy of the Aland Islands, which awards a particular form of autonomy on account of the linguistic diversity of those territories, inhabited by a community of Swedish-speaking individuals. The law on autonomy progressively expanded its reach and took over the areas once assigned to the Aland Islands institutional bodies: currently, these include education and culture, police management, local district administration, industrial (activity) promotion, domestic communication, health issues and welfare.

Special attention must be given to the Spanish legal system: on one hand, article 3, paragraph 2 of the Spanish Constitution delegates to each autonomous Community the task of regulating the use of their common idiom; on the other, article 3 also awards such subordinate bodies full legislative competence to approve laws concerning “linguistic harmonization” and aimed at identifying the measures needed to promote and strengthen the use of their language within their territorial boundaries.

Similar views can be developed to include other federal legal orders, as well as highly regionalized territories. For example, consider Germany: the Brandenburg (article 25 of the Constitution) and Sachsen (article 6) Landers have provided in favor of the Sorabs present on their territory, while the Schleswig-Holstein (article 5 (2)) protects the linguistic identity of Dutch and Frisians. Also bear in mind the present situation in Austria: pursuant to some of the smaller States’ Constitutions, the Land is required to encourage the development of its linguistic minorities’ culture and identity. Lastly, some Italian Regions – especially those having a special statute – have employed their statutory authority and legal competence to protect their linguistic heritage.
This is the case, for example, of the Statutes of the Special Regions of Trentino-Alto Adige, Friuli Venezia Giulia and Valle d’Aosta, in addition to the Statutes of the Ordinary Regions of Calabria, Veneto and Molise. Conversely, a more extensive regional legislation has been provided for the protection of specifically identified linguistic communities (as in Basilicata, Friuli Venezia Giulia, Sicily, Tuscany and Veneto), or for the promotion of the territory’s cultural and linguistic heritage (as in Sardinia, Piedmont, Emilia Romagna and Molise).

6. The most important devices for the enhancement of linguistic diversity.

National legislative policy-makers have outlined distinct approaches for the implementation of linguistic rights, as they are aware that their mere declaration runs the risk of amounting to empty and rhetorical slogans, absent any protective instrument and effective performance.

Said policies are evidently affected by the historical and social characteristics of each legal order: however, this does not make it impossible to try and provide an overall definition of the matter.

Firstly, there exists somewhat of a distinction between strategies aimed at enhancing diversity, and approaches intended to incorporate diversity in an integration perspective: while the former ones are focused mainly on separatist policies, the latter ones are instead largely involved in promoting positive actions.

Secondly, we are able to distinguish between systems: while some consider minorities to be substantially equal, others are in favor of granting some of them a predominant status, or rather a reinforced protection.

Thirdly, there are legal orders regulating the cultural rights of groups that are historically established within their territory, on one hand, and legal orders awarding promotional measures to "atypical" minorities as well, that is, groups that are not structurally rooted in a specific land or territory, on the other.

Lastly, from an exclusively language point of view, it is possible to tell the difference between separatism-inspired laws and linguistic pluralism-inspired laws.

These techniques can be described as part of several categories, among which a special mention must be awarded – in our opinion – to the following ones:

a) Favorable electoral legislation.
Many legal orders deem that ethnic and linguistic differences affect the very same notion of national political representation. From this point of view, it is appropriate to take in consideration the decision rendered by the European Court of Human Rights on 2 March 1987: given the adoption of very different electoral systems in each state, the court discussed the need to set out certain mechanisms that would allow all linguistic minority voters to express their preference for candidates able to speak the language of their region, so that they could have representatives who were also members of their same community.

Accordingly, it should be pointed out that in Italy linguistic minorities – but just those deemed worthy of additional protection – have been awarded the right to be politically represented. This is the case, for example, of the Statute of the Region of Trentino-Alto Adige: pursuant to article 30, members of the Italian and German linguistic communities follow a rotating scheme for the election to President and Vice-president of the Regional council. In fact, during the first 30 months of the Council’s term (it stays in charge for 5 years), the President is chosen among the councilors belonging to the Italian community, while for the remaining time before the legislature expires, he is elected among the German-speaking ones. Besides, during every session, the Vice-president must belong to the linguistic community opposite to that of the sitting President. The Ladino minority can aspire to presidency for a limited time, only if both the German and Italian groups agree to it. Similar rules apply to the election of the President and Vice-president of the provincial Council of Bolzano (article 48 of the Region’s Statute): the very same statute also provides for representative attendance of the Ladino minority.24

Such representative standards must be complied with even with respect to governing bodies. By virtue of article 36 of the Statute, in fact, the Ladino community must be awarded one seat in the regional board, albeit this is not ensured according to proportional representation. Instead, the composition of the provincial board of Bolzano must mirror the consistency of linguistic minorities attending the Council.25

The Constitutional Court has judged that including the ethnical and linguistic factor to political representation is constitutionally legitimate (decision n.233 of 1994): it acknowledged the right of linguistic minorities to express their political representation in a condition of actual equality, “even if such entitlement cannot exceed certain limits, due to several different

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24 Article 48 of the Statute declares that the Ladino group’s presence in the provincial Council of Bolzano is guaranteed by regional law, while, with regard to the provincial Council of Trento, it is the very same Statute that requires the ascription of one seat in the assembly to the territorial community comprised of the City Councils of Moena, Soraga, Vigo di Fassa, Pozza di Fassa, Mazzin, Campitello di Fassa and Canazei, where the Ladino-dolomitic linguistic community of Fassa is established.

25 The members of the Regional Board not participating to the Council must be elected by the qualified majority of 2/3 of the Council’s members, as long as the councilors belonging to the same linguistic community to which the elected members belong have expressed their consent, but only to the extent that the councilors amount to the majority of the provincial Board.
considerations (also regarding numeric proportionality) and mainly because of the need to balance this privilege with other significant issues worthy of protection (such as the principle awarding equal validity to every vote required for the constitution of elected organs)”.

It must be noted, though, that mentioning “actual equality” suggests the unconstitutional nature of all provisions setting barring clauses concerning the distribution of seats, given that these can make it rather difficult, if not impossible, for certain linguistic minorities to access elected organs.26

The presence of linguistic diversity affects the legal order of other states, such as Spain, for example: however, in this country, the prescribed solutions have not proven highly penetrating. Linguistic representation has been taken into consideration by the recent senatorial reform, the so-called “small reform”. It came into force on 11 January 1994 and immediately had an effect on the Senate regulation, by allowing the use of the autonomous Communities’ languages in some of the activities performed in the second House.27

On greater scale, the same situation has affected the Belgian legal order. In fact, linguistic differentiation influences the structure of all organs, legislative, governing and judicial in nature.

With regard to the legislative body, pursuant to article 43 of the Constitution, “the voted members of each House are subdivided in a French speaking group and a Dutch speaking one, as provided by law”. It should be pointed out that the German speaking group, instead, is denied entry, even though it is represented in the Senate: pursuant to article 67 of the Constitution, associates of the German community can appoint one of the 71 Upper House members.

The equal representation awarded to the two larger linguistic minorities involves the governing organ as well: article 99 of the Constitution requires the Council of Ministers, exclusive of the Prime Minister, to be made up of an equivalent number of French and Dutch-speaking ministers.

Finally, with regard to the judicial authority, article 152 of the Constitution outlines the Superior Council of Judges’ composition: it must consist of an identical number of French-speaking and Dutch-speaking members. As for the German community, instead, it is merely required that one of the French-speaking members is familiar with German. The Cour d’Arbitrage held that the German community’s subordinate position is completely legitimate. In its decision n.3 handed down on 25 January 2001, it ruled that the presence in the Conseil of a limited number of members who are knowledgeable in German does not constitute a case of discrimination, given that all members of the judicial order are familiar with French, having had to graduate or achieve their doctorate degree using that language. According to such an opinion, the Court gave adequate reason

26 See Constitutional Court, decision n.356 of 1998.
for the different degree of protection awarded to the German speaking community, compared to the French and Flemish ones: it held that a different principle is to applied in order to protect said minorities, and such principle is not represented by linguistic independence, as it normally happens for larger minorities, but it focuses only on bilingualism.

In fact, the law regulates that the members of both the Court of Cassation and of the Cour d’Arbitrage must be equally subdivided among French and Dutch-speaking judges.

The Polish electoral law adopted on 12 April 2001 follows this lead: it provides that all parties representing minority groups are exempt from reaching the 5% barring clause to gain access to seat allocation within both the Lower and the Upper House. Specifically, the protection of national minorities in Poland has its legal foundation in the 2001 bilateral Treaty with Germany, which guarantees the assignment to the German minority of a seat in the Lower House.

In addition, the Polish law on election of city councils does not allow the use of gerrymandering to undercut the social relations existing between voters belonging to national minorities.

Article 6(6) of the German federal law on Bundestag election also introduces the same provision, which excludes minority-representing parties from the requirement set forth by the 5% barring clause. It must be noted that in Germany, linguistic minorities are very few: presently there is only one minority-representing party, the Sydslesvig-Holstein Vaelgerforening that acts for the Danish minorities living in Schlesvig-Holstein, even if it didn’t run in the federal elections.

Article 64, Section 3 of the Slovenian Constitution requires that representatives for the Italian and Hungarian communities be seated within the local and national assemblies. In addition, Article 80, Section 3 states that both the Italian and Hungarian communities have right to only one representative member each. In order to achieve this, the law has awarded a double vote to each group representative, one having a national political nature, the other one possessing ethnic import.

Pursuant to the electoral law, the Italian and Hungarian groups are allowed to: organize distinct electoral districts specifically planned considering the areas that are significantly populated by community exponents (Article 20); nominate particular electoral commissions (Article 23); derogate from the general law with regard to proposed candidacies, for which only 30 signatures belonging to community members are necessary in order to submit said candidacy (Article 45); define an ad hoc ballot paper (Article 74); arrange a special procedure for the counting of votes and to proclaim the winners (Article 95).

Obviously, a single representative cannot truly operate in a significant manner in order to protect the rights of his community: therefore, Article 64 of the Constitution establishes the

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representative’s right to veto any legislative document that may negatively affect the interests of the concerned community\textsuperscript{30}. Besides, the last section of this article requires that laws providing for constitutionally recognized rights of both communities, as well as the acknowledgment of their status must be adopted with the consent of all representatives of the respective communities.

Similar provisions favoring the community’s representation within elected bodies are included in the law on administrative elections and on local autonomy: specifically, it expects that 10\% of the council seats within the local autonomies where exponents of the national community reside be set aside for their directly elected representatives\textsuperscript{31}.

\textit{b) The use of one’s personal language in judicial and administrative proceedings.}

With regard to the judicial matter, the right to use one’s personal language is tightly intertwined with the right to have counsel, as well as a fair trial.

This is what happens in Italy. The recognition of such linguistic privileges is based on laws executing international treaties – with regard to civil actions -\-, while it is directly provided for by the Constitution – with respect to criminal proceedings. As often stated by the Constitutional court, article 24 of the Constitution on the right to have counsel takes account of the possibility of using a language that is different from Italian in all legal proceedings (decisions n.271 of 1994, n.16 of 1995 and n.406 of 1999). Besides, according to said Constitutional court’s case law, there has never been any doubt on the fact that every Italian citizen has the right to use his individual language in all civil and criminal actions, if he or she is a member of acknowledged linguistic minorities (see decisions n.28 of 1992, n.62 of 1992 and n.15 of 1996).

The approach embraced by Belgium on the same issue is a bit more complicated. In relation to both civil and criminal proceedings, the general rule is to use the language spoken in the region where the judicial district is located. On the contrary, the rule followed in the bilingual region of Brussels favors the language spoken in the region where the defendant is resident: however, he can formally request the court to use another language during trial, but the judge can deny such motion if he deems that the defendant is fully capable of understanding it. Conversely, if the motion is granted, the trial is subsequently transferred to a judge of equivalent degree, but appointed to a court placed in the defendant’s linguistic region.

With regards to government activities, the law on administrative proceedings in force in the German Land of Brandenburg sanctions the possibility for all submitted documents to be written in

\textsuperscript{30} Even though said prerogative does not apparently extend to single articles within general rules. C. Casonato, see above, 332.

\textsuperscript{31} In the cities of Isola, Pirano and Capodistria, the national self-governing Communities designate a number of representatives within the city Council (two for Isola and three for Pirano and Capodistria).
the Sorab idiom: their translation to German is charged to the government (but if the documents are submitted in any other foreign language, it is the private citizen who is responsible for its expense). Likewise, article 7 of the Treaty of Vienna requires the Austrian administrations of the Carinzia, Burgenland and Stiria Landers to use the Croatian and Slovakian languages in all government and judicial activities.

Instead, according to the Belgian law of 18 July 1966, local administrative officers are compelled to use only the language spoken in the linguistic region they belong to, in all domestic-regional activities as well as for any information and communication with the public.

However, when it comes to dealings between public authorities and the population, the general rule is still the same: specifically, the language to be used is the one spoken in the region to which the officers belong to, except for the case when they need to communicate with citizens of other regions, in which situation they should make use of the language spoken by the private individual. Such an alternative has become the rule in the malmediennes and in the German city councils, where the administrative authorities can reply in French or in German, compliant with the other party’s request. Also, all the towns on the linguistic border are obliged to use either French or Dutch.

All government documents can be translated, if the interested party passes on such an application to the Governor of his Province of residence: following this, the latter will issue a duplicate of the original. In the malmediennes towns, such a request can be submitted directly to the authority releasing the document.

In Spain, the general law on the judicial system- n. 5 of 1986 – provides that whenever autonomous communities use more than one official language, a member engaged in any type of proceedings can choose to use the distinctive idiom shared by the Community, if all parties agree on it. Documents are to be translated in Spanish only when they are effective outside of the community’s territorial borders.

In Spain, instead, pursuant to law n.30 of 1992, the official language used in all government proceedings is Castilian. However, with respect to all the other autonomous communities recognizing another idiom as the official language, the law has authorized the use of both languages when dealing with government administration. According to decision n.26 of 1986, handed down by the Constitutional Tribunal, the act of acknowledging a language as official presumes that all public authorities have accepted it as the normal means of communication, not only in domestic relations, but also in their contact with private citizens, as well as recognizing it as having full legal validity and effects.
Pursuant to Article 4, Section 2 of the Slovenian law on public administration\(^{32}\), all operations, proceedings and any other administrative document performed in areas inhabited by Italian and Hungarian speaking citizens may be done using Slovenian, as well as Italian and Hungarian. For example, when the local statues allow it, the form employed to ask for the release of the personal ID card may be printed in Slovenian and in English, as well as in Italian and in Hungarian. In bilingual areas, civil registrar officers are required to release register particulars and certificates also in Italian and Hungarian (Article 30, Section 2, Law on Registers of births, of deaths and marriage, n.2 of 1987), just as they are expected for passport release and notary deeds.

With regard to court activities, bilingual territories are allowed to employ minority languages: all translation costs are charged to the State (law on courts of justice, n.19 of 1994). In addition, the President of the Court of Appeal may integrate the panel of judges with the needed number of judges that are capable of understanding Italian and/or Hungarian.

In the city of Capodistria, the Statute has established that all state and local organs, all companies and public bodies must be able to reply in Italian to the petitions submitted by citizens; even documents and deeds must be released using both languages.

In compliance with the statute of the city of Pirano, the official languages are Slovenian and Italian: both may be employed by citizens before the public administration and during judicial proceedings. Likewise, all judicial documents and papers pertaining to an Italian-speaking individual must also be released in his language.

Similarly, the Slovakian system authorizes the use of a minority language in dealings with public offices in those territories where members belonging to a linguistic minority represent approximately 20% of the population (Article 34, Section 2, Letter b of the Constitution, 1995 Law on state language and 1999 Law on national minorities).

c) Access to administration on account of language

Provided that the large presence of certain languages in distinct geographic areas has been the cause of their mandatory use, it should not come as a surprise that several legal orders decided to introduce specific selection criteria for public administration, grounded on linguistic factors and in direct contradiction with the principle of equal access to public offices.

These special techniques are in use mainly in Belgium, where public employees can be subdivided in three different categories: as regards their language, they speak French, Dutch or both; however, when considering their employment status, there are only French and Dutch groups.

\(^{32}\) Published on the Gazzetta ufficiale n. 52 del 2002.
Still, 20% of the chief executive positions are reserved exclusively to bilingual officers. Besides, according to its decision n. 2 of 13 January 1999, the Cour d’Arbitrage held that an equivalent number of French and Dutch speaking officers must be numbered among said percentage of chief executives: as a consequence, even if an applicant comes in after other candidates, his recruitment is legitimate as long as he belongs to the less represented linguistic group.

Specific provisions have ordered judges to prove that they graduated in law in a French or Dutch course of studies, according to the district to which they have been appointed. With regards to the bilingual region of Brussels, instead, the majority of judges must demonstrate they are knowledgeable in both national languages

Further to law 25 March 1999 on the reform of all judicial cantons, the city councils having a special linguistic statute are compelled to give evidence that at least one operative justice of peace and one substitute are familiar with the second spoken language of that judiciary district. Even the Cour d’Arbitrage, by rendering decision n.62 on 30 May 2000 deemed this provision to be fully legitimate with regard to justices of peace, given that they can perform administrative duties as well33.

Even in Spain, further to law n.30 of 1984 on the “Measures for the reform of the public office”, subsequently amended by law n.23 of 1988, it has been established that “in relation to the open competition for access to the public office, the administration, in as far as to its expertise, will have to select civil servants who are apt to perform in autonomous Communities that use two official languages”. Therefore, the so-called harmonizing laws of several autonomous communities, such as Cataluña, Galicia and País Vasco, have established that being familiar with the community’s own language is to be deemed as a preferential factor in all public examinations; instead, in relation to such test, the Statutes of Valencia, Aragona and Navarra support the knowledge of the community’s law.

Furthermore, the case law developed by the Flemish section of the Conseil d’Etat has established that representatives elected in the Flemish area city councils must employ Flemish when exercising their duties34.

Likewise, in Slovenia, the statute of the city of Pirano has determined that seats must be set aside for those who fluently speak both Slovenian and Italian within public administration offices, public bodies and companies.

33 In the same decision, the court, instead, regarded the provision requiring similar requisites for the head clerk as unconstitutional, given that compelling said officers to be knowledgeable in a second language has been deemed as unbalanced compared with the purpose of simplifying the interaction between linguistic minorities and administrative offices.

34 X. DELAGRANGE, Le fédéralisme belge : la protection des minorités linguistiques et ideologiques, in Revue de droit public et de la science politique en France et à l’étranger, 1994, 1179 ss.;
In Italy, Article 38 of the Statute of the region of Valle D’Aosta on the employment of regional officers has expressed its favor towards individuals originally from the area or that are knowledgeable in French.

In Trentino Alto-Adige, instead, the German minority enjoys a greater amount of protection: there are in fact different employment lists depending on personal linguistic background. Province residents must state the language group they belong to, should they decide to access reserved job positions: this declaration retains its validity for ten years and may not be modified during this time period. Language knowledge is certified through a differentiated system, according to the professional level one intends to apply for.

d) Linguistic protection through the financial support and the creation of mass communication instruments

The Italian Minister of Communications, by virtue of article 12 of law n.482 of 1999, can draw up agreements with the concessionary company for public TV, so as to encourage the promotion of specific conditions for linguistic minorities; article 13 of the same law, instead, provides for agreements signed between Regions and the concessionary company for public TV and/or local radio stations, in order to sponsor programs using minority languages.

The same happens for German minority communities: they can benefit from public TV and radio airtime. More specifically, the Danish minority can avail itself of their own representative sitting on the committee for the Authority on Telecommunications in Schleswig-Holstein. Conversely, the support given to the Frisian and Sorab communities is definitely less incisive. In fact, the former only have a few minutes of daily news in their language on the TV channel “Welle Nord”, while the latter have a couple of daily hours of airtime on public TV channels reaching within the regional borders.

Besides, in Germany, the Danish community living in the Schlewig-Holstein region has its own newspaper, just as the Sorab minority in Brandenburg and Saschen.

Likewise, in Austria, public TV supports Croatian, Slovakian and Hungarian by way of a local TV transmitting in Karten and in Burgenland.

In Spain, the State has jurisdiction as to the laws regulating the social means of communication, while the decentralized bodies are responsible for the promotion and development of state legislation. According to such distribution of competence, for example, we can better understand Catalanian law n.2 of 2000, which provides for the use of such language for all radio and TV broadcasting managed exclusively by the community. If instead the broadcasting means belong to the State, then Catalanian programming can only amount to 50% of the total. However,
the promotion of the Catalan culture is backed by an added 25% airtime, given the presence, in both TV and radio programs, of said community’s songs.

It is very interesting that the Catalan Community legislation also provides for the protection of the Aranesis language, which can regularly broadcast on TV and on the radio.

In addition, consider Article 5 of the Flemish community decree adopted on 7 November 1990 in Belgium, according to which said community shall recognize a radio only if its transmissions are in Flemish.35

f) The promotion of one’s personal language through cultural and academic activities.

In Italy, Article 19 of the statute of the Province of Bolzano requires choosing Italian or German as primary teaching language: hence, depending on the choice, the other one shall be taught as second language. Pursuant to article 102 of the Statute of the Italian region of Trentino-Alto Adige, all schools in the province of Trento – where Ladino, Mokena or Cimbrian is spoken – must teach both the Ladino and German language, as well as their culture.

In Valle d’Aosta, Article 39 of the Statute establishes that the French language class and the Italian language class must be made up of the same hours, while certain subjects may be taught in French only.

On the other hand, article 4 of law n.482 of 1999 provides that in all territories where historical minorities are protected, their languages can be used: specifically, in beginning with educational activities for kindergarten children, continuing on to the instruction of elementary and middle school students. Besides, even Universities, in accordance with their distinctive autonomy and financial resources, can entertain cultural and scientific activities aimed at enhancing their minority idiom.

In Germany, in the Schleswig-Holstein Lander, there are specific schools for the Danish, whereas the Sorabs students attend exclusive schools in the Landers of Brandeburg and Saschen. With regard to the former, their right to establish special schools dates way back to a Prussian law of 1928, but has more recently been confirmed on 26 September 1949 by the Schleswig-Holstein government Declaration, as well as by the Bonn-Copenhagen Declaration of 1955. Further to the 1955 declaration, the Lander can decide to institute Danish language schools of any order and grade. It is imperative to point out the mixed nature of all funding guaranteed to Danish education institutes as well as to the services intended exclusively for such students: it is made up of Lander

resources, in addition to financing received directly from the Danish government and from private associations.

The Frisian community residing in the same Lander, instead, is not similarly protected, as its members cannot attend specific institutes: in fact, they can only take a couple of courses on Frisian language in public schools, or else follow a course on language and literature at the Kiel university.

Conversely, the Brandenburg and Saschen Landers have undertaken a different, midway approach: on the one hand, they have set up public schools that teach Sorab language and culture, on the other, there are private institutes where all lectures are in said language.

In Belgium, the language used for education is the same as the one spoken in the region the school is in, except for the bilingual capital of Brussels. However, anyone residing in a region speaking a language that is different from his personal mother tongue is likely to have some kind of protection: in fact, the State provides financial aid to parents who prefer enrolling their children in a relatively close institute that teaches in the desired language. Also, at the request of several parents living in a region having a special statute, the local authority must arrange for special kindergarten and primary schooling, in order to teach children using the same language they are used to speak at home, even though this is not the national language normally employed in that specific region.

Likewise, in Austria, article 67 of the Saint-Germain treaty of 1919 compels the Austrian government to assist non-German speaking minorities with the purpose of granting them the right to attend schools where classes are taught using their personal language. Similar funds are offered also for the promotion of cultural activities benefiting linguistic, as well as racial and religious minorities. This rule – sanctioned by the WW1 Peace Treaty – is completed by article 7 of the Vienna Treaty of 1955: pursuant to said article, the Slovakian and Croatian minorities now have the right to attend primary and secondary education lecturing in their language. By sanctioning the protection of linguistic minority, the Federal State is allowed to also legislate on the matter of Lander jurisdiction. In point of fact, according to the Bundesgesetz of 19 March 1959 (Minderheiten Schulgesetz fur Karten) and to the Bundesgesetz uber die Minderheiten Schulgesetz fur das Burgenland, the two Landers’ competence on educational matters is significantly restricted, given that the mentioned laws directly determine the number of minority language classes to be taught, they organize all educational activities for schools lecturing in said language, although they allow for a minimum of German-spoken hours of class.

In Spain, taking a look at the autonomous communities where another official language – besides Castilian - is employed, the law provides for both languages to be taught in primary and secondary education, with the purpose of making all students perfectly bilingual.
With respect to Universities, besides, every autonomous Community can freely draft its own promotional rules and instruct on when to use either language in educational activities, among professors and in research projects.

When it comes to considering the educational perspective, even France, a traditionally hostile country with regard to acknowledging linguistic diversity, has considered the likelihood of using local dialects and idioms, as stated by law n.51-46 of 11 January 1951, the so-called Dexionne Law. Further to this law, teachers are allowed to use dialects whenever it is likely to benefit education (article 2), and at their request, professors can also be allowed to dedicate one hour a week in teaching local idioms. However, students can choose whether to attend such classes.

In Slovenia, Article 64, Section 1 of the Constitution has delegated to the legislator the responsibility of regulating the instruction of Italian and Hungarian in areas where bilingualism is likely.

The law providing for the implementation of rights possessed by Italian and Hungarian national minorities suggests two alternative models for the protection of their national languages with regard to public education: each community has chosen a different model. Specifically, the Hungarian one has opted for a mandatory bilingual education, while the territories occupied by Italians show a preference for a monolingual academic system, although Italian schools are required to study Slovenian, and vice versa. Primary and secondary school programs must be planned so that Italian and Hungarian students learn about the history and geography of their respective motherlands, also through the cooperation of relevant national institutions.

If the students are not enough to arrange a monolingual class, it is however necessary to find a way to teach the planned program anyhow. The docents must be mother tongue, even if it is allowed to employ Slovenian teachers who are guaranteed to be fluent even in the minority language.

Financing for education in a language different from Slovenian is shared on a national and a local level: with regard to the protection of Italian, municipal bodies have proven particularly receptive.

In Hungary, pursuant to Law n.77 of 1993 on education and to Law n.79 of 1993, pupils may be taught in their mother tongue or in a bilingual environment, depending on their parents’ requests, starting from kindergarten to higher education. If no less than eight parents of students who speak a minority language make such a request, it is then mandatory to arrange a specific class to meet their needs.

The 1991 Polish law regulating the education system requires the establishment of schools with extra classes using a minority language, bilingual schools employing both the official and the
minority language, schools teaching compulsory minority language classes, as well as the arrangement of minority language classes for students of different schools.

The Czech Republic, instead, has delegated the decision of opening private schools using a minority language to specific by-laws; it has done likewise with regard to the definition of the terms and conditions necessary to protect the right of national minority group members to be educated using their mother tongue (Law n.273 of 2001 on the rights of national minority group members and Law n.29 of 1984 on the primary and secondary school system).

Moreover, it is the Slovakian Law n. 29 of 1984 on primary and secondary schools that regulates the creation of institutes where education is provided in Hungarian (even if it is mandatory to teach the national language), where education is bilingual (for the Ukrainian and German minorities), or rather where the minority language represents only one of the subjects taught.

g) The use of onomastic and toponomastic studies.

The use of onomastic and toponomastic studies in relation to minority languages represents an important, yet merely symbolic, factor that highlights the degree of attention granted in the protection of such diversity. On this matter, article 11 of the Council of Europe Framework Convention for the Protection of National Minorities provides that “The Parties undertake to recognize that every person belonging to a national minority has the right to use his or her surname (patronym) and first names in the minority language and the right to official recognition of them, according to modalities provided for in their legal system”.

In Italy, article 11 of law n.482 of 1999 allows the member of a minority to change his name or last name, in keeping with his idiom. In this instance, one’s linguistic right is tightly linked to his constitutional right to have an identity, as reiterated by the Fascist regime. In a way, this rule is somehow aimed at healing the serious injury that was suffered by such a fundamental privacy right.

It is also worth mentioning article 102 of the Trentino-Alto Adige Statute, which insists on the protection of the Ladino, Mokena and Cimbrian toponomastic. Likewise, article 5 of the Treaty of Vienna prescribes that geographical names are to be maintained in both German and non-German idioms in the regions where Croatian and Slovakian communities reside.

In Spain, pursuant to law n.7 of 1977 and therefore before the entry into force of the 1978 Constitution, Spanish names can be translated in the various idioms present on the territory: this procedure is performed by simply appearing before the judge responsible for all personal registrations.

The Spanish government recently furthered its efforts in the protection of equally official languages: in 2001, it reached an agreement with the authorities governing autonomous
communities, where more than language is deemed the official one, and as a consequence, it is now possible to issue bilingual ID documents.

Lastly, with reference to toponomastic, it is important to take in consideration Catalonian decree n.78 of 1991, given that it prescribes the Catalonian language as the official language for all regional geographical denominations, whereas in the Aran Valley, it is still possible to express them in the minority idiom.

The Sorab language is also employed in toponomastic within the Brandenburg and the Sachen Lander in Germany.

**h) Linguistic rights and specifically intended bodies.**

Quite remarkably, the Belgian legal order instituted a *Commission permanente de contrôle linguistique*, which is supposed to continuously monitor the actual implementation of rules providing for the protection of linguistic minorities. Said committee is composed of individuals designated by the cultural Councils of three communities: five members are indicated by the French and Dutch linguistic groups respectively, while the German council appoints only one. The commission is also subdivided in a French and a Flemish section: the German language member attends meetings only when the dealings concern a German-speaking region.

Also, the Belgian law has provided for the institution of a permanent national Committee for the Cultural Pact: its duty is to make sure that none of the decrees issued by the Cultural Councils for the protection of their languages is basically discriminatory on grounds of ideological and philosophical opinions, according to law 16 July 1973. This Commission is made up by 28 members, 13 of whom are respectively for the French and the Dutch speaking groups, while only 2 are for the German-speaking group.

In Finland, where the Swedish language is considered official just as Finnish, it is possible to find the *Svenska-Finlands Folkting* or Swedish popular assembly. This is made up of members elected indirectly in six districts on the basis of the city elections’ results*: its responsibility is to protect and promote the rights and interests of the Swedish community living in Finland. In addition, it submits initiatives and proposals to the central administrative bodies and to the government, as well as acting as a consultant for the adoption of bills likely to affect the Swedish-speaking community, which represents 6% of the entire population36.

Along these lines, in 1973 the Finnish government established a community assembly for representatives of the Sami group, which lives there and counts approximately 5700 members. It is composed of elected representatives belonging to the group and possessing Finnish citizenship.

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36 S. Mancini, see above, 194.
Following in the steps of the Swedish community assembly, the Sami parliament offers its consultancy to central and local bodies: it must submit its mandatory opinion in all instances in which measures concerning the community are under discussion.

Poland has also resolved to set up advisory bodies supporting constitutional ones, such as the commissions for ethnic or national minorities seated within the Houses and the office of the Prime Minister.

Since 1995, the Slovakian government has been integrated by a council for nationalities and in the Czech republic there is a similar council for national minorities. Half of the latter is formed by representatives of minorities elected by supporting groups (Article 6, Section 4 of Law n.273 of 2001 on the rights of national minority members).

As follows, Article 64, Section 1 of the Slovenian Constitution allows the Italian and Hungarian communities to set up organizations for the preservation of their national identity: pursuant to this provision, currently there are self-governing Communities of Italian nationality. They are public law bodies, operating on a city level and formed through direct and secret elections. The active and passive electorate is reserved for community members entered in special electors’ lists managed by the same Communities and subject to inspection by local administrative bodies headed by the Minister of Internal Affairs.

These organisms provide their consultancy to local bodies whenever legislative measures likely to concern minority linguistic groups must be adopted. For example, in the city of Capodistria, the self-governing Community must authorize the naming of city blocks and of streets in linguistically mixed territories, any document approving the setting up of public bodies implementing particular rights of the Italian community, relevant statutes, the appointment of directors and the regulation of visual bilingualism.

The Community’s opinion must be taken into consideration only on the city’s Statute and symbols, on the mid-term and long-term city development plans, on the budget, on the cultural development programs and on education.

The Hungarian situation is rather interesting: a local and a national ombudsman have been introduced for the protection of minority linguistic rights. With regard to the former, his assignments include his compulsory participation to all local organ and local commission meetings whenever the debate concerns issues relating to minority rights. He can petition local bodies for the scrutiny of proposals pertaining to linguistic rights, and the local authority cannot elude, nor postpone the discussion without the ombudsman’s consent; the ombudsman can also urge local bodies to review the decisions adopted, or ask about the state of implementation of provisions.

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37 C. Casonato, see above, 333.
protecting linguistic rights. The ombudsman can also act as mediator with the authorities on linguistic matters and be consulted by local bodies whenever an issue concerning linguistic rights is under debate (Article 6, Section 5, Law n.273 of 2001).