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LANGUAGE AS A FACTOR OF INTEGRATION: ANY THEORY BEHIND? REFLECTIONS ON THE EUROPEAN DIMENSION OF LINGUISTIC INTEGRATION DEPARTING FROM A CONFERENCE ON "LA LINGUA COME FATTORE D'INTEGRAZIONE POLITICA E SOCIALE", FLORENCE, 15TH NOVEMBER 2013

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Language as a factor of integration: any theory behind? Reflections on the European dimension of linguistic integration departing from a conference on "La lingua come fattore d'integrazione politica e sociale", Florence, 15th November 2013[1]

Foreword

This paper collects the joint reflections of three legal scholars of the University of Trento. The idea of this essay was suggested by the conference "La lingua come fattore d'integrazione politica e sociale" [The language as a factor of political and social integration] held in Florence on 15th November 2013 and organised as a launching event of a national research project, funded by the Ministry of Instruction, University and Research. In particular, the conference concerned the study of the evolution of the language phenomenon, as a means towards political and social inclusion, in a social context more and more characterised by the coexistence of a plurality of languages within the same social group.

Starting from a brief analysis of the contents of the seminar, which have now been published in an edited book (Nicoletta Maraschio et al., Atti del convegno La Piazza delle lingue 2013, Firenze, 14-16 novembre 2013, Vol. I - *Le parole della discriminazione. Diritto e letteratura;* Vol. II - *Lingua come fattore di integrazione politica e sociale. Minoranze storiche e nuove minoranze*, Accademia della Crusca, Florence, 2014), the authors reflect upon the different meanings and interpretations of the concept of linguistic integration, taking into account three main areas in which the linguistic phenomenon is more relevant *vis a vis* socio-political inclusion. The first one concerns migration and the effort that states and territorial autonomies are putting in place in order to facilitate migrants' integration. The second one refers to the peculiar (and to some extent unique) situation of South Tyrol, an autonomous Province in Northern Italy, where three official language groups (German, Italian, and Ladin)

[1] The paper represents the fruit of joint reflections by the three authors. Nevertheless, paragraphs 1 and 2 have been written by Lucia Busatta, paragraph 3 by Elisabetta Pulice and paragraph 4 by Elena Ioriatti Ferrari.

coexist. The third section is finally dedicated to the interesting linguistic pattern that has been established by EU institutions, in order to grant equality and representation to all the official languages of EU member states.

1. Introduction: some cues on languages as a factor of integration

Which are the factors of social and political integration? Are a common language, cultural and linguistic diversity, specific, technical and bureaucratic languages part of these factors? How much does the acknowledgement of linguistic pluralism count for integration in Europe?
The answers to these questions are more complicated than it could apparently seem. Discovering that, beyond the specific issue of linguistic pluralism, the value of language and languages for a legal order and for a constitutional community could also be considered as a hypothetical factor of integration might raise even more questions and scientific curiosity.
Social communities are more and more characterised by multi-culturalism; nowadays, this aspect is particularly relevant in the European Union, where traditional, historical and local languages are coexisting with "new minorities" and their respective languages that, just until the last decade of the past century, were limited to some areas and were regarded as marginal phenomena. The cohabitation of people coming from different countries or continents, their daily confrontation and mixture in public or private places and spaces pose, one the one hand, new challenges for the legal order and impose, on the other hand, the necessity to continuously find new balances between fundamental rights. Sometimes, already existing legal instruments might help in finding well balanced solutions; otherwise, in some occasions it might also happen that they prove to be not enough or inadequate to respond to the present and concrete needs of society.
This is the context in which the University of Florence, together with other scientific partners, has organised a conference on "Language as a factor of social and political integration". The event has been formulated within a nationally funded Prin project[2] on this theme and organised in cooperation with an annual convention run by Accademia della Crusca[3] and dedicated to multilinguism.

[2] Prin is the acronym for "research project of national importance". This expression refers to research projects that are granted a co-funding by the Ministry of Instruction, University and Research. Almost every year, the Ministry opens a call for research projects' proposals which are open to the submission for all scientific areas. Selected projects are granted a three year funding and normally involve a plurality of research units which might belong to different Universities and which are responsible for the fulfilment of one or several targets of the project. In the present case, the project has been funded by the 2010-2011 call, is coordinated by the Department of Legal Studies of the Universities of Florence and has eight ore partners, including the University of Milano-Bicocca, the Scuola Superiore Sant'Anna in Pisa, the Universities of Bolzano, Siena, Pisa, Palermo and Macerata and the National Research Council.
[3] Accademia della Crusca is an ancient Italian institution, funded in 1583, which devolves its activities to the study and the preservation of the Italian language. The institution uses a metaphoric language to refer to its components and activities, all of them are borrowed from the lexicon of flour and of the process of bread-making. Therefore, its main purpose is «separating the flour (the good language) from the bran (the bad language)». Today, the main activities of Accademia include (i) supporting scientific activity and the

The event was twofold: the morning seminar dealt with minority languages' protection at a national, supranational and international level, whereas in the afternoon attention was given to the relationship between old and new minorities in the EU, during a round table that involved legal scholars, practitioners and experts coming from EU institutions.

The main focus of the conference was on current legal issues of minority rights' protection and promotion in the European Union and in some member States, including Italy. Almost twenty years have passed since the adoption of the Framework Convention for the Protection of National Minorities in 1995; from then on, several soft law and hard law instruments have been put in place, both at a supranational and at a national level. Moreover, people belonging to national or linguistic minorities in Europe have gained a different level of self-awareness, with particular regard to their rights and to the demands that could be raised before public powers.

1.1. At an international level, different instruments have been used in order to grant rights to minorities, widely speaking: to national, linguistic, cultural or religious groups, general or more specific documents can apply. Their adoption depends on the socio-political or historical moment in which they were enacted or, from a more theoretical viewpoint, on the evolution of theories on fundamental rights (Luigi Condorelli). For example, after a period in which the individual dimension was preponderant and less attention was given to the notion of group as a whole, in a more recent phase, the acknowledgement – and therefore the protection – of collective rights started to emerge. To make an example, article 27 the International Covenant on Civil and Political Rights (1966) provides that «In those States in which ethnic, religious or linguistic minorities exist, persons belonging to such minorities shall not be denied the right, in community with the other members of their group, to enjoy their own culture, to profess and practise their own religion, or to use their own language». This provision explicitly sets forth that the enjoyment of rights of people belonging to a minority passes through the realisation of individual rights. The Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities, adopted by General Assembly resolution 47/135 of 18 December 1992, adopts a similar approach *vis a vis* individual rights. Nevertheless, the necessity to guarantee also the identity of the group as a whole emerges in the protection of the group's identity (e.g. art. 4, par. 4 with reference to education).

In general terms, the instruments that at an international level have been put in place in order to protect minorities and individuals belonging to such groups could be summarised in four categories, that are: the prohibition of elimination or suppression of such groups; intolerance towards forced assimilation; general acknowledgement of the necessity to (at least) tolerate minorities; and a general statement for the need to promote the preservation of linguistic, ethnic and religious diversity, even if this task is

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training of new researchers in Italian linguistics; (ii) spreading the historical knowledge of the Italian language and making the population aware of its linguistic evolution; (iii) collaborating with other similar foreign institutions and with governments to support the cause of multilingualism. These and further information could be read on the website of Accademia della Crusca: www.accademiadellacrusca.it.

not supported by hard law instruments. In parallel, the international community has adopted some legal instruments devoted to the protection of indigenous people (see for example the UN Declaration on the Rights of Indigenous Peoples, adopted by resolution no. 61/295 of 13 September 2007), in which the double dimension of fundamental rights' guarantee – both at an individual and at a collective level – is made evident since article 1. The core of the declaration is the proclamation of the right to self-determination, whereby these peoples can determine their political status and freely pursue their economic, social and cultural development (art. 3).
Even though all of these general principles are of seminal importance for the protection and the guarantee of fundamental rights for minorities, it has to be remarked that at a state level the lack of ratification by states or the differences in the implementation of internal legal instruments inevitably leads to profound diversities in the enjoyment of these rights for the individuals concerned and for the groups they belong to. A significant example of this gap is represented by the situation of Roma or Sinti peoples in most European countries.

1.2. From the EU viewpoint, the relationship between language (or languages) and institutions has an autonomous and sometimes even unique structure (Ornella Feraci). The peculiarities of EU law and its primacy over national law determines an interesting interlace between the rules concerning official languages and those regarding competences. This interconnection is made evident by, on the one hand, the multitude of languages recognised on the EU territory, that is the territories of its member States, (about 24 official languages and 60 minority communities). All of these languages encounter different levels of protection and acknowledgement. Beyond state official languages, there are also come super-protected minority languages (i.e. Catalan in Spain), minorities in risk of extinction (Sami), languages that are at the same time official or majoritarian in one country and minority languages in another one (i.e. German is the official language in Germany and Austria and a minority language in a specific area of Northern Italy and Belgium) and some non-territorial languages (such as Sinti or Rom). On the other hand, the EU does not have a proper competence in the field of languages; nevertheless, it has been promoting the raising of the standard of guarantee and the increase of the level of promotion of minority languages and cultures, promoting the spread of a European value of linguistic diversity, which has been founded on the principles of human dignity and equality and non-discrimination, stated in the EU Charter of Fundamental Rights (articles 1, 20 and 21).
The application of the general principles promoted at the EU level could, for example, influence and significantly characterise also the rules on citizenship and the access to social benefits or public services established at the national level. A very well-known example of this phenomenon is the landmark decision of the EUCJ in *Bickel and Franz* (C-274/9, 24th November 1998), which extended the provision originally established for a linguistic minority of the State (Italy) also to other EU citizens. It is worth mentioning that the principle stated in 1998 by the EUCJ has been recently confirmed and further specified in the decision *Grauel Rüffer* (C-322/13, 27th March 2014).

Moreover, EU law can also influence the policies adopted outside the EU, especially with regards to potential candidate Countries: throughout the fulfilment of requirements for EU membership, the EU can boost the achievement of common standards for fundamental rights' protection and, in particular, for the guarantee of minority rights. Even though the EU does not have specific competences in the field of linguistic policies, nevertheless it can give support to member States' actions or could intervene, by the procedure provided for by art. 7 TEU, in the case of a "clear risk of a serious breach" or of a "serious and persistent breach" of the values protected by article 2 TEU and 22 of the EU Charter of Fundamental Rights. The first one explicitly provides for the acknowledgement and the protection of fundamental rights of persons belonging to a minority, which are indicated as *common* to the member states «in a society in which pluralism, non-discrimination, tolerance, justice, solidarity and equality between women and men prevail». The latter proclaims the EU obligation to respect « cultural, religious and linguistic diversity».
As a consequence, the promotion of linguistic diversity in the EU should be considered as a means towards the achievement of tolerance and the guarantee of democracy and pluralism. This end is gained mainly through the provision of soft law instruments which permit to mitigate discriminatory shoves and through the concrete activity of promotion granted by a specific area of the EU budget for economic support of linguistic diversity.

1.3. With specific regard to the relationship between old and new minorities, the point of view of comparative law can help in pointing out the main problems of legal guarantees and the hypothetical channel of normative intervention. In this context, the experience of Sweden, as well as the solutions elaborated in the Balkans, could highlight the existence of different levels of protection for linguistic minorities and, more interestingly, the fact that linguistic policies could serve diverse purposes and could become means for the political inclusion or exclusion of linguistic groups (Alessandro Simoni).
For example, in Sweden, the Swedish Language Act (nr. 600 of 2009) contains provisions «on the responsibility of the public sector to ensure that the individual is given access to language and on the use of language in the public sector and in international contexts» (section 1). The Act is aimed at specifying «the position and the usage of the Swedish language and other languages in the Swedish society» and protecting language diversity in Sweden (s. 2). It «contains provisions on the Swedish language, the national minority languages and Swedish sign language» (s. 1); with regards to national minorities, the act indicates that Swedish is the *principal* language (s. 4) and is the *official* language of Sweden in international contexts and has the status of official EU language (s. 13).
The Law acknowledges «Finnish, Yiddish, Meänkieli (Tornedal Finnish), Romany Chib and Sami» (s. 7) as national minority languages, which are to be promoted and protected by the public sector as a whole. From this, it follows, as a general principle, the opportunity, for all residents in Sweden, to learn, develop and use their minority

language as well as Swedish; other legislative instruments are enforced to grant the right to use minority languages in the national territory (s. 10).
It is worth noticing that the law recognises also Romany Chib as a national minority language, thereby considering the language spoken by Roma people a "unitary" phenomenon: in other words, the Swedish law-maker decided not to give legislative relevance to the linguistic pluralism of Roma communities. This example demonstrates that a solution for the problem of the acknowledgement of linguistic rights to Roma people could be possible and could be achieved through a political path, (which actually started in 1995 in Sweden), aimed at extending these rights even to a minority which is numerically and historically present on the national territory, even without a specific connection to a certain delimited territory.
After the ratification of the European Framework Convention on Minority languages in 2000, Sweden has not renounced the adoption of the principle of territoriality for the acknowledgement of linguistic rights of national minorities, if applicable (that is, for example, for Sami), but it was contextually decided to give also relevance to the criterion of the historical presence of a linguistic group on the national territory.
In parallel, the recognition of linguistic rights in the Balkans has been particularly strong in the last decade. For example, in Kosovo, the instruments of linguistic protection of groups are provided by the Law no. 2008/03-L-047, *on the Protection and Promotion of the Rights of Communities and their Members in Republic of Kosovo*, and by the *Law on the use of languages* (Law no. 02/L-37, 27 July 2006). The purpose of the first one is to guarantee «full and effective equality for all people of Kosovo», by declaring the national, ethnic, linguistic and religious diversity of the country «as a source of strength and richness in the further development of a democratic society based on the rule of law» (art. 1.1). The groups to which the law is specifically addressed are those «traditionally present in the Republic of Kosovo that are not in the majority»; they are «Serb, Turkish, Bosnian, Roma, Ashkali, Egyptian, Gorani and other communities» (art. 1.4). The right to use the language of these communities is expressly stated by article 1 of the *Law on the use of languages*. With particular regard to Romani, the law establishes the right to use it as an official language at the municipal level under the special conditions established by law (art. 1.2).
The particularly rich and promotional means provided by the Republic of Kosovo for the legal protection of different linguistic groups has to be related to the political willingness to avoid social clashes in the population, under the guidance of international instruments cited in the preambles of both legislations. It finds its roots in the inter-ethnic conflict that divided the country since 1999 and in the consequent international commitment undertaken by OSCE during the pacification process.
The legislative choices adopted in Sweden and in Kosovo for the protection and promotion of linguistic minorities historically present on the territory are two examples that could be helpful in demonstrating how the multi-level system of guarantees for minority rights in Europe could be multifaceted. With particular regard to the legal acknowledgement and protection of Roma people, culture and language, whose presence is traditionally widespread on the European space, it should be pointed out that the level of guarantee could sensibly vary from one country to the other and could be –

in some cases – even controversial. For instance, Roma people are not even mentioned in the Italian law on the protection of historical minorities (nr. 482/1999, see *infra*), due to a quite rigid adoption of the territorial principle for the recognition and exercise of linguistic rights.

1.4. In Italy, linguistic pluralism deserves particular attention, not only due to the presence of several minorities on the national territory, but also because of the fact that the Italian language is itself a "plural" and "prismatic" language, due to its copious territorial varieties and dialects (Vincenzo Orioles). From the point of view of the "linguistic scholar", though, this pluralism should be surely taken into account and should be object of further studies and researches, but – far from being underestimated *per se* – it could generate hypertrophia in sources of law. The law maker should not be encouraged to adopt principles of hyper-protection when dealing with languages: in other words, if the mainstream in languages' legal protection becomes the principle that for any (territorial) language or dialect we need a new law with its own system of protection, as a result we all will lose the significance and the real scope of the protection that the above-mentioned international and supranational instruments are pursuing.

1.5. Taking into account the national legal framework, after almost fifty years of "normative silence" on the realisation of constitutional principles, Italy has adopted the law nr. 482 in 1999, on the protection of historical linguistic minorities. The main issue for the legal scholar dealing with linguistic and minority rights concerns its effectiveness and its capacity to give a concrete and incisive answer to needs present within the society (Paolo Caretti). Together with the degree of effectiveness of the law, the meaning and the range of these rights is strictly related to the *definition* of language and therefore to the objective of the guarantee. In some cases, the instruments for the promotion of linguistic diversity demonstrated to give more importance to the cultural aspect of a language, rather than to its linguistic profile, *stricto sensu* intended. Moreover, the plurality of possible addressees of these guarantees has led to the adoption of very different levels of guarantee, insomuch as a uniform discipline for language rights is almost impossible to be conceived.
With regard to the actuality of linguistic problems, though, from a legal viewpoint, social pluralism should also be taken into account: in the last twenty years, Italy has become a land of immigration and the Italian population has learned to share its spaces and places with people coming from all over the world and speaking several different languages. These peoples and their languages deserve a certain degree of legal protection, in order to facilitate and promote their better integration in the Italian society, but the problem concerns the legal instruments that should be used to this end.
With regards to linguistic rights and to the protection of minority groups, the law nr. 428/1999 is surely a benchmark due to the variety of rights enumerated therein. But should it be extensively interpreted to give a legal protection also to these languages, which cannot boast a historical connection with the Italian territory? Should it become a means for the integration of new social, cultural and linguistic groups into the national

society? Indeed, the definitions and the finalities of the law impede to extend it to new minorities' linguistic rights. Moreover, it has also shown, during the years, some elements of fragility and has received even some criticisms, especially with regards to the close list of minorities that could have access to the particular system of protection enforced by it.
Nevertheless, the fact that the law boosts and propels public policies and interventions for the protection and, more importantly, for the promotion and strengthening of linguistic and cultural diversity could be regarded as the final purpose that legal interventions specifically addressed to new minorities should pursue. Therefore, new legal intervention, specifically addressed to new minorities, should take into account this profile and should establish the right to people belonging to new minorities (i.e. migrants of first, second, third generation or even more) to learn, use and safeguard their traditional language, as a first instrument for integration. Secondly, public policies on migration and rules on access to the national territory should not use the majoritarian language (Italian) as a means for segregation or as an obstruction to stabilisation.

1.6. Finally, an issue that deserves particular attention by the law-maker and by the public administration concerns the relationship between the use of one's own language with public institutions. In this context, at all levels, in order to safeguard the concrete life of a historical language present on the territory of the State, general principles and specific provisions establish the possibility, for the individual, to use one's own (traditional) language when dealing with public powers. A seminal example of these provision is represented by the law of the Autonomous Province of Trento, nr. 6/2008, concerning the guarantees and promotional instruments for territorial linguistic minorities: its article 16 provides for the right of citizens belonging to a historical minority of Trentino to use their traditional language in the relationships with public administration, provincial institutions and schools in the Municipalities where these minorities are traditionally settled. In this context, the fundamental datum that emerges concerns also the relationship between language (or languages) and power (Fabio Merusi). More specifically, it has to be remarked that the language, when used in the relationship with the public administration, is not only a means of communication between individuals, but represents – above all – the vehicular instrument that gives concreteness to the realisation of public powers and duties and, conversely, to the enforcement of rights connected to the relationship between public institutions and individuals.

2. Social and political integration: filling the linguistic gap

The close link between language and public policies has been tackled with during the conference and in the written proceedings. Nevertheless, the topic presents so many possible perspectives and different interpretations that it could be argued that the conference's presentations serve as a basis for further reflections and legal analysis. At the present day, a challenge for legal scholars is to understand in which way and how *language* (or *languages*, when applicable) could be a factor for integration and,

therefore, how public interventions could be better addressed, to this end, to the use, protection and promotion of languages.
For the individual, language is first of all a factor of identity and it represents the instrument through which the individual poses himself/herself in relation to other subjects; whether written or spoken, it is utmost the main way of communication. For this reason, it also has a fundamental function in connection to the relationship between individuals and public powers. In this perspective, the use of the language in this kind of relationship is two-fold: on the one hand, public powers usually determine the official language that shall be used, both written and spoken, by public authorities in the fulfilment of their duties; on the other hand, the individual is required to use this language (or sometimes *languages*) when dealing with public powers. This latter profile is the one in which the value of language fully demonstrates all of its potentialities: the easier the individual can communicate with the public dimension, the quicker he or she can find an answer to his or her questions or a response to his or her needs, whatever they could be.
Nowadays societies are more and more complex and composite: several cultures and languages share the same space and live together. It could, in some cases, be a forced cohabitation, due to political, historical or economic causes or it could, in other cases, be a choice of people. This creates new issues with regards to a society's linguistic dimension. On the one hand, it might happen that a specific territory decides to promote the use of a language different from the one spoken by the majority (it is the case of linguistic minorities' rights in Italy, for example), as a possible means to enforce the feeling of belonging to the territory itself and/or to strengthen social cohesion. On the other hand, it might happen that linguistic pluralism is unavoidable and forced and that, therefore, the public dimension has to face a concrete phenomenon and must identify the most efficient instruments that could help in performing and achieving public objectives and duties, with the final goal to respect fundamental rights and the principles of equality and non-discrimination.
Moreover, the difference between historical minorities and the so-called "new" minorities should deserve deep consideration. These groups share, as a common aspect, the use of an idiom different from the official language(s) of the place they live in or from the language(s) spoken by the majority. On the other side, though, the reason and the scope of the use of this different language are diverse and, in some circumstances, even opposite.
For example, people belonging to Italian historical minorities – except for German-speaking people in South Tirol, who achieved and enjoy a particularly high degree of protection by the Italian legal order, due to historical and political reasons – are often well integrated into society. The cause of the guarantee offered by Italian legislation could be found in the willingness to promote the safeguarding of a linguistic – and therefore cultural – diversity which inherently belongs to Italian culture, as a heritage of the mixture composition of the national population. This is the reason why the law provides for the possibility, within territories of settlement of these minorities, to use historical languages not only in the private dimension, but also (and more interestingly) in the relationship with public administrations or, for children, at school. Throughout

this instrument, by means of linguistic guarantees for some people into a specific territory, the legislation propels also the durability and dynamism of languages that, on a long-period consideration, are at risk of falling into disuse. Linguistic policies, in this context, could be regarded as a means through which public powers achieve the major objective of preservation of languages that, due to the fact that are not included into "official" circuits, are weaker than others. Moreover, cultures which otherwise would be endangered, could receive vitality thanks to the fact that the language they are connected to is used, spoken and – above all – revised and updated.

From the opposite point of view, people belonging to "new" minorities, in other words migrants of first, second or third generations, have different reasons to use their native language and prove to have diverse needs concerning "linguistic relations" to public powers. For example, they need to fully understand the rules of the new society they are living in; this might be difficult not only at a linguistic level but also under the cultural perspective. In some other circumstances they might need to receive specific information concerning the possibility to have access to social rights, to grants, to facilities, which depend upon some conditions that are not always easy to understand. For these reasons, public administration, in most Western countries, offers information services in languages different from the official one, even without or beyond the duties imposed by legislation, in order to facilitate the integration into the society of people coming from foreign countries.

A significant example that demonstrates the value and importance of language as a factor of integration comes from Catalonia. Spain, in general, and the Catalan Autonomous Community (C.A.) rapidly passed from being a territory of emigration to one of immigration. This phenomenon occurred more or less in the last twenty years, after the country started its path of reconstruction of the democratic order, following the end of Franco's regime, and simultaneously with a profound promotion of linguistic policies in Catalonia. Thanks to the particular attention that the C.A. has for Catalan language, the spoken idiom was – since the very beginning – used as a factor to boost the integration of immigrants in the area and was regarded as an aspect that deserves a very special degree of attention by public authorities dealing with people coming from foreign countries (on this issue see the *Report on the Integration of Immigrants in Catalonia*, Institut de Govern i Polítiques Públiques, Barcelona 2013). Given these premises, effective access to Catalan language courses is considered one of the major factors to promote integration of foreigners, either European citizens or not. The deep economic crisis of the last six-years period has shown how much the linguistic factor counts for integration: difficulties in courses attendance has dramatically increased, due to a more irregular access to employment and to the frequent change of working schedules. As a consequence, these persons encountered more difficulties in finding an adequate workplace, due to linguistic problems, and this naturally determines more difficulties in integration.

3. The South Tyrol case: from separation to bilingualism (and multilingualism) as a shared interest?

3.1. Introduction

The South Tyrol model has often been mentioned during the conference, especially with reference to the high level of protection granted to linguistic minorities.

Issues relating to South Tyrol have been considered in different contributions, although no presentation was specifically focused on the role of language in this Italian autonomous province (province of Bolzano-South Tyrol which, together with Trentino, composes the special Region Trentino-Alto Adige/Südtirol[4]).

The right to use one's own language in the relationships with the public administration and the extent of the protection afforded to linguistic rights in South Tyrol have been particularly stressed, especially from a comparative perspective with the legal framework provided for other – both historical and new –minorities, or as a model to which the protection of linguistic rights may tend.

Despite these references, the peculiarities of the South Tyrol case still leave space for further reflections on some very specific issues regarding the role of language as a factor of integration.

A proper understanding, also in a European and comparative perspective, of the potential of this model requires references to its approach to cultural and social integration, to the reasons for its peculiarities and to the complexity characterising the dynamic process of implementation of linguistic rights, which is necessary to properly address the needs for flexibility in managing the issues of integration, while avoiding minority assimilation.

In particular, the South Tyrol case raises interesting issues concerning how to improve a truly bilingualism (and multilingualism) as a shared interest in the path toward a cross cultural understanding between communities with different historical, cultural and linguistic traditions and, at the same time, how to combine the protection of South Tyrolean language groups (German, Italian, Ladin) with the European context, especially concerning mobility, and the integration of new minorities.

In this respect, the South Tyrol experience also offers a significant example of the role education may play in the difficult balance between safeguarding and developing minority culture and identity, on the one hand, and its social integration and interaction with other language groups, on the other.

3.2. The role of linguistic rights in South Tyrol

The South Tyrolean case shows specific and distinctive features of the function language may perform as a factor of integration.

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[4] For purposes of this essay, the terms South Tyrol (which stands for Alto Adige/Südtirol) and Province of Bolzano will therefore be used without distinction, meaning the autonomous province that, together with Trentino (or Province of Trento), composes the Italian special region referred to with its official and bilingual name Trentino-Alto Adige/Südtirol. The term (city of) Bolzano/Bozen refers instead to the provincial capital of South Tyrol, while the city of Trento is the provincial capital of Trentino.

In this Italian autonomous province, Italian and German speakers represent the two main linguistic communities, while the third and smaller official language group speaks Ladin (a Reto-Romance language, which is spoken also in other areas of the North-East of Italy and in the Swiss Canton of Grisons).
German and Ladin speakers are linguistic minorities within Italy but in the South Tyrolean context linguistic rights gain a particular role because of the historical, political and legal compromise aimed at coping with the linguistic, social, political and legal issues raised by the coexistence of the two main language groups, the Italian and German ones alongside with the Ladin one, after the incorporation of South Tyrol in the Italian state.
In particular, the deeply-rooted importance of the use of language(s) in the Bolzano province and the need for a strong protection for language groups have their origin in South Tyrol's historical background, namely in the historical trauma suffered by the German speaking group during the fascist period (1922-1945). As a consequence, in South Tyrol many provisions concerning linguistic rights may be considered a reaction to previous cultural and linguistic discriminations, aiming at counterbalancing the deep disproportion between the two language groups generated by fascist policies. These guarantees were first laid down by international documents (Paris Agreement, namely Annex IV, the "De Gasperi-Gruber Agreement" signed in 1946, and the so called "Package of measures in favour of the population of South Tyrol", approved in 1969 by the parliaments of Italy and Austria) and strengthened by the role played by the Austrian government in supporting the South Tyrolean question (*Südtirolfrage*), also by referring it to the United Nations.
Therefore, in South Tyrol the issue of "language as a factor of social and political integration" arises in a more complicate way, concerning not only minorities protection but also the very coexistence of two linguistic communities, whose relations have been characterised by a long-lasting conflict and that basically share now parity, equal official status and a huge degree of political, legal and administrative autonomy in the Province of Bolzano.
The South Tyrol experience is indeed characterised by a combination of territorial self-government and protection of linguistic minorities. The complex process of political negotiations, characterising both the constitutional implementation of international guarantees and the implementation of the autonomy statute (i.e. the "basic law" of the special Italian region Trentino-Alto Adige/Südtirol, which enjoys the same status as constitutional laws) led to the current special position of South Tyrol as to autonomy arrangements and protection of linguistic rights.
In particular, important safeguards for language groups are the right to use one's mother tongue in the relationships with the public administration and with judicial authorities and the proportional principle, according to which, in specific fields (including public employment and allocation of public funds), representation and access to social services by citizens belonging to the three linguistic groups (German, Italian, and Ladin) are considered and guaranteed in direct proportion to their numerical strengths within the South Tyrol population. Crucial features of the framework for South Tyrol autonomy are also mechanisms of power sharing between the language groups. Indeed, each group

participates to government, enjoying a proportional representation in political institutions.
To guarantee linguistic rights a language certification is mandatory for all applicants to the public service. The Certificate of bilingualism ("Patentino di bilinguismo" in Italian and "Zweisprachigkeitsnachweis" in German) so deeply characterises the South Tyrol experience as to become, to some extent, an important element also in preserving the sense of belonging to the social community, for both Italian, German and Ladin speakers.
Precisely because the rights of language groups have historically represented and still represent the main prerequisite for a peaceful coexistence, in the Bolzano Province, many, if not all, social, cultural and work aspects are therefore centred around and influenced by the language issue.
Nevertheless, the policy of relationships between the two main language groups, while granting parity of languages, considers and uses separation as an instrument for stabilisation (Fraenkel-Haberle, 2008, p. 261). Accordingly, a variety of services and institutions, including schools, newspapers, radio and television programmes, newspapers, cinema and theatre seasons, are separated on a linguistic basis: each language group is thus given equal rights, equal quality of public services, and equal opportunities but at the same time it enjoys great cultural autonomy and is essentially separate from the other.
The role of language in South Tyrol may in a sense be described by what can be perceived as an oxymoron, since it combines a symbolic value and a pragmatic dimension. The combination of symbolic elements and pragmatism is indeed an efficient description of the peculiar and complex way in which the relations between language groups are developed and organised in South Tyrol and of the function linguistic rights and language issues perform in this context.
With reference to integration, it is worth underlining that in the Province of Bolzano, separation, acting as a tool for stabilisation, can be considered as a fundamental step, or even as the basis for the gradual, and still on-going, process of integration, especially between the two main conflicting language groups (German and Italian).
Nonetheless, despite the evolution of the relationships between these two groups after the conflict settlement, which can be dated back to the formal declaration of conflict settlement made by Austria before the UN in 1992, the process of integration is not yet completed. Indeed, after the end of the conflict, and especially after normalization – meaning by this term the return to a normal, balanced and basically peaceful relationship between the actors involved in the conflict – the outcomes of separation in terms of trust and linguistic rights may be, at present, more concretely exploited in order to reach a higher level of integration, which goes beyond the peaceful coexistence and the equal status of the language groups, toward further shared goods and interests.
In this perspective, education offers an interesting viewpoint for the analysis of the dynamic nature of separation and integration in South Tyrol, also in the light of the new challenges raised by the European context.

3.3. Education and cross-cultural integration: multilingualism and the European context.

The school system of the Bolzano province clearly shows how parity of languages and separation are combined in the relationships between the German and Italian communities: on the one hand, the education system aims to grant both the right to education in the mother-tongue and knowledge of the other co-official language of the Bolzano province, but, on the other hand, it is characterised by two separate and parallel school systems (one Italian and one German) where education curricula and administrative functions are attributed to institutions separated according to linguistic diversity.

It also follows that there is no truly bilingual school system for members of these two language groups. An interesting example of multilingualism in education is instead represented by Ladin schools where the same number of teaching hours is given in German and Italian.

With reference to German and Italian schools, the compulsory teaching of a group's language to students who are not members of that group is an essential tool for intercultural dialogue between these two main South Tyrolean linguistic communities. Nonetheless, the rigid separation within the education system, while permitting both languages to be taught in an equal and autonomous way, thus preserving the cultural and linguistic heritage of each group, proves to be a choice that leads to social separation rather than to an integration based on cross cultural understanding and on shared social, cultural, and linguistic resources and environments.

Furthermore, another obstacle in crossing linguistic and cultural boundaries between German and Italian speakers is linked to the difficulties that the latter have with understanding the South Tyrol dialect, i.e. an Austro-Bavarian dialect spoken by the German group, and so culturally-rooted as to be considered a fundamental element of its cultural identity and to be almost the only real vehicular language within this group.

This is an example of how separation, although granting stabilisation and a peaceful coexistence, may hinder further steps toward a higher level of integration. On the contrary, spaces for shared experiences in the education environment could improve socialisation and spontaneous interaction between the two language groups, thus helping in reducing also these kinds of obstacles to a true social cohesion between different linguistic communities.

A more shared education system open to cross communal life and multilingualism might therefore better combine the preservation of cultural and linguistic diversity with the need for harmonious interaction between people with different cultural and linguistic backgrounds, thus increasing the value of pluralism as the real cultural richness of South Tyrol.

Recent initiatives addressing the need for more effective bilingualism (especially my means of the so called "immersion learning", based on the vehicular use of the language) testify the increasing awareness of the importance of language in sharing interests and reducing separation toward a better way to exploit common resources.

Moreover, by strengthening the idea of bilingualism (Italian and German) or even multilingualism as a common good and taking advantages from the linguistic resources

(notably from the fact that in this province students are already used to effectively confront themselves, since the very beginning of school, with a different language and a different culture) South Tyrol may, but also can, progressively go beyond the static conservation of ethnic and linguistic diversities, building a more dynamic education and cultural system that is open to European and multicultural challenges.
In this context, the Free University of Bolzano, which is trilingual (including English) might be considered a sign of South Tyrol's new openness to a more European and multilingual perspective.
Another interesting example is the participation of South Tyrol in the cross border inter-regional cooperation with Tyrol and Trentino within the framework of a "Euroregion", i. e. a new cooperation instrument created in 2006 by the European Union (European grouping of territorial cooperation - EGTCs). In particular, the EGTC "European Region Tyrol - South Tyrol - Trentino" (whose charter was signed at Castel Thun in 2011) aims to promote and strengthening the cultural, economical and social relationships between the three territories involved and their citizens. Among the joint actions and activities promoted by the Euregio, it is interesting to notice the project "2020 Bilingualism Objective" aimed at fostering the knowledge of the German and Italian languages in Tyrol, South Tyrol and Trentino, also by involving families, school institutions, universities and cultural communities.
Therefore, language is not only meant as the main distinguishing criterion for both social identification and legal acknowledgement of minorities, but is also gaining a crucial importance in promoting cultural, political and economic cooperation and social integration.
In this respect, it is also important to mention the "Trentino trilingue" programme recently approved by the province of Trento as part of a broader operational programme based on the European Strategy 2020 adopted by the European Union in 2010 to support employment, productivity and social cohesion in Europe. "Trentino trilingue" aims at fostering the knowledge of EU languages, English and German in particular, in the province of Trento through many initiatives concerning the education system and promoting trilingualism also in the cultural field, as well as in research and University programmes and policies (e.g. strengthening the teaching and learning of Eu languages starting from kindergartens; increasing CLIL courses; improving teachers' language training competences, supporting mobility and language certifications. See the website http://www.fse.provincia.tn.it/opportunita/trentinotrilingue/).
Moreover, in a trans-border reality, cooperation in developing a multilinguistic environment can offer further opportunities and initiatives to overcome linguistic barriers EU citizens may face in exercising their freedom of movement within the European Union.
Indeed, with particular reference to the European context, the South Tyrol case clearly shows how protection of language groups needs to cope with the principles of non-discrimination and with the free movement of people, goods, capital, and services, from at least two points of view.
First, the rigid application of provisions meant to exclusively protect South Tyrol language minorities may prove to be inconsistent with EU law (as stated, for instance,

by the European Court of Justice in the *Angonese case*) and to act as hindrances for other EU citizens in gaining access and effectively exercising their EU citizenship rights.
Besides, the openness toward the issues of integration and multilingualism characterising the European context may be a more constructive and dynamic way of exploiting the linguistic background of South Tyrol.

4. Multilingualism and integration: towards or away from European citizenship?

4.1. Introduction

The EU soon recognized and tried to regulate European linguistic diversity through a policy of multilingualism, which identified the national languages as official at the very beginning of the European Economic Community (Art. 217 of the E.C. Treaty and Council Regulation No 1 April 15, 1958). Through this policy, the EU introduced at least one European linguistic right: the rule allowing citizens to write to the EU institutions in each of the EU's official languages and to receive and answer in the same language. If this possibility of plurilingual communication with the EU institution is the "core" right recognized in the Regulation n. 1 on multilingualism, as well as in the Lisbon Treaty, it is worth considering whether or not, as well as providing practical solutions, the regulation of languages at the EU level is also favouring the development of a real European citizenship.
The principle of multilingualism is to guarantee full equality for all the official national languages of the European Member states. Does this principle really favour the integration of EU citizens in the European Union, not only as a supranational institution, but also as a wide-ranging of all 28 European states? Does the EU extend the same rights to all EU citizens though and by means of this multilingualism?
Despite the very interesting contributions presented in Florence at the seminar on "Language as a factor of social and political integration" there is still space for reflections on the issue.

4.2. Multilingualism and language policy

A useful starting point for an analysis of the matter is the fact that in this uniquely polyglot organization the presence of EU Language regulation does not correspond to a genuine "EU Language Policy" (B. DE WITTE, *Language Law of the European Union: Protecting or Eroding Linguistic Diversity*, in R. CRAUFURD SMITH, *Culture and European Union Law,* Oxford University Press, 2004, p. 240). A probable consequence of this passivity is the lack of general, comprehensive reflection on the language question, within the framework of EU action in the Member States. As a consequence, the impact of these actions on language matters is largely fortuitous. A well known example is the free movement of persons: when linguistic requirements are imposed for the exercise of a private profession, or on foreign workers, the EU action on free movement of persons and services is prevented by national language requirements. The same obstacle might arise when national provisions pertaining to languages are imposed

on commercial activities (e.g. labels); this creates additional transaction costs for firms and may hinder cross border trade.
The absence of a clear linguistic policy transforms the regulations of language use in economic and social fields of the different Member states into barriers to the effectiveness of EU action. According to Creech the origin of this paradox is the EU's implicit attitude that the language issue is merely an economic affair (R.L. CREECH, *Law and Language in the European Union. The Paradox of a Babel "United in Diversity"*, Europa Law Publishing, Groningen, 2005, p. 157). Like law, in the EU institutional mindset, language seems to be nothing more than a medium though which the completion of the Internal market can be facilitated.

4.3. Mulitilingualism v. multikowledge?
At the time when the EEC needed to decide its language regime, the choice of institutional multilingualism was a relatively low cost commitment, originally limited to four languages. The choice to make all languages of the founding States official languages, was *a practical solution* to fulfil the requirement for the political equality of the States, and to allow the publication of the legal texts that were to produce direct effects in each Member state to be read and understood by all citizens in their national language.
However, since then not only has the number of languages grown from four to twenty-four, but the implications of the principle have been constantly changing, "from a pragmatic solution to a constitutional principle of paramount importance" (B. DE WITTE, *Language Law of the European Union: Protecting or Eroding Linguistic Diversity*, in R. CRAUFURD SMITH, *Culture and European Union Law,* Oxford University Press, 2004, p. 225). In order to prevent this evolution from gradually affecting the functioning of the EU institutional structure, the practical accommodation has been to limit the number of languages in the day-to-day reality of the EU. The main consequence has been the well known emergence of English – with French as a "second choice" – as the indispensable *lingua franca* of the EU as a whole.
Nowadays English is one of the most utilized languages within the European Union and in the future it will probably prevail at the national level too. There are already European states, such as the Netherlands, where the replacement of their traditional national language with English in official documents and events has been discussed. This pragmatic approach of the EU, while realistic, does not encourage the use and learning of all the other EU languages, *all minority languages*, when compared to English (R. RATTI, Giornata REI (Rete di eccellenza dell'Italiano istituzionale), *L'italiano nel mondo globalizzato: quale presente e quale futuro? La prospettiva europea,* Rome, December 1st, 2014).
A symptom of this overwhelming trend is the selection process for EU civil servants: in 99 cases out of 100, English is a necessary requirement. If there is one difference between the EU and the bilingual States, it is the requirement in all national public selections for the ability to work in all the languages recognized by regional or national law as official. In Italy, for example, bilingual skill is imposed as a condition for the employment of civil servants in South Tyrol.

At the EU level, the regime of official multilingualism does not lead to a real plurilingualism, but to a convergence of EU citizens on one, at most two, languages, English and to some extent, French. Multilingualism is not synonymous with "multiknowledge" of languages, understood as knowledge of languages other than one's mother tongue. According to the same EU, the official recognition of 24 EU language is not related to any increase in the desire of EU citizens to learn foreign languages.
Furthermore, the EU approach to languages may have led to a distortion of the linguistic patterns that would naturally result from the spontaneous interaction between private persons within the European space.

4.4. Multilingualism and the drafting of "rights"
From this perspective, multilingualism might be considered to promote the integration of EU citizens in the ongoing process of creation of the European system. As noted above, the real establishment of EU citizenship is related to the extension to all European citizens of the same rights and the national language regimes might become very concrete obstacle to this process.
But even more problematic is the way in which the rights provided by EU acts – mainly directives and regulations – are interpreted and applied in the Member States. The rule providing that EU regulations and other documents of general application shall be drafted in all the official languages may lead to differences arising from translations of the same rule into the different EU legal languages, and hence to misinterpretations and patchy acknowledgment and application of European citizens' rights from State to State.
The quality of national legislation from the perspective of practical implementation is related to the capacity of EU law to lead to the same results, both in the different legal systems and within the same legal system. It is well known that this is the Achille's hell of the EU action of harmonization of national laws.
On one side, the phenomenon should not be overestimate. According to some authors, divergences between courts of different jurisdictions with regard to the application of EU law are not so recurring, in general occurring no more frequently than divergences among national Courts in applying domestic law. It has been noted that at the national level the point at issue is no longer language: the interpretation of the law and the application of the law are made on the basis of the solution to the case and not to the lexicon (R. SACCO, (dir.), *L'interprétation Des Textes Juridiques Rédigés dans Plus d'une Langue*, Torino, 2002). In fact, the particular words employed to reach harmonization are secondary for national judges; the primary purpose is to solve a case. Contradictions are always present, even when a text is written in one language. The idea of a rule formulated in a way which could lead to one interpretation, to one solution, is an illusion. Words never have a single meaning.
However, the other side of the issue is that citizens with regard to their *rights* cannot always rely on the text of a piece of EU legislation in their own language. In theory, in order to have technical/legal certainty of the meaning, they should consult all (or at least some) of the other language versions; however, in reality, national judges quite always

rely on the English and French versions, together with their mother tongue one (M. DERLÉN, 2007).
Furthermore, given the ambiguity caused by multilingualism, the explanatory power of an individual word in the text of an EU law is weaker than in a monolingual context.
It is well known that discrepancies between multiple versions of EU legal texts, all of which are deemed to recognize the same rights in all the EU legal languages, are often submitted to the opinion of the Court of Justice of the European Union by national judges. Legislation is not the sole source for the creation of an EU legal language: the European Court also plays a key role in this process. Since its creation the this Court has consistently reinforced European legal terminology through the mechanism of art. 267 TFEU of the Treaty. However, the Court of Justice's activity is slowed down and at the same time limited by its own structural connotations. First of all, the length of time for carrying out the Court of Justice's interventions is quite long: secondly, a further weak point of the mechanism is the proceeding, which is necessary requested by the national judges. Thus, the creation of a general EU terminology can only be fragmentary.
Hence, the obvious suggestion is that EU institutions should draft "their" law better, but EU legal drafting is a complicated task and many actors, many languages, many interests are involved in a process that cannot be entirely controlled in terms of legal results. Furthermore, it is well known that translating legal terms causes more difficulties than translating data in other technical sciences. Since words express concepts, the translation of a word with another word is possible to the extent that the two words express the same concept. But, unlike sciences such as biology or medicine, legal science is characterized by the fact that there is not necessarily a correspondence between a word and a concept in all the different legal systems. Therefore the legal terminology of the EU came into being through the specific mechanism of lexical creation, which chiefly consists in the coining of neologisms. Such coinages may be entirely new terms, or words which are already pre-existent in one of the languages and are adapted for use in EU law; from the semantic viewpoint, the terms remain in their original form, but acquire a new, European meaning and are then later transposed to all the EU official languages. Thus, European terminology is made up of numerous neologisms, whose purpose, ideally, is to ensure that all the official languages have equivalent legal concepts available to them.
The final result of this commitment should be to introduce a concept granting the same legal meaning in all the official languages of the Member states, but able, at the same time, to distinguish the "European" meaning from the "national" one, even when, as may be the case, from a semantic point of view the two words seem to be identical.
The consequence of this is that the linguistic equality provided through the principle of multilingualism could prevent the substantive equality of citizens before European law.
In sum, there should be serious doubts as to whether requiring a multilingual drafting of EU norms – and consequently of EU rights – is functional to the effective transposition of *rights* in the Member States.
A possible starting point in the approach to this problem – probably *the* problem of the 21 Century with regard to EU legislation – is a shift of mind: regardless the mindset of

EU Commission, the activity underway to unify the laws of the European member states should not aim solely at the achievement of the Internal market.
In this last development the emphasis at the debating table should be placed on the insufficient attention being paid not just to legal language in the unification/harmonization process of European law, but to the impact of the principle of multilingualism on the structure and the content of the rule.
At this point of the story – that of the European Union – it is crucial not to limit the present process to laying down provisions with a purely economic scope and the importance of the opportunity to draft proper rule providing *rights* must be understood.
In its harmonization of the law of member States, the EU has been focusing its attention on the regulation of *instruments* rather than *rights*. A clear example are the directives on consumer protection – nowadays "Directive on *Consumer Rights*" – and particularly the well known "right of withdrawal"; a consumer opportunity to withdraw from a contract within seven (now fourteen) days is undeniably a proper "right"; however, the regulation provided in the directives is more focused on the procedure of withdrawal (the instrument) than on the effect of the withdrawal on the contract (the right).
This drafting technique originates in the provisions prescribing how EU acts have to be written from a stylistic point of view; these are contained in common guidelines intended to improve the quality of the drafting of the Community legislation adopted by the three institutions. According to one of these principles "rules have to be drafted bearing in mind their translation in all the official languages". Hence, multilingualism influences not only the translation, but the actual structure and content of the rule. The result of this process is clearly visible in the same style of the directives and the regulations: a pragmatic, detailed, concrete regulation of legal instruments, rather than a systems of rights.

4.5. Rethinking the position of the European Parliament
Many years ago, one of the proposed solutions for the creation of a systematic set of rules common to the Member States was the European Civil Code.
The idea of introducing a European code and repealing the national codes has, very understandably, touched on delicate aspects of all European legal traditions. However, the topic is a stimulating, albeit complex, one, and contributions from the disciplines of legal science have increased significantly over the last ten years. The origin of this proposal was the European Parliament, which passed a series of resolutions, in 1989 and 1994, in which it invited the Commission, the Council and the Member States to commence the drafting of a "common European code of private law", reconfirmed by two further resolutions in 2000 and 2001.
At that time, this initiative was justified in the preamble of the first resolution, which stated "on the one hand that the European Community has already proceeded with harmonization of certain sectors of private law, and on the other that progressive harmonization is essential for realization of the European common market".
The message of the European Parliament has never been analysed in depth and the origin of the four resolutions is still rather obscure. However, nowadays it is reasonable to think that by suggesting the drafting of a Code for Europe the European Parliament

was actually calling for the drafting of *rights*, to be enacted at the supranational level, although probably enforced nationally.
Once these rights have been drafted and enacted, no matter whether they have to be translated into all the official languages.
But when the rules providing rights have to be drafted taking their translation into account, the levels of abstraction and regulation have to be very low, and the focus detailed. The risk to enact practical *instruments* rather than recognising *rights* is very high.
The creation of a EU citizenship should pass through the acknowledgment of the role of multilingualism as a guiding principle – not as a stylistic guide – favouring the integration of the EU citizens in a systems of rights.