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Conclusion

Il va sans dire que lorsque l'on parle des enfants soldats, l'on ne peut s'empêcher de penser à Omar Khadr qui fut arrêté alors qu'il était âgé de 15 ans. Il était donc un enfant soldat. Le BIDE a publié sur le site PEACEBUILD/PAIXDURABLE une chronologie de ce qui c'est produit depuis sa naissance. J'y réfère le lecteur pour qu'il/elle ait une idée précise de ce qui s'est passé dans ce dossier.

Omar Khadr est né au Canada.

Il est citoyen canadien.

Il est le seul enfant soldat à avoir été poursuivi pour crime de guerre.

Que fait le Canada ? ...

A chaque jour qui passe s'atténuent les chances de succès des programmes de réinsertion et de réhabilitation qui lui seront offerts...

A SPEAKER-CENTRED APPROACH TO LINGUISTIC RIGHTS: LANGUAGE AS A TRANSVERSAL MATTER IN THE *EUROPEAN FRAMEWORK CONVENTION FOR THE PROTECTION OF NATIONAL MINORITIES*

BY

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Introduction

In 1991 the Council of Europe held in Klagenfurt (Austria) a conference on "Intercultural Learning in the service of Human Rights". Peter Leuprecht, then Director of Human Rights at the Council of Europe, had taken notice of the critical research on ethnocentrism and nationalism which then was carried out at the Uni-

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versity of Klagenfurt; but obviously Klagenfurt was also chosen because of its geographical proximity to the region of former Yugoslavia, which in that moment experienced a dramatic outburst of violence and struggle for power fought in terms of ethnicity. Though we had already met Peter Leuprecht earlier, in the context of solidarity actions either related to immigrants and refugees or to the Slovene minority in Carinthia, the Klagenfurt conference turned out to be the starting point of an intense co-operation which eventually transformed into a long-lasting and ongoing friendship. The presence of Peter Leuprecht, who, in a position of responsibility, combines trenchant analysis, human generosity and moral courage at a crucial moment of history, simply opened up, so to speak, an exceptional window of opportunity.

One of the main outcomes of the Klagenfurt conference was the idea of drafting what would soon become the Council of Europe's "Confidence-Building Measures" programme, which in two respects broke new ground: Directly addressing actors in civil society rather than state authorities and encouraging cooperation projects involving individuals from both majority as well as minority backgrounds. As developed in the following contribution, intercultural dialogue and cooperation also became a cornerstone of the *Framework Convention for the Protection of National Minorities*, one of the resulting outcomes of the 1993 Vienna Summit, of which Peter Leuprecht, then Deputy Secretary-General of the Council of Europe, was a foresighted and provident architect.

I. – The Framework Convention: a Speaker-Centred Approach to Language and Rights

Over the past decades, language rights increasingly became a topic in sociolinguistics, though not an uncontested one. Schematically, on one side of the spectrum are scholars who, for different reasons, advocate the elaboration and implementation of linguistic rights. While supporters of the so-called language ecology movement emphasize the worldwide loss of linguistic diversity due to linguistic imperialism, other academics instead focus on disadvantages experienced by speakers of minoritized languages, such as the disadvantages that children face when educated in an imposed lan-

guage. (1) On the other hand, the concept of linguistic human rights is criticized for different, not always compatible reasons. Scepticism is formulated concerning tendencies to essentialize identity constructions and to reify the link between language and identity, not taking into account the necessity to cater to expressions of multiple identities, and neglecting the situatedness of acts of identification. Linguistic human rights concepts are also questioned because they might result in policies that confine speakers to languages which restrict their access to equal participation in society. (2) Political discourse arguments contesting linguistic rights often invoke that linguistic diversity might undermine national unity and social cohesion.

In our contribution, we will explore the way in which one of the main European legal instruments for the protection of minority rights covers and understands linguistic rights. The *European Framework Convention for the Protection of National Minorities* (FCNM) (3) was opened for signature in 1995. Like the *European Charter for Regional or Minority Languages* (4) (Charter) it was adopted by the Committee of Ministers of the Council of Europe in the wake of growing ethnically motivated tensions and conflicts after the fall of the Iron Curtain in 1989. In both treaties, which are generally seen as complementary, the close connection between minority rights and language becomes apparent.

For the Charter, the point of departure is the safeguarding, maintenance and development of a common European cultural heritage in which the protection of historical, regional or minority languages is seen as a cornerstone. The Charter thus focuses, as stated in its Explanatory Report, primarily on the "cultural function" of language, "that is why it is not defined subjectively in such a way as to consecrate an individual right". (5) The Charter defines regional or minority languages as languages "traditionally used within a

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(1) Jane FREELAND and Donna PATRICK, "Language Rights and Language Survival", in Jane FREELAND and Donna PATRICK, eds., *Language Rights and Language Survival*, Manchester, Northampton, St. Jerome, 2004, 1 at 1.

(2) For an overview of different positions see Stephen MAY, "Rethinking Linguistic Human Rights. Answering Questions of Identity, Essentialism and Mobility", in Jane FREELAND and Donna PATRICK, eds., *Language rights and language survival*, Manchester, Northampton, St. Jerome, 2004, 35.

(3) European Treaty Series (ETS) no. 157.

(4) European Treaty Series (ETS) no. 148.

(5) *European Charter for Regional or Minority Languages, Explanatory Report*, at para. 17.

given territory of a State by nationals of that State who form a group numerically smaller than the rest of the State's population" and "different from the official language(s) of that State". By defining distinct criteria linked among others to citizenship and territory, it explicitly excludes "dialects of the official language(s) of the State or the languages of migrants". (6) Nevertheless, it also grants a certain protection to traditionally used "non-territorial languages" such as Yiddish and Romani.

In contrast, in the FCNM the emphasis is not placed on the protection of specific languages, but on the protection of individual rights of persons belonging to national minorities, who may exercise these rights individually or in community with others. As specified in the Explanatory Report, the possibility of joint exercise of those rights and freedoms does not imply the recognition of collective rights. Translated into linguistic terms, the person centred approach adopted by the FCNM implies that linguistic rights are associated with speakers and their language practices rather than with "given" languages. Taking specific languages as a point of departure as the Charter does, assumes an understanding of languages as bounded and clear cut categories. This understanding was challenged by Mikhail Bakhtin as early as in the 1920s. He argued that unified languages are not naturally given but imposed and also opposed to the heteroglossic character of language practices in society. Heteroglossia stands here for the multivoicedness which according to Bakhtin (7) encompasses three dimensions: the diversity of discourses, the diversity of languages and codes, and the diversity of individual voices. The codification of standard languages is historically linked to the political and economic process of nation state building in which a common, unified, national language was seen as a crucial factor for national unity. That which is considered a language, is in practice more an ideological and political question than a linguistic one; or, as Joseph puts it "languages too are 'imagined communities' whose very existence and maintenance depend on the belief of the nation." (8) Though the FCNM allows a

flexible approach to what is to be considered as a language, the notion of "national minority" nevertheless makes clear that the FCNM is also historically situated within the nation state paradigm which provides a framework for thinking in categories of majority and minority groups.

The crucial point is that FCNM refrains from providing a definition of the notion of "national minority" and, not least because it was impossible to arrive at a definition that would find the consent of all member states of the Council of Europe, adopts instead a pragmatic approach. (9) Peter Leuprecht who was deeply involved in the process of the elaboration and negotiation of the Framework Convention stresses that this solution was as much a stratagem as a compromise: "This absence of definition was preferable to any of the definitions that were on the table when the Convention was negotiated; all of them were designed to exclude certain groups and individuals. Avoiding a definition left the way open to 'jurisprudential' developments." (10)

The now 39 state parties to the FCNM have adopted different approaches when defining the scope of application of the Convention, whereby some states provided their own definitions of what in their understanding is or is not to be considered a "national minority", while other states made various declarations or reservations; some of them denying the existence of national minorities within their territory. A few member states of the Council of Europe, such as France and Turkey, outrightly refused to sign and ratify the convention.

According to Peter Leuprecht, human rights are literally subversive in the sense that they limit power, including state power. (11) One of the "subversive" dimensions of the FCNM certainly lies in the monitoring process which is carried out by a monitoring body composed of independent experts, the Advisory Committee. In the course of three monitoring cycles, the Advisory Committee has evaluated information given by the authorities as well as by civil

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(6) *European Charter for Regional or Minority Languages*, art. 1, lit. a.

(7) Mikhail BAKHTIN, *The dialogical principle*, edited by Tzvetan TODOROV, Manchester, Manchester University Press, 1984 at 56.

(8) John E. JOSEPH, "Language and Politics", in Alan DAVIES and Catherine ELDER, eds., *The Handbook of Applied Linguistics*, Malden, Oxford, Carlton, Blackwell, 2004, 345 at 359.

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(9) *Framework Convention, Explanatory Report*, at para. 12.

(10) Peter LEUPRECHT, "Minority Rights in Europe", in Razmik PANOSSIAN, Bruce BERMAN and Anne LINSCOTT, eds., *Governing Diversity – Democratic Solutions in Multicultural Societies*, Montreal, Right & Democracy, 2007, 39 at 43.

(11) Peter LEUPRECHT, "Menschenrechte und Minderheitenrechte", in Helmut GUGGENBERGER/Wolfgang HOLZINGER, eds., *Kollektive Identitäten im Spannungsfeld von Integration und Ausschließung*, Klagenfurt, Drava, 1993, 227 at 238.

society actors, gathered information *in situ* during country visits and produced opinions concerning the different state parties. These opinions together with the country related resolutions of the Committee of Ministers, form a sort of growing body of binding "jurisprudence". The declarations and reservations made by the states concerning the scope of application of the Convention are not exempt from being examined by the Advisory Committee, which often urges state authorities to reconsider the scope of application of the Convention and to adopt more inclusive approaches. In several opinions the Advisory Committee recommended that state authorities should consider extending the protection of the Convention – at least in the field of education and culture – to groups so far not included. The Advisory Committee mentions in this context specifically persons belonging to national minorities living outside the traditional territories as well as non-citizens. As a whole, the monitoring process, which involves state authorities, members of the concerned groups and independent experts has, over the years, contributed to a considerable and open-ended evolution in the understanding of minority rights, including the rights concerning language use.

The FCNM does not treat language matters or linguistic rights in one specific article, but topics related to language use and linguistic practices are spread over a range of different articles, which focus on language in various contexts; such as education, media, personal names, administration and judiciary, participation in society, etc. Our aim is to show that the FCNM has the merit of taking an open approach to language not only focussing on its cultural function, but exploring the notion of language in its different dimensions.

In his seminal analysis of semiotics, communication and language published in 1934, Karl Bühler (12) distinguishes three main functions of language: *Darstellung* (representation of an object or a state of affairs), *Ausdruck* (expression of the sender's feelings), and *Appell* (appeal to the receiver). These three functions, which are, to varying degrees and proportions, present in every utterance, are thus related to the message as well as to both partners of an inter-

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(12) Karl BÜHLER, *The Theory of Language: The Representational Function of Language*, Amsterdam, Philadelphia, John Benjamin, 1990.

action, the addresser and the addressee. As Roman Jakobson, (13) who took up and elaborated on Bühler's model states, these functions correspond to the three grammatical persons – the first person of the addresser, the second person of the addressee and a "third person", someone or something spoken of. In other words, in every interaction, speakers simultaneously refer to themselves and, through the exchange of content related messages, constitute and modify social relations with others. Following Bühler and Jakobson language practices can be analysed in a perspective taking into account the multilayered nature of language in its dimensions of identity, of instrumentality, and of interaction. Translated into a human rights terminology, the identity dimension corresponds to the right of self-expression and the right of being recognized. The instrumental dimension refers to the right to access information, education, services and resources in the same terms as other members of society. Finally, the interaction dimension points to a need to communicate across differences and to participate actively in society.

II. – The Identity Dimension: Heteroglossic and Situated Linguistic Repertoires

The link between language and identity becomes apparent in several articles of the FCNM, (14) but it is a core concern of Articles 3, 5 and 11. Article 5 obliges state parties "to promote the conditions necessary for persons belonging to national minorities to maintain and to develop their culture, and to preserve the essential elements of their identity" whereby language is explicitly stated as one of these essential elements. Article 11 stipulates the right of a person belonging to a national minority to use his or her surname and first names in the minority language, to display language signs, inscriptions and other information of a private nature visible to the public in the minority language; and calls upon state parties to display traditional toponyms intended for the public also in the minority

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(13) Roman JAKOBSON, "Linguisitics and Poetics", in Thomas A. SEBEOK, ed., *Style in Language*, New York, Wiley, 1960, 350.
(14) We wish to thank Francesco Palermo with whom Brigitta Busch worked on the question of linguistic rights in the context of the FCNM.

language. Article 3 on which we focus in this chapter stipulates that "every person belonging to a national minority shall have the right freely to choose to be treated or not to be treated as such and no disadvantage shall result from this choice or from the exercise of the rights which are connected to that choice". Article 3 does not explicitly mention language, but in practice, language use and declarations on mother tongue are in many cases considered as an expression of identity and of belonging to a particular group. Such declarations of linguistic affiliation can be required at different moments such as population census, school enrolment, inscription into electoral registers, military conscription, job application in public service, police and judiciary investigation.

The Advisory Committee has in its monitoring process taken an open approach which discards the simple equation between language and identity. It considers the compulsory declaration of linguistic affiliation as contrary to the freedom of choice, especially when such a declaration is not anonymous, when the declaration of affiliation remains unchangeable with a person for a longer period and when the refusal to declare one's linguistic affiliation to one of a range of pre-established language categories leads to the exclusion from certain political or civic rights. (15) This is for instance the case for South Tyrol where the declaration of linguistic affiliation is conceived as an either-or-choice (between German, Italian and Ladin) and remains in the official register unchangeably linked to a particular person for ten years. The exercise of certain rights of access to jobs in public administration is bound to the declaration of being affiliated to one of the three linguistic groups. The Advisory Committee also stresses in its opinions that it is not compatible with the Framework Convention when persons are classified without their knowledge and consent (16) and emphasises that the possibility of multiple and situational affiliations should be guaranteed within the principle of self-identification. Acknowledging the situatedness and the possible multiplicity of identifications is, as

Heintze (17) explains in his discussion of article 3 of the FCNM, a fundamental principle of minority protection. He provides an example of how one individual might wish "to identify herself or himself in different ways for different purposes, depending upon the relevance of identification and arrangement for her or him in a particular situation or context".

In a sociolinguistic perspective, situations in which minority languages are present are by definition linguistically diverse settings in which power relations come into play. To grasp the complex relationship between language practices and acts of identification, the concept of the linguistic repertoire proves to be productive. Linguistic repertoire means the totality of linguistic and communicative possibilities, which are available to speakers in specific situational contexts. Definitions explicitly include register specific, stylistic and dialectal varieties as well as a pragmatic knowledge to adequately applying these linguistic possibilities in specific situations. The concept of linguistic repertoire is not based on languages as bounded entities, but on a speaker centred perspective which highlights experiences and desires linked to language. It is linked to personal life trajectories and to life worlds, understood in the phenomenological approach as a collective intersubjective pool of perception and a shared field of experience and transforming actions. In this sense, with Merleau-Ponty (18) we view language as part of corporeal memory which is reflected in embodied practices of interaction. The linguistic repertoire develops through interaction and is thus constantly changing. (19) Or, as Blommaert puts it, "it is tied to an individual's life and it follows the peculiar biographical trajectory of the speaker"; it "reflects a life, and not just birth". (20) The linguistic repertoire is constantly evolving, whether due to a change of living circumstances such as mobility, or as a result of political change. In the context of the fall of the Iron Curtain for instance,

(15) *Advisory Committee on the Framework Convention for the Protection of National Minorities*, Strasbourg, Council of Europe, quoted in the following online: <http://www.coe.int/t/dghl/monitoring/minorities/3_FCNMdocs/Table_en.asp>. Opinion on Italy I; Opinion on Cyprus III.

(16) Opinion on Germany I; Opinion on the Slovak Republic I.

(17) Hans-Joachim HEINTZE, "Article 3", in Marc WELLER, ed., *The rights of minorities. A commentary on the European Framework Convention for the Protection of National Minorities*, Oxford, Oxford University Press, 2005, 107 at 119.

(18) Maurice MERLEAU-PONTY, *Phénoménologie de la perception*, Paris, Gallimard, 2009 [1945] at 221.

(19) Brigitta BUSCH, "Die Macht präbabylonischer Phantasien. Ressourcenorientiertes sprachbiographisches Arbeiten" (2011) 40 *Zeitschrift für Literaturwissenschaft und Linguistik LiLi* 58, 58 ff.

(20) Jan BLOMMAERT, "Language, asylum, and the national order" (2008) 50 *Working Papers in Urban Language & Literacies* 1, 16 f.

the drawing of new political borders has also changed linguistic hierarchies: Former minority languages became majority languages and vice versa. Similarly to Bourdieu's concept of *habitus,* the notion of linguistic repertoire relates to the social and discursive realms: it is shaped by experiences inherent in power relationships, social hierarchies and language ideologies, discourses about language(s) and language use.

In social interaction, speakers draw on the complex structure of linguistic resources and potentialities of their repertoire to position themselves through distinction from and identification with others. Claire Kramsch (21) established the evidence that not only languages one masters, but also languages one desires can play an important role in such acts of identification. Identification with others implies the construction of a collective – and exclusive – "we" within which inequalities and power relations seem, at least for a moment, to be erased by a magic act. The relevance of language topics in identity constructions and in discourses about identity points to the crucial role that particular language practices – as dialects, accents, registers – can play in terms of being identified (or misidentified) by others and, subsequently, in practices of self-identification and distinction from others. Linguistic practices can become a shibboleth by which a person is identified as belonging or not belonging to a particular group. Fear of discrimination then can urge persons to hide or deny parts of their repertoire. The desire to identify with a specific language can become powerful especially when linked to experiences of oppression, non-recognition or misrecognition – e.g. by imposed forms of patronyms or toponyms conforming to the majority language. Linguistic affiliation can also be used to legitimize conflicts concerning the distribution of economic resources, social status and political power. An instrumental and scientifically detached view of language that understates its identity dimension fails to understand the role that language can play in political discourse, social mobilisation and conflict. (22)

In its opinions concerning the implementation of Article 3 of the FCNM, the Advisory Committee focuses on questions related to census, as these frequently are moments when declarations of lin-

(21) Claire KRAMSCH, *The multilingual subject,* Oxford, Oxford University Press, 2009.
(22) S. MAY, *op. cit.* at 44.

guistic or ethnic affiliation are asked for and as census results are interpreted as information on the numerical size of particular groups, from which the enjoyment of rights related to a "substantial number" of persons belonging to a national minority can depend. Questions on language were introduced in the scope of the population censuses already in the 19th century as language was then seen as an unambiguous and objective indicator for ethnic identity. (23) Following the assumption that for every person one language is dominant, all persons indicating more than one language in the census form are still today in most countries treated as monolingual for census purposes. Considering the heteroglossic nature of individual linguistic repertoires such a simple equation that reduces persons to a single language category is highly problematic. In its opinions the Advisory Committee therefore encourages authorities to collect data in strict conformity with the principle of self-identification and following the recommendations of the Conference of European Statisticians. (24) Census questionnaires must allow respondents the opportunity to indicate more than one language. Furthermore, flexibility – optional questions and an open list of alternative answers with no obligation to affiliate to a set category and including also the possibility for multiple linguistic affiliations (e.g. for children of mixed marriages) – is seen to be essential to allow the census results to reflect each individual's actual choices. (25) Mandatory questions on ethnic or linguistic affiliation are not considered compatible with the principle of freedom of choice laid down in Article 3.2 of the Framework Convention. (26) The Advisory Committee also encourages authorities to take specific initiatives to include persons belonging to minorities, and persons speaking a minority language among the census officials and to translate the census questionnaires into minority languages. (27) During the preparatory phase of the census, the

(23) International Statistical Congress 1857, cf. Dominique AREL, "Language categories in censuses: backward- or forward-looking?", in David KERTZER and Dominique AREL, eds., *Census and identity. The politics of race, ethnicity, and languages in national censuses*, Cambridge, Cambridge University Press, 2002, 92 at 95.
(24) Opinion on Croatia III. See Conference of European Statisticians recommendations for the 2010 Census of Population and Housing prepared in cooperation with the Statistical Office of the European Communities (EUROSTAT). UN Economic Commission for Europe, Geneva (2006), at §430-436 language.
(25) Opinion on Cyprus III; Opinion on the Slovak Republic III.
(26) Opinion on Estonia I.
(27) Opinion on Croatia III; Opinion on Cyprus III.

authorities should consult the representatives of minorities about the questions relating to a person's affiliation with a national minority and to his or her languages spoken in daily life. (28)

The Advisory Committee insists that when processing the collected data it is crucial to respect the free expression of ethnic and linguistic identity – including multiple affiliations – in order for the census results to reflect each individual's actual choice and to draw an accurate picture of the population's composition. (29) When interpreting the data, authorities must be aware that past experience and fear of discrimination can prompt persons to hide their linguistic affiliation and identity. (30) Census and other quantitative data cannot be regarded as a sole means of obtaining reliable information for language policies but must be supplemented with sociological studies which consider other parameters, especially when trends reveal a decreasing number or when statistical data differ considerably from estimations by minority representatives. (31) When trends show demographic changes due to inner migration (e.g. towards urban centres) authorities are invited to adjust their language policies accordingly in order to respect the rights of persons belonging to national minorities also outside traditional territories. (32) In the light of these opinions which acknowledge translocal language repertoires and situated constructions of identity the Framework Convention proves its capacity to take into account changing sociolinguistic parameters such as growing mobility and the emergence of new social spaces constituted through diversified cultural and linguistic practices.

III. – The Instrumental Dimension:
Language as a Means to Access Basic Rights

In communication models which highlight the multifunctionality of language, the instrumental dimension of language, sometimes also called the representational function, points to the objects and state of affairs in reality, to the contents and contexts of the mes-

(28) Opinion on Croatia III.
(29) Opinion on Cyprus III; Opinion on Hungary III.
(30) Opinion on Croatia II.
(31) Opinion on the Slovak Republic III.
(32) Opinion on Austria II.

sages exchanged between interaction partners. In terms of linguistic rights, this means that the right to express oneself in one's own language is only of symbolic value, if full access to social, economic, political and cultural life is only possible while using another language, that of the majority. As language is a means to the enjoyment of human rights such as the right to education, access to the media, to health care, to fair trial etc., the possibility of using languages other than those of the majority or state language(s) in these domains must be guaranteed and regulated. To raise the question of the instrumental or functional value of minority languages means to address the hierarchical relation between different languages, their unequal legal status and, from a more general point of view, the disparity between what Pierre Bourdieu (33) has identified as the social and symbolic value of languages or linguistic practices in a given language market. In a sociolinguistic perspective, this is not just a language matter, but one that also concerns the power relations between different groups of speakers. Language can in this context become an argument in struggles in favour of access to and redistribution of resources; but it can also function as a barrier which prevents access to resources. If a minority language is perceived among its speakers as functional only in certain, mainly private domains it can be experienced as a limiting factor which tends to confine the speakers within given social and geographical boundaries. This can urge speakers to move away from their language, to decide not to pass it on to the next generation and to choose to educate their children in the majority language.

Studies about language maintenance and language loss traditionally referred to the nation state or to particular territories within a nation state as the main frame of reference. More recent approaches, which take in account processes such as growing mobility, the increasingly transnational and multidirectional character of communication flows or the commodification of local "authenticity," point to the co-presence of different, sometimes contradictory frames of reference to which persons are exposed to as speaking subjects. (34) In this sense, in sociolinguistics a shift can be

(33) Pierre BOURDIEU, *Ce que parler veut dire. L'économie des échanges linguistiques*, Paris, Fayard, 1982.
(34) Jan BLOMMAERT, James COLLINS, Stef SLEMBROUCK, "Polycentricity and interactional regimes in 'global neighborhoods'" (2005) 6 *Ethnography* 205.

observed from a territorial conception in which language use is considered as being tied to certain geographically and/or socially demarcated entities, to a more de-territorialised conception of spaces of communication. The focus is less on a single nationwide linguistic market than on a multiplicity of overlapping spaces and places, on local as well as on translocal scales, in which speakers participate in their everyday life and in which different language regimes are present. The notion of language regime refers to a bundle of habituated practices, implicit or explicit rules, language ideologies and hierarchies, which regulate the language use within a certain space or place. Such spaces can be "real" ones – a school, a hospital, a neighbourhood – as well as virtual ones, as for instance a specific youth culture or an internet forum, each one of these spaces being connected or pointing to other referential spaces. Local language regimes regulating language use within such spaces can differ considerably from linguistic hierarchies on a national level. In some contexts, the use of a minority language is still considered in terms of deficiency in relation to the normative power of a single standard language; but in other contexts, multilingualism and the facility to communicate in a minority language can be perceived as an added value. This can be the case in the sense when locality and "authenticity" become an asset in symbolic and economic markets as well as in situations when a minority language facilitates access to networks, spaces and markets beyond the national level. In such situations a considerable "upgrading" of minority languages can take place. This can for instance be observed in the Austrian province of Carinthia where the Slovenian language was considered almost until the fall of the Iron Curtain as a low prestige language, whereas, since the increasing permeability of the border between Austria and Slovenia, there have been considerable changes. Slovenian is now seen as an asset by a growing number of persons who are interested in learning the minority language. This re-evaluation is reflected among others by the constantly growing quota of children enrolled in bilingual education. (35)

The FCNM addresses questions related to language as a means of access to other rights in a number of its articles. Article 4 obliges

(35) Brigitta Busch, "Slovene in Carinthian – Language beyond Ethnic Categories", in Werner Wintersteiner, Georg Gombos and Daniela Gronold, eds., *Border dis/solutions. Multilingualism, Transculturality and Education*, Klagenfurt, Wieser, 2010, 144.

the state parties to adopt "adequate measures in order to promote, in all areas of economic, social, political and cultural life, full and effective equality between persons belonging to a national minority and those belonging to the majority." Article 9 contains a range of measures in the field of media policy and access to media that are included in order to recognise "the freedom to hold opinions and to receive and impart information and ideas in the minority language". Article 10 calls upon state parties to recognize the right to use minority languages in public freely and without interference and to endeavour to ensure favourable conditions for the use of these languages within the administration and judiciary. Article 14 refers to access to education including efforts to ensure "opportunities for being taught the minority language or for receiving instruction in the minority language".

An analysis of the monitoring process reveals that the Advisory Committee is aware that language policies in such fields as education have to take into account the multifunctionality of language. An over-emphasis on the identity dimension which can translate in the field of education to policies promoting exclusively the use of the minority language would likely result in confining speakers to an imposed locality and in limiting their social mobility. On the other hand an over-emphasis on the instrumental dimension of language can result in an educational system that overrules the minority language by favouring the majority language, as well as a policy that disregards the communicative value of minority languages and instead favours assimilative practices. In a range of opinions the Advisory Committee makes clear that the rights guaranteed by the FCNM should be translated into language policies in such a way that individuals belonging to national minorities, in order to be able to enjoy their rights and to participate in society on an equal basis, are empowered to move freely between different spaces in which differing language regimes are present. In the field of education, the Advisory Committee stresses that the learning of the minority language or the State language(s) should not be a mutually exclusive choice (36) and that authorities should consider encouraging multilingual and dual medium education models, which would attract children from

(36) Opinion on Serbia and Montenegro I; Opinion on Norway I.

both majority and minority backgrounds (37) and cater to children who grow up bilingually in "mixed" families. It invites authorities to take into account demographic changes as there can be trends of increased migration from areas traditionally inhabited by persons belonging to national minorities (38) to near and distant urban centres outside these areas. Local school networks in such areas should nevertheless be secured in a sustainable way, (39) and persons living outside of these areas should also have the possibility to be taught their language or in their language. (40) The Advisory Committee also encourages a more proactive approach to minority language education with regard to immigrant populations, particularly in areas where they live in substantial numbers. (41)

IV. – The Interactional Dimension: Intercultural Dialogue and Cooperation

Traditional approaches to linguistic rights mostly concentrate on identity and instrumental aspects which sometimes are presented as contradictory or even as mutually exclusive. It is one of the qualities of the FCNM that it not only takes into account these two dimensions of linguistic rights, but it introduces a third dimension expressed in the terms of "intercultural dialogue" and "effective participation". Peter Leuprecht is one of the first protagonists of this innovative approach. Already in 1991, in his inaugural speech at the above mentioned Council of Europe's conference in Klagenfurt on "Intercultural learning in the service of Human Rights" he developed a vision of overcoming conventional ways of thinking in categories of majority and minority:

> *Was wir anstreben sollten, ist weder Assimilierung oder Unterdrückung der Minderheit durch die Mehrheit noch Segregation, Apartheid, Ghettoisierung oder Konservierung der Minderheit im Reservat als Kuriosum und Attraktion für Touristen (...) Es geht darum, (...) nicht ängstlich zurückzuweichen, sich ein-*

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(37) Opinion on Croatia III.
(38) Opinion on the Slovak Republic III.
(39) Opinion on Germany III.
(40) Opinion on Austria II.
(41) Opinion on UK I.

> *zuigeln, abzugrenzen, auszuklammern, sondern die Öffnung zu wagen, aufeinander zuzugehen.* (42)

This is precisely what relates to the interactional dimension of language. The term "interaction" implies the presence of an Other, the execution of an action directed towards the Other, and the reciprocity of the process. The importance of this third, appellative function of language is visible in several articles of the FCNM. When Article 3.2 stipulates that the rights and freedoms flowing from the principles of the Framework Convention may be exercised individually or in community with others, the Explanatory report gives an important specification: "The term 'others' shall be understood in the widest possible sense and shall include persons belonging to the same national minority, to another national minority, or to the majority." Article 6 in a programmatic sense stipulates that the parties are to take effective measures "to promote mutual respect and understanding and co-operation among all persons living on their territory, irrespective of those persons' (...) identity". Article 6, in more than one respect, expands beyond the sole protection of cultural or linguistic rights of national minorities. It addresses society as a whole, calling for policies which reflect and promote diversity, eliminate barriers and encourage contact and co-operation between persons belonging to different groups on the basis of mutuality as a leading principle; and explicitly extends the scope of its provisions to *all* persons living within a State's territory, citizens as well as non-citizens. Article 12 specifies how these goals are to be applied in the fields of education and research "to foster knowledge of the culture, history, language and religion of their national minorities and the majority". Finally, Article 15 calls for the creation of "the conditions necessary for the effective participation of persons belonging to national minorities in cultural, social and economic life and in public affairs, in particular those affecting them." Education, culture and media are identified in Article 6 as particularly relevant fields for intercultural action. This

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(42) Peter LEUPRECHT, "Eröffnung des Seminars – Begründung des Seminarthemas", in Vladimir WAKOUNIG and Brigitta BUSCH, eds., *Interkulturelle Erziehung und Menschenrechte*, Klagenfurt/Celovec, Drava, 1992, 23 at 27: "What we should aim at, is neither assimilation or oppression of the minority by the majority, nor segregation, apartheid, ghettoisation or conservation of a minority in a reservation as a curiosity and attraction for tourists [...] The point is not to retreat anxiously, not to close oneself off, not to demarcate or exclude, but to dare opening up and approaching one another." (Translation by the authors)

takes into account the potential danger that the development of parallel school or media systems, separated from each other on the basis of language or ethnicity, can represent for the cohesion of society.

In terms of language policies, the Advisory Committee has interpreted the provisions of Article 6 in such a manner that the languages present in society must be represented – made visible and audible – in the public domain so that all persons can gain awareness of the multilingual character of society and can recognize themselves as being part of society. Language policies therefore should encourage the creation of spaces, where different linguistic practices can meet and be negotiated in a spirit of mutual respect. In this sense not only speakers of minority languages should be encouraged to learn majority languages but also vice-versa. Inclusive language policies must cater to all, including individuals belonging to national minorities living outside areas where they traditionally settle, as well as immigrants and other non-citizens. The Advisory Committee is especially critical of cases where language works as a gate-keeping device and is used as an argument to justify policies of segregation as is the case in a number of education systems with respect to Roma or immigrant children. The Committee also expresses concern when linguistic divisions are used for political purposes and presented as a root cause of cleavages in society; and when intolerance based on linguistic affiliations is stirred up in political discourse. (43) Special attention is also required when laws and policies exclusively emphasise the use of the state language(s) at the expense of minority languages. Such concerns are namely expressed in the contexts of the adoption of state language laws as well as of so called integration agreements with foreign-language immigrants. With regard to the latter the Advisory Committee highlights that a successfully integrated society involves both the minority and the majority and provides support for all persons to preserve and maintain their identity and culture, including multilingual repertoires and multiple affiliations. (44)

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(43) Opinion on Moldova III.
(44) Opinion on Liechtenstein III.

Conclusions

Minority rights as conceived by the FCNM and developed further through the monitoring process require inclusive language policies which rely on three pillars: the right to express difference and the recognition of difference; the facilitation of equal access to resources and rights despite difference; and, in Nancy Fraser's words, (45) the need for "social interaction across difference". As she explains, policies of self-affirmation which concentrate only on the recognition of difference tend to fix and reify identity ascriptions and can result in exerting moral pressure on individuals to conform to a given group culture: "Ironically, then, the identity model serves as a vehicle for misrecognition." Fraser pleads for an alternative approach to recognition which takes into account questions of social status and social subordination – insofar as one is prevented from participating as a peer in social life. In this sense, misrecognition means being denied the status of a full partner in social interaction. Only when one is enabled to act as a full partner and to interact with others on an equal footing, does it become possible to expose oneself to interaction across difference.

To engage in a process of intercultural dialogic interaction implies deconstructing pre-established identity categories and dichotomies, whereby deconstruction does not mean denying or neutralising them but rather understanding that any identity categorisation is constituted through the exclusion of an Other. By making visible traces of the excluded Other, strategies of deconstruction aim at transforming the way in which categories are conceived as homogeneous and hierarchical by breaking them up and acknowledging heterogeneity within what before was conceived as one and the same. In his essay *"Le monolinguisme de l'autre"*, Jacques Derrida, using his own language experiences as an example, demonstrated the alienating power which a dominant language can exert in a colonial context both through processes of assimilation and of exclusion. Deconstructing languages as "given" categories becomes a means to reverse practices of linguistic de-propriation towards practices of appropriation while avoiding the double trap of nation-

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(45) Nancy FRASER, "Rethinking Recognition" (2000) *New Left Review* 107, 112 f.

alist phantasms on the one hand and of what Derrida calls *"homo-hégémonie monoculturaliste"* (46) on the other.

We appropriate a language not just by learning and using it, but by transforming and adapting it for new contexts and needs. From a sociolinguistic point of view, interaction across difference means to accept that languages, "minority" and "majority" languages alike, are exposed to permanent transformation. Stephen May (47) poses the question why cultural and linguistic change and adaptation should always be unidirectional – from a minority language/culture to a majority one. In fact, language contact results in multi-directional changes. Language practices that draw on a range of different linguistic resources like code mixing or translanguaging can – as described in a number of recent sociolinguistic studies (48) – also be a means of undermining language ideologies and hierarchisation between different languages and codes. Nevertheless, there is a need for language policies that promote affirmative recognition and facilitate access to resources and rights in minority languages to counterbalance the hegemonic position of majority languages.

A speaker-centred approach which corresponds to the FCNM's conception of minority rights as rights and freedoms of individuals interacting in social contexts must first of all acknowledge that language is not just a "neutral" medium for the exchange of messages, but closely tied to personal and collective experience as well as to ideologies, discourses and power relations. When exploring relations between language and human rights, it is therefore necessary to take into account the multidimensionality of language in communication as developed by Karl Bühler in the early 20th century: the expressive function which relates an utterance to the speaker, the representational function which relates it to the content of the message and the appealing function which relates it to the interaction partner. Rethinking language rights from this perspective requires

us to find ways to balance and fine-tune, according to the specific situation, language policies that take into account the dimensions of identity, of instrumentality and of social interaction.

Unlike approaches to linguistic rights that take languages or language communities as their point of departure, a speaker-centred approach as expressed in the FCNM aims at overcoming reified categorisations and making the constructedness of language categories apparent. Instead of thinking about linguistic rights in terms of "languages", a speaker-centred approach focuses on the notion of language practices acknowledging the heterogeneity of individual linguistic resources and the heteroglossic character of language in interaction. Instead of taking the idea of collective identities to which individuals are ascribed to for granted, the speaker-centred approach focuses on situational acts of identification through which individuals signify distinction from or identification with others. Instead of assuming a quasi natural link between language and territory, the speaker-centred approach explores how speakers in their daily lives move through different social spaces characterised by and constituted through specific language practices.

(46) Jacques DERRIDA, *Le monolinguisme de l'autre*, Paris, Éditions Gallilée, 1996 at 121 f.

(47) S. MAY, *op. cit.* at 45.

(48) Ben RAMPTON, "Style contrasts, migration and social class" (2011) 43 *Journal of Pragmatics*, 1236; Angela CREESE and Adrian BLACKLEDGE, "Translanguaging in the Bilingual Classroom: A Pedagogy for Learning and Teaching?" (2010) 94 i *The Modern Language Journal* 103; Alastair PENNYCOOK, "Linguistic landscapes and the transgressive semiotics of graffiti", in Elena SHOHAMY and Dirk GORTER, eds., *Linguistic landscape. Expanding the scenery*, London, Routledge, 2009, 302; Brigitta BUSCH, "Slovene in Carinthian – Language beyond Ethnic Categories", in Werner WINTERSTEINER, Georg GOMBOS and Daniela GRONOLD, eds., *Border dis/solutions. Multilingualism, Transculturality and Education*, Klagenfurt, Wieser, 2010, 144.