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Language Rights as Human Rights: Drawing upon Three Opposed Perspectives. Do Migrants Have Language Rights?

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.*Abstract*— This article describes the multifaceted concept of language rights (LRs), exploring its real limits through three theoretical lenses: linguistic, geo-based, and as the rights of migrants. The linguistic perspective questions how a precise definition of language can be established, emphasizing the intrinsic value of all languages in communication, cultural preservation, diversity, and personal development. The geo-based approach posits LRs as collective rights developed by the state, essential for ethnic communities localized in specific geographical areas, their cultural identity, and self-determination. Examining LRs as migrant rights, the article stresses the individual and collective aspects, asserting their crucial role in ensuring inclusion, integration, and fair treatment. The study also scrutinizes language rights in compulsory education, comparing the implementations in the USA and Poland, shedding light on practical legal challenges. This comprehensive analysis aims to enrich the discourse on language rights, recognizing their pivotal role in fostering cultural diversity, social cohesion, and equitable integration, especially for minoritised groups like migrants.

Keywords— language rights definition, rights of migrants, bilingual education of migrants, minoritised groups and educational law

I. INTRODUCTION

The term “language rights” (LRs) commonly refers to the rights to use one’s language. In literature, there is a consensus that LRs are typically possessed by a person or collective, and the concept of linguistic rights is considered as one aspect of human rights (see more: Skutnabb-Kangas & Phillipson, 2010; Skourmalla & Sounoglou, 2021; Morales-Gálvez, 2022). Yet, this group of rights, apart from some OSCE reports and recommendations (e.g., The Oslo Recommendations regarding the Linguistic Rights of National Minorities), has not been comprehensively codified in any single act of public international law. The lack of codification poses a real risk of misunderstanding and/or selective application of LRs, particularly among scholars, legal practitioners and policymakers, when it comes to an understanding of the extent and boundaries of these rights. In this light, it should be pointed out that some public policy researchers limit LRs to the status of recognised national minorities by the state (Morales-Gálvez, 2022) or to one particular policy on language(s) promotion imposed by the state (i.e. particular constitutional provisions on language in the public domain) (X. Arzoz, 2009).

It is also evident that in sociolinguistics, there is a shift from the universal idea of LRs as human rights to the twofold hierarchical categorisation, which consists of (a) language human rights (LHRs) and (b) language rights. As was presented by Skutnaab-Kangas & Phillipson (2017), LHRs refer to the (1) right to use one's mother tongue in education and to the (2) right to use one's language in trial proceedings. As it follows, the first is a part of the right to education, and the second is a part of the right to a fair trial. Lawyers criticise the second right, as its rationale lies in securing trial fairness (Arzoz, 2009, p. 545). Thus, the right to use one's language in trial proceedings is not directly related to the public's intention of language policing. Furthermore, legal researchers argue that language rights suffer from a lack of clear boundaries, and the concept of language rights constitutes an undefined list of rights.

Despite some legal theory inconsistencies, there is a well-grounded ideological stance in sociolinguistics favouring the legal establishment of language rights. For instance, Skutnabb-Kangas advocates for an inclusive language rights catalogue,

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aiming to identify the fundamental rights encompassed by LHRs. She views LRs as a means to prevent "language death" through linguism and its radical form, linguicide (Skutnabb-Kangas & Phillipson, 1989) . Indeed, linguicide and linguism are not recognised by public international law as a crime, and the term "language death" has no juridical application. Thus, these phenomena are not seen as a threat by legal researchers, which makes these terms rarely mentioned in works on LRs from the perspective of studies on language policies.

As we briefly demonstrated, there is a certain amount of inconsistencies related to the lack of a common theoretical basis in theorising on LRs. Again, as of 2023, the primary question, "What is the notion of limits for language rights?" posed by Xabier Arzoz (2009), remains unresolved. Therefore, it becomes essential to reassemble the idea of LRs to enhance understanding and provide guidance for the proper interpretation and application of LRs as human rights.

In this paper, our objective is to provide a comprehensive description of the sense of language rights and to pose the real limits for the applicability of this concept using three distinct theoretical patterns. These patterns include (1) the linguistics perspective on LRs, (2) the geo-based approach to LRs, and (3) LRs as the rights of migrants. The examination and application of this theoretical lens are crucial for the effective legal implementation of LRs. It should be noted that we use the terms "language rights" and "linguistic rights" as synonyms.

In the linguistics perspective on LRs, we initiate our inquiry with the fundamental question: "How can we establish a precise definition for a language?". This narrow inquiry shapes the real, non-political and pure limits of the legal framework on LRs. We emphasise the intrinsic value of natural and semi-natural languages and their equal role in communication, preserving diversity, personal (self-) determination and development, cultural heritage, and sustainability. This perspective argues that language rights should be recognised and protected to ensure the diversity of all languages and prevent the loss of cultural resources. Furthermore, within the linguistic approach to LRs, we emphasise the significance of recognising the intrinsic value of language as a fundamental tool of communication. This perspective underscores the importance of acknowledging the personal and societal worth that language carries in facilitating meaningful interactions.

Then, we construct the geo-based approach, as it considers LRs to be addressed to a particular social group(s) by publicly authorised institutions (e.g., states, supernational and international organisations). From the practical perspective, it asserts that language is closely linked to cultural identity, which in the eyes of policymakers is localised in a particular geographical area (e.g., reservation, autonomic region, self-government unit, etc.), and the preservation and promotion of particular languages are essential for the well-being and self-determination of ethnic communities. Hence, language rights are seen as collective rights, being crucial for safeguarding the cultural and social rights of ethnic groups.

We argue that LRs, combining the two patterns described above, are essential for migrants. While scholars have discussed migrants' duty to learn the host society's official language(s), the right to use their languages in the public sphere remains under-addressed (Banai, 2013; Barry, 2001; Kymlicka, 2001; Van Parijs, 2011). Viewing language rights from an individual perspective is crucial for ensuring inclusion, integration, and fair treatment of individuals with migration backgrounds. Moreover, considering the collective aspect of language rights, LRs play a role in the equitable integration of new groups into society. In this regard, we examine language rights in compulsory education, being a part of well-grounded basic rights in international law, and compare how the USA and Poland implement these rights, highlighting some practical legal challenges.

II. Language and Right: The Linguistic Perspective

Non-linguistic (but legal) problem

Undoubtedly, the first act of the United Nations that underlies the language as a right is the Universal Declaration of Human Rights of 1948 (hereinafter referred to as the "Universal Declaration"). While it references language as a possible ground for discrimination in Article 2, it was not primarily designed to address language matters. In public international law, "language" is typically seen as an objective concept that does not need further clarification.

In legal research, especially when examining the rights of minoritised ethnic groups, the focus often lies on languages already legally recognised. Researchers may rely on predetermined catalogues of minorities established by national governments, as seen in Banaszak (2014) and Kuzborska (2014), who adhere to the definitions set by Polish and Lithuanian legislation, respectively. However, this approach limits considerations beyond the state-defined boundaries and might exclude minoritised groups not covered by the accepted catalogue. Kochenov and Varennes (2015) also touch on the issue, considering language as an integral element of the global human rights standard but not providing a clear definition of language.

While some scientific works may explain the scope of these terms, the fundamental concept that allows for language identification remains unexplained. Could such omission lead to adverse practical consequences?

We have decided to present here several approaches that are observed in practice, which undoubtedly demonstrate not only the presence of the issues above but also indicate the scale of the problem. The first is the state's failure to recognise certain languages, often categorising them as dialects or regional varieties of majority languages. Examples include the statuses of Rusyn in Ukraine, Silesian in Poland, and Latgalian in Latvia.

The second approach involves the non-recognition of de facto minority or majority languages due to political reasons, leading to the exclusion of these languages from state language protection programs. Examples are the Russian language's loss of official status in Ukraine and restrictions on languages other than Russian in the Russian constitution (2020). Furthermore, this exclusion leads to the inability to invoke national norms

(e.g., constitutional provisions) or provisions of the European Charter for Regional or Minority Languages (ECRML) (ETS 148, 1992), which declares a protective approach for minority languages exclusively recognised by the state.

Thirdly, international judicial bodies like the European Court of Human Rights and the Court of Justice of the European Union interpret "language" differently based on the law of the states involved in disputes. These differences can result in legal complications. A unified definition of "language" is essential to prevent discrimination against specific social groups and enhance the analysis of language-related rights.

Again, different interpretations of the term "language" can give rise to numerous legal issues. It is beyond doubt that the lack of a unified stance regarding the establishment of a clear definition of this concept can lead to discrimination against specific social groups. Consequently, it can be asserted that the term "language" warrants a deeper analysis, particularly in the context of rights related to particular languages. Hence, it is valuable to invoke relevant theories from linguistics and related fields.

Linguistic perspective on language and rights

Defining "language" is a longstanding debate among linguists, with various perspectives on what constitutes a language. Some definitions focus on linguistic criteria like shared grammar and vocabulary, while others take a sociocultural angle, emphasising language's role in identity and culture. This lack of a universal definition also complicates the legal status of languages. Some widely spoken languages, like English and Spanish, are recognised in multiple countries. In contrast, others, such as Rusyn in Ukraine and Silesian in Poland, are spoken by smaller communities and may lack national recognition. To clarify, we should address two critical terminological distinctions. First, we are concerned with natural (and semi-natural) languages. Thus, a suitable definition of language for this paper should be limited to natural languages (NLs). NLs encompass standard, literary, and regional varieties historically connected to the standard language, including dialects and vernaculars. They also include sociolects and professional jargons linked to specific social and occupational contexts. NLs develop organically within communities and are integral to cultural practices over generations.

Conversely, artificial languages are intentionally created for specific purposes, either by individuals or groups, like programming languages (e.g., JavaScript or Python) for computer programming or constructed languages (e.g., Esperanto) aimed at fully replacing natural languages. Semi-natural languages also encompass simplified linguistic varieties, such as controlled languages (e.g., Simple English or Special English), which simplify language to aid communication and support language learners.

Understanding the term "language" in the context of this research is essential when delving into the legal status of NL. To shed light on the meaning of "language," we shall explore three key linguistic research areas that have historically emerged in language study: grammar, semantics and pragmatics. Grammar is the first field we encounter in language studies. It is dedicated to uncovering the rules and structure of language. In this context, language is seen as a systematic arrangement of elements and rules that facilitate individual communication. Semantics explores how people use language to convey thoughts and emotions, shedding light on the meanings attributed to words and expressions. Lastly, pragmatics examines how individuals employ language to achieve their communication objectives in diverse situations. Through these diverse research domains, a comprehensive understanding of language emerges, encompassing both its structural underpinnings and its communicative intricacies.

In his Course in General Linguistics (Saussure, 2011), Ferdinand de Saussure introduced a structuralism approach to language. Saussure viewed language as a structured system where the value of each element depends on its coexistence with others. He divided language into two components: "langue" (rules) and "parole" (communication acts). This framework influenced the development of grammar, semantics, and, to some extent, pragmatics.

Noam Chomsky (2000) defines language as a system of sentences for communication composed of a limited set of elements. Chomsky's generative grammar studies the syntax of natural languages. It proposes that language structure results from rules governing the combination of words and phrases, creating grammatically correct sentences. This approach aims to uncover the fundamental structures enabling the creation of countless sentences. The generative capacity distinguishes human language from animal communication.

In turn, generative semantics, inspired by Chomsky's generative language approach, especially its semantic aspect, aims to explain language's meaning using generative rules. Developed in the 1960s by George Lakoff (1971) and others, it builds on Chomsky's work on generative grammar. The core idea is that meaning is not simply a matter of matching words with things in the world but rather is generated through a complex set of rules that combine words and concepts to create meaning. This approach addresses the challenge of words having multiple meanings that shift with context.

Pragmatics addresses the role of context, a dimension not fully explored in grammar or semantics. It develops key concepts like implicature and speech acts, conveying indirect meaning through the contextual use of words or expressions (Grice, 1975). Implicatures describe the speaker's intention and are inferred from the context. Another essential concept is speech acts, where language is used to perform actions like making statements, asking questions, making requests, or issuing commands (Austin, 1962). In this regard, John Searle proposed that language serves to represent the world and to perform various acts. Language operates through a system of rules, encompassing not just rules for content but also sincerity, preparatory, and constitutive rules derived from the context (Searle, 1969).

Of course, the ideas on language presented above have only been briefly outlined. However, upon examining grammar, semantics, and even pragmatics from the perspective of research direction, it becomes clear that the language being investigated (be it English, German or Swahili) is irrelevant for

all concepts. This recalls Chomsky's idea of generativity, which can be unpacked differently: humans constantly develop languages, thus continually filling them with meanings necessary for communication. Once again, there are no better or worse languages. All human languages convey meanings to the extent necessary for their users.

III. GEO-BASED APPROACH TO LANGUAGE RIGHTS

The geo-based approach to LRs has been well-established in public policies and theoretical works for decades. This approach ignores the private aspect of language, focusing primarily on collective rights addressed to the languages of groups, particularly highlighting the languages of ethnic groups. For instance, Skutnaab-Kangas & Phillipson (2017, p. 1) use the term “ethnolinguistic minorities”, which refers to speakers of languages associated with minoritised cultures in the society.

In this regard, some philosophers and political theorists have established a concept of long-settled cultural communities. According to Patten and Kymlicka (2003, p. 27), language [rights] should be shared by well-established communities of speakers who have resided in a specific territory for several generations and have actively preserved their language. This concept aligns with Will Kymlicka's (1995) notion of a "national group," which encompasses both majority and minority groups within a particular political entity, wherein members are committed to the preservation of their language(s). However, especially in the European context, LRs tend to be a part of the “national minority” status. Current European regional regulations on this issue can prove this proposition. For example, the ECRML proclaims a catalogue of rights for national minorities related to a language in education, public administration, language in the public domain and personal life. Still, this list is dedicated to native citizens of particular states.

Thus, being excluded from that standard is faced by people without a passport or those not classified as national minorities according to internal law. It is an actual problem for states, new superstate formations, and international organisations (i.e. European Union, Council of Europe) as moderators of such rights policies. Again, there are two internationally recognised collective legal statuses which fit the term “long-settled cultural community”: (1) European-based “national minorities” and (2) indigenous people. Both of them are composed of communities which are recognised as social groups by the state (they have a special legal status, not the same as the status of the ethnic majority), and they at least have some territorial connections with specific areas (which is also indisputable by the state).

The category of national minorities is a well-established and recognised term in practice, particularly in Europe. However, the concept of national minorities is strictly limited to minorities officially recognised by the state. Consequently, the catalogue of minority languages, in most cases, becomes a privilege available only to selected categories of society. As an argument, we shall refer to the limitations established by the ECRML. Specifically, Article 1(a) of the ECRML specifies that the Charter applies only to languages traditionally used by a numerically smaller group of citizens within a state and distinct from the official languages of that state. Although the ECRML indicates that it constitutes an acceptable minimum necessary for the existence and promotion of language within society (Article 4), thereby promoting the creation of more advanced binding legal instruments concerning language rights within jurisdictions, Article 3(1) of the ECRML leaves the initiative to determine the languages covered by the Charter in the hands of the state. Moreover, through such an approach, the Charter de facto allows the state to consider whether or not to become more tolerant towards linguistic diversity.

Continuing our analysis, the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP) from 2008 (A/RES/61/295, 2007) also provides a regime of protection for indigenous languages. The definition of indigenous peoples in UNDRIP is constructed with consideration of specific characteristics that characterise this group, including territory (Article 10), distinctive cultural features of indigenous peoples (Article 13), traditional ownership rights and rights to lands, territories, and resources historically owned or occupied by them (Article 26). This significantly limits interpretative possibilities, unlike the Rome Statute, which allows for a more flexible identification of a group.

The UNDRIP is not a binding document for the UN members. However, UNDRIP contains significant aspirations and ideas that, in our opinion, have the potential for application in the context of language protection, for example, in domestic law. For instance, indigenous peoples have the right to maintain, use, develop, and transmit their history, languages, oral traditions, philosophies, writing systems, and literature to future generations, as well as to determine and maintain their own names for their communities, places, and persons (Article 13(1)); the right to understand and be understood in political, legal, and administrative processes in a language that they comprehend, and, where necessary, through the provision of interpretation services (Article 13(2)); the right to establish their own education systems (Article 14); the right to promote themselves and to be tolerated within society (Article 15), and the right to establish their own media in their languages on a non-discriminatory basis (Article 16). Furthermore, the declaration proclaims a prohibition on forced assimilation (i.e. aggressive acculturation, see Article 8), which, among other things, involves "the removal of children of the group to another group" (Article 7) and – which may seem unusual for public international law – the protection [of these children] from active integration practices provided by the state (Article 8(1)(d)).

IV. LANGUAGE RIGHTS AS RIGHTS OF MIGRANTS

If the status of ethnic groups is adequately established and there exist international legal instruments that create a certain framework of rights for these groups and, consequently, obligations for the states, then when we attempt to establish such rights for migrants, we encounter a problem. Currently, neither the term "migrant" nor the cultural rights of migrants are defined by international law. For the purposes of this article, we adopt the definition of a migrant as a non-citizen who,

voluntarily or due to a complex humanitarian situation, has moved from the state of permanent residence to another state. In the literature, two types of migrants are distinguished: long-term and short-term migrants (Morales-Gálvez, 2022). Among migrants, we also distinguish beneficiaries of international protection (BIP), as this is the only category of migrants that has a well-established international status. According to some scholars, the definition of BIP is based on the Geneva Convention as “refugees or persons with subsidiary protection under EU law” (Arcarons, 2018; Preda, 2020). There is also a broader understanding of BIP, which includes “resettled UNHCR ‘Programme’ refugees” and “persons granted ‘leave to remain’ under local law” (Gusciute et al., 2016).

Geneva Convention refugees under Article 1 of the Convention are persons granted refugee status due to the fact of being forced to flee their country as a result of persecution, war, or violence; having a well-founded fear of persecution for reasons of race, religion, nationality, political opinion or membership in a particular social group (UNHCR, 1951). In turn, following Directive 2011/95/EU, holders of subsidiary protection under EU law are third-country nationals or stateless persons who do not qualify to be considered refugees under the Geneva Convention but who would face a real risk of suffering serious harm if they returned to the country of origin or former habitual residence. The meaning of BIP covers the two statuses referenced above in this research. Indeed, participation in the Resettlement Programme by UNHCR (UNHCR RP) and being granted “leave to remain” under local law do not apply to the same extent to all states (Gusciute et al., 2016). Therefore, instead of these two categories, we include holders of temporary protection under Directive 2001/55/WE, launched by the Council Implementing Decision (EU) 2022/382 as a response to the desperate war in Ukraine, to the scope of BIP. Crucially, the Geneva Convention and Directive 2011/95/EU proclaim the principle of equal treatment. This principle refers to the following:

1) the same treatment as is accorded to nationals with respect to elementary education (Article 22 of the Geneva Convention);
2) the same access to public relief as it is applicable to nationals (Article 22 of the Geneva Convention);
3) the same treatment in labour law and social security as it is accorded to nationals (Articles 17, 19 and 24 of the Geneva Convention).

A more secure status is provided for all migrants in the area of education. The OSCE Convention against Discrimination in Education (1960) was the first document which provided the meaning for discrimination in education, stating that this form of discrimination encompasses: (a) depriving any person or group of persons of access to education of any type or at any level; (b) limiting any person or group of persons to education of an inferior standard; (c) establishing or maintaining separate educational systems or institutions for persons or groups of persons; (d) inflicting on any person or group of persons conditions which are incompatible with the dignity of man (Art 1).

In turn, equal access to elementary education shall be distributed to all migrants due to the UN Convention on the Rights of the Child (1989). It proclaims compulsory and free primary education in accordance with the principle of equal opportunity (Article 28 §1). This document also describes a catalogue of particular rights addressed to languages. The development of respect for the parents of the child, as well as the child's own cultural identity, language, and values, is emphasised in Article 29 (c) of the document. Furthermore, the convention encourages the mass media to consider the linguistic needs of children belonging to minority groups or indigenous communities, as stated in Article 17 (d). The conventions mentioned above shape two fundamental language rights related to education: (a) the right to use one's first language in education and (b) the right to learn a language that serves as the medium of instruction. However, the practical realisation of the mentioned rights, especially the notion of limits, can significantly vary among states. We will illustrate this difference in the examples below. In this regard, we will specifically examine the linguistic rights within the compulsory education domain. This approach is considered appropriate since a uniform legal framework should apply to all migrants in the area of compulsory education.

V. Practical (local) manifestations

In order to highlight the particular legal perspective on the language rights of migrants in education, we shall use two exponential examples: Poland and the United States of America. The example of Polish law on language rights is suitable, as Poland is currently facing a significant wave of refugees since its post-WW2 history: 11,746,812 arrivals from Ukraine and 1,605,738 official registrations of refugees in Poland (and 8,255,288 across Europe) as of 22.05.2023 (during a period 24.03.2022-22.05.2023) (UNHCR, 2023).

Poland's legal framework offers restricted autonomy options for public schools. The latest Eurydice report (European Education and Culture Executive Agency, 2023) indicates that public schools in Poland have limited autonomy concerning the management of human resources, such as the appointment, dismissal, and determination of duties and responsibilities of teachers. Additionally, their autonomy is limited in the allocation and determination of the use of public funds. Yet, when it comes to the flexibility of the compulsory curriculum, public schools do not have autonomy. Nevertheless, Eurydice's report classifies Poland as a country that grants full freedom to schools regarding the curriculum content for optional subjects and teaching methods. Consequently, the national curriculum and regulations set forth by the Ministry of Education hold significant importance for public schools in Poland.

According to Polish law, all children are required to attend school for compulsory education. Individuals who are not Polish citizens and those who are Polish citizens but were educated in schools outside of Poland are categorised as "persons who are not Polish citizens and persons being Polish citizens who were educated in schools operating in the education systems of other countries" (Dz.U. 2017 poz. 1655). In order to use a shorter term, we call them “Polish Language

Learners" (PLLs). There may be a legally justified assumption that individuals with non-Polish citizenship who fall under the category of PLL may also participate in educational programs for national minorities due to the principle of non-discrimination as is established in case Bickel and Franz (Case 276/96, 1998) considered by the Court of Justice of the European Union (CJEU). In Bickel and Franz, CJEU attested the non-discrimination principle in access to public services (i.e. criminal and civil procedures) of the Member State in light of the right to move and reside freely in another Member State (Article 21 of the Treaty on the Functioning of the European Union). The Court stated that the exercise of the right to move and reside freely in another EU state is significantly advanced when Union citizens are afforded the capability to communicate with the administrative and judicial institutions of that state using a designated language on an equal basis with its native citizens. Going in this vein, the Court ruled that the right to use a non-state language granted by the member state to residents of a certain region also applies to all citizens of the European Union, even though they do not have residence in the region with such policy. This landmark case is relevant as the basis for European Union citizens to have equal access to educational programs designed for national minority groups. Moreover, the shown principle shall be adopted for third nationals, to whom the right to move and reside freely in another Member State was granted in accordance with the Treaty on the Functioning of the European Union (see Article 45 of the EU Charter of Fundamental Rights). Indeed, it is important to note that this case is not explicitly implemented in the National Curriculum and the Education Act (Dz.U. 2005 nr 17 poz. 141.).

The National Curriculum and Education Act do not specifically address the status of refugees and individuals falling under the PLLs' status. However, they provide requirements and recommendations for learning modern, regional, and minority languages. According to Article 18 (Dz.U. 2017 poz. 1655), schools or local authorities are required to organise special Polish language courses for individuals who have low or no knowledge of the Polish language. This is done parallel to regular subjects. An exception to this rule is applicable in cases where students experience communication disturbances and adaptation difficulties due to cultural differences or changes in the educational environment. In such cases, preparatory branches (in Polish: "oddziały przygotowawcze") are incorporated into the educational system, where pupils are taught the Polish language and subjects separately from local students (Article 16 in Dz.U. 2017 poz. 1655).

Furthermore, the Polish educational system provides two approaches for the implementation of native languages in schools. The first concept involves bilingual classes and bilingual schools, where two languages of instruction are used for selected subjects, including Polish and another modern language. It should be noted that this concept does not apply to two subjects: Polish and History of Poland (Article 4 in Dz.U. 2017 poz. 1627). The second concept implements classes with the native language as a subject for members of the national minoritised group (NMG).

Indeed, the Polish language is a compulsory subject in the 8th year of elementary school and in final high-school exams, which can pose a challenge for PLLs. Additionally, according to Article 44o-44q (Dz.U. 2021 poz. 1915), the Polish education system incorporates a mechanism for personal promotion to the next grade, requiring a certain level of grades in each compulsory subject. Similarly, the languages of instruction for secondary school-leaving exams are restricted to Polish and the list of NMGs' languages recognised by the state. Undoubtedly, Polish law provides specific instruments that should allow migrants to use their native languages in the educational process. However, the purpose of these instruments is solely to facilitate the rapid acquisition of the majority language in order to assimilate with the students' majority. There are also examination requirements that result in disparate treatment of PLLs in comparison to other students. The suitability of alternatives encompassed within the scope of EU law appears to be uncertain.

The USA has a longstanding tradition of supporting migrant languages within the framework of bilingual, multilingual and other language acquisition programs in compulsory public education. As of 2023, Arizona remains the only state with limited access to bilingual education. Public education is mainly governed by state authorities, with federal funding and minimum requirements. In this regard, the Bilingual Education Act of 1968, also known as Title VII of the Elementary and Secondary Education Act, marked the beginning of federal support for bilingual education.

Although not legislation per se, the landmark Supreme Court case Lau v. Nichols (414 U.S. 563; 1974) was instrumental in shaping bilingual education. The U.S. Supreme Court, in its ruling, determined that the school district's failure to provide meaningful and effective access to English language instruction for non-English-speaking students violated their civil rights under the Equal Protection Clause of the Fourteenth Amendment. The Court held that it was essential for schools to take affirmative steps to help students overcome language barriers. In turn, the Education Amendments of 1974 (i.e. Equal Educational Opportunities Act, EEOA) expanded on the 1968 act to emphasise the importance of culturally responsive education.

In Castañeda v. Pickard case (648 F.2d 989; 1981), the Court constituted a robust framework for evaluating how language education programs shall meet the requirements of the EEOA. This standard has become a linchpin for evaluating the quality and legality of language education programs, serving as a guiding framework for educational institutions and the judicial system. It is also worth mentioning the case of undocumented students. Plyler v. Doe (457 US 202; 1982) addressed the educational rights of undocumented immigrant children. The Court found that access to public education for any child, regardless of their immigration status, severely disadvantaged them and inhibited their potential contributions to society.

VI. Summary

In conclusion, the LRs' extent within the public sphere is closely tied to the linguistic advocacy of the speakers. However, there is no scientific reason to discriminate against any language. International public law establishes equal access to ceducation for all, regardless of immigration status. This shapes the basis for LRs: the right to use one's mother tongue and to understand the language of instruction.

For states, the implementation of these two basic rights may have different notions of limits. In some cases, educational policymakers consider successful pupil integration to be rapid learning of the majority language, while others prioritise the long-term impact of successful curriculum completion through bilingual and multilingual programs. In this manner, genuinely balanced limits for the application of identified language rights for migrants can be determined only through the establishment of scientifically justified criteria for effective educational programs for minoritised students with migration backgrounds. It shapes a real need to create a way to assess the friendliness of language policies in education towards migrants.

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