2024, Vol. 13, Issue 2

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LANGUAGE RIGHTS OF NEWCOMERS AND INDIGENOUS PEOPLES IN THE AFRICAN AND EUROPEAN CONTEXTS

Abstract: This article briefly discusses the problem of language coexistence in two legal contexts: Africa and Europe. The study reveals a pattern of agenda of modern regional legal practices: (a) the separation of people by preferred languages, and (b) the public policy of assimilation. Moreover, we pose our counterarguments to the 'game-changing' idea of the culture of justification in law: colonialism powered by the legal culture of duties continues its existence in internal and external affairs. Based on Tove Skutnabb-Kangas's 'linguicism', the article queries the extent to which both the European Union and the African Union have gone to protect the linguistic rights of the Indigenous, tribal minorities and minoritised children, including refugee minorities.

Keywords: migrants; Indigenous peoples; linguistic genocide; linguistic human rights; Africa; Europe.

* Klinytskyi's contribution to this article was funded entirely by the Polish National Science Centre, under grant number UMO-2022/45/N/HS5/00961.

** Ugwu's contribution to this article was funded entirely by the Polish National Science Centre, under grant number UMO-2021/41/N/HS5/01227.

1. Introduction

It is over 13 years since Professor Tove Skutnabb-Kangas[1] asked a critical question on how those who teach English as a second language (TESOL) could avoid committing crimes against humanity. She posed this question in 2009 in her seminal work, 'What Can TESOL Do in Order Not to Participate in Crimes Against Humanity?'[2] where she argues that the deliberate exclusion of a minority person's mother tongue in the person's education scheme could be said to be a crime against humanity. This question is relevant today in Europe due to the increasing number of migrant movements caused by either the ongoing genocide in Ukraine or migrants crossing the Mediterranean Sea into Europe. For instance, refugees from Ukraine, especially those still of school age, will have to study in languages different from their mother tongues.[3] In Africa's context, Professor Skutnabb-Kangas's question could serve as a roadmap toward discovering the extent to which the African Union (AU) and other national governments have protected the linguistic rights of people displaced because of armed conflicts and the various Indigenous communities in the continent.

The choice of Africa and Europe is predicated for two reasons. Firstly, one of the reasons for selecting Africa and Europe for this study is the shared linguistic basis, with several widely spoken languages being common to both continents. For Africa, some European languages like English, Spanish, French, and Portuguese are the official languages of some African countries or are widely spoken to the detriment of Indigenous languages. Secondly,

1 Tove Skutnabb-Kangas (1940-2023) was a prominent Finnish educator and linguist renowned for her extensive research and advocacy in the field of minority education, language policy, and linguistic human rights. Over her long and distinguished career, Skutnabb-Kangas dedicated herself to the study of bilingual education and the rights of linguistic minorities, emphasizing the importance of mother tongue education as a fundamental human right. Skutnabb-Kangas's contributions to linguistics and education are a lasting legacy, inspiring continued research and action in the pursuit of linguistic rights and educational equity for minority language speakers around the world.

2 Skutnabb-Kangas, "What Can TESOL Do in Order Not to Participate in Crimes against Humanity?", 340-344.

3 For instance, the Estonian government announced that children of Ukrainian refugees would study according to the Estonian programme from autumn, which will have to include studying in a different language and having proficiency in the Estonian Language before qualifying for certain jobs. See "Rain Leoma: What Might Ukrainians Study in Estonian Vocational Schools? | Opinion | ERR." at https://news.err.ee/1608578146/rain-leoma-what-might-ukrainians-study-in-estonian-vocational-schools.

the legacy of language imperialism continues to impact Indigenous language use and the language rights of those not fluent in these other dominant languages in Africa. This creates, in most cases, barriers to education, access to government services, and economic opportunities for those who do not speak the official languages. However, the issue of language discrimination and rights is not unique to Africa. In Europe, particularly within the European Union (EU), there is an increasing focus on promoting and respecting linguistic diversity.[4] A comprehensive framework for the protection of the rights of national minorities supports this trend.[5]

Indeed, instances of language discrimination and linguistic imperialism can also be observed in the European states, particularly concerning newcomers. For instance, Europe faces a significant influx of refugees and migrants, many of whom come from different linguistic backgrounds and cultures. This poses a challenge to the language policies of European countries and the protection of language rights of newcomers as minoritised groups. It also contributes to the marginalisation and even endangerment of these languages and the cultures they represent. These individuals may sometimes face discrimination or exclusion due to language barriers, affecting their access to education, healthcare, and employment. Therefore, exploring the language rights of refugees and migrants in Europe can shed light on the importance of linguistic integration and the need for inclusive language policies that respect the diversity of languages and cultures.

In this article, we use the term 'newcomer' to refer to holders of international protection statuses and other migrants. In the context of international protection, we understand: (1) the refugee status under the 1951 Refugee Convention and its 1967 Protocol,[6] (2) beneficiaries of subsidiary protection under the Directive of the European Parliament and the Council 2011/95/EU,[7]

4 Bayat, Kircher, and Velde, "Minority Language Rights to Education in International, Regional, and Domestic Regulations and Practices: The Case of Frisian in the Netherlands", 82.

5 This framework is based both on the implementation of the provisions of the Universal Declaration of Human Rights and United Nations conventions into local legislation, as well as on the development and adoption of regional conventions by the Council of Europe, the case law of the European Court of Human Rights, and the catalogue of recommendations of regional organizations (such as the Committee of Ministers of the Council of Europe). See more on this issue: Tudisco, "National human rights institutions and access to justice for national minorities in Europe" and Pan, Pfeil, and Videsott, "National minorities in Europe", 3-17.

6 UN Convention and Protocol Relating to the Status of Refugees, https://www.unhcr.org/media/convention-and-protocol-relating-status-refugees.

7 Directive 2011/95/EU of the European Parliament and of the Council of 13 December 2011 on standards for the qualification of third-country nationals or stateless persons as beneficiaries

and (3) beneficiaries of temporary protection under the Council Directive 2001/55/EC which was enforced in response to the mass influx of displaced persons from Ukraine in 2022.[8] Despite the significant increase in individuals granted international protection status in recent years,[9] it is essential to also classify as newcomers those categories of migrants who, while not holding protection status, intend to stay in a host country for extended periods.[10] Among these categories, economic migrants should also be included.

On the other hand, Indigenous peoples have received a considerable amount of definitions, but the most widely cited is the one given by José Martinez Cobo, former UN Special Rapporteur of the Sub-Commission on Prevention of Discrimination and Protection of Minorities. He defines Indigenous peoples as

> Indigenous communities, peoples and nations are those which, having a historical continuity with pre-invasion and pre-colonial societies that developed on their territories, consider themselves distinct from other sectors of the societies now prevailing in those territories, or parts of them. They form, at present, non-dominant sectors of society and are determined to preserve, develop, and transmit to future generations their ancestral territories and their ethnic identity as the basis of their continued existence as peoples, in

of international protection, a uniform status for refugees or for persons eligible for subsidiary protection, and the content of the protection granted, 2011 O.J. L 337/9.

8 Council Directive 2001/55/EC of 20 July 2001 on minimum standards for giving temporary protection in the event of a mass influx of displaced persons and on measures promoting a balance of efforts between Member States in receiving such persons and bearing the consequences thereof, 2001 O.J. L 212/12.

9 As of the end of 2023, the European Union recorded 4,275,865 beneficiaries of temporary protection status, see Eurostat, *Beneficiaries of temporary protection at the end of the month by citizenship, age and sex – monthly data*, Eurostat (2024), https://ec.europa.eu/eurostat/databrowser/bookmark/dd22a8d2-65d3-422f-af6a-88e04037a9fc?lang=en. As of 2023, EU member states issued 409,485 positive decisions for refugees and beneficiaries of subsidiary protection, and the trend on the increase in the number of applications continues to rise. See *Asylum decisions up by 7% in 2023*, https://ec.europa.eu/eurostat/web/products-eurostat-news/w/ddn-20240426-2.

10 The term 'migrant' is commonly used in the research on language planning as an umbrella term encompassing all social groups seeking to settle in host countries for various reasons. See more in Martin, O'Riordan, and Maier, "Refugee and Migrant Children's Views of Integration and Belonging in School in Ireland – and the Role of Micro- and Meso-Level Interactions", 2-3; Riera-Gil, "Linguistic Rights and Duties of Immigrants and National Identity in Catalonia: Between Accommodation and Transformation".

> accordance with their own cultural patterns, social institutions and legal systems.[11]

The challenges faced by Indigenous peoples, as highlighted by Cobo, include not only the struggle for recognition but also the fight against practices that seek to undermine their rights, like the right to maintain their language as part of the right to language.

Although the problem of indigeneity in Africa has been pointed out,[12] many groups now identify as Indigenous peoples, while others struggle for recognition. Examples of such groups include the Ogiek, Maasai, and Endorois of Kenya, the Ogoni people of Nigeria, the San people found in some Southern African countries, the Pygmy people of Central Africa, and many more. Furthermore, in Europe, not many groups identify as Indigenous peoples, but the Sámi people are widely known. The Sámi people, who reside in the northern regions of Norway, Sweden, Finland, and Russia, have a rich cultural heritage and a complex identity shaped by historical, social, and environmental factors. The total population of Sámi people is estimated to range between 50,000 and 150,000, with approximately half being native speakers of the Sámi languages. The Northern Sámi group is the largest, with around 20,000 to 23,000 speakers in Norway and 5,000 to 7,000 in Sweden, while other Sámi groups have fewer than 600 speakers each.[13] This linguistic diversity is a critical aspect of Sámi identity, as language serves as a vital marker of ethnic belonging and cultural continuity.[14] A common denominator between newcomers and Indigenous peoples is that they, more often than not, form a minority group, with the possibility of experiencing discrimination and a denial of some of their rights, including language rights.

In comparison, the protection of the linguistic rights of Indigenous and tribal people is of critical importance in Africa, where the continent's extensive linguistic diversity, coupled with the legacy of colonization and ongoing socio-political challenges, has created a heightened need for effective

11 The United Nations Sub-Commission on Prevention of Discrimination and Protection of Minorities and its Study of the Problem of Discrimination against Indigenous Populations, UN Doc. E./CN.4/Sub.2/1986/7/Add. 4.para 379 (1986).

12 Pelican, "Complexities of Indigeneity and Autochthony: An African Example", 52; Werner, "Who is Indigenous in Africa? The Concept of Indigeneity, its Impacts, and Progression", 379, 398.

13 Budykina, "Linguistic Security as a Factor of Sustainable Development of a Region (on the example of Scandinavian Peninsula)", 3.

14 Nystad et. al, "Ethnic Identity Negotiation among Sami Youth Living in a Majority Sami Community in Norway", 4.

measures to preserve and promote these communities' languages, which are at significant risk of marginalization and extinction. Though uncertain, many policies and laws specifically targeting this protection are being developed in Europe, while the policies are not well-defined in Africa. In other words, the few existing policies in Africa are not even well implemented by the different African countries. In this regard, the present instruments at the AU level are insufficient and coupled with Africa's experience with colonialism, where Indigenous languages were seen as inferior and a barrier to the hegemony and administration of colonialism in the continent, there is a need for even a more radical approach to the protection of linguistic rights.[15] In this context, this article examines the AU and EU legal regimes regarding the protection of linguistic rights. These legal regimes encompass treaties, case laws, and policies. The article will first look at Professor Skutnabb-Kangas's ideas and the concepts she formulated: linguicism and linguistic genocide, and finally, attempts by both the EU and AU to address linguistic rights.

2. Examining Professor Tove Skutnabb-Kangas's Ideas

Professor Skutnabb-Kangas is an emeritus professor in the field of linguistics and education. Her works, spanning over three decades, cover areas like bilingualism and the protection of minority languages.[16] She worked in various capacities where she had the opportunity to teach and research the Nordic languages in an English-speaking country, like the USA, where she worked in Harvard's Department of Nordic Languages. In 2009, she wrote about the possibility of English Language teachers committing crimes against humanity when they use 'subtractive dominant-language medium education for [indigenous and minority] children'.[17] According to her, using a subtractive dominant-language medium to teach Indigenous and minority children causes 'serious mental harm: social dislocation, psychological, cognitive, linguistic, and educational harm, as well as economic, social, and political marginalisation'.[18] In her analysis, she referred to a work she co-authored with Robert Dunbar and presented at the Seventh Session

15 Maja, "Towards the Human Rights Protection of Minority Languages in Africa – GlobaLex".
16 Skutnabb-Kangas, "Tove Anita Skutnabb-Kangas dr.phil.: Curriculum vitae".
17 Skutnabb-Kangas, "What Can TESOL Do", 340.
18 Skutnabb-Kangas, "What Can TESOL Do", 340.

of the United Nations Permanent Forum on Indigenous Issues in 2008.[19] In this paper, they argued that using a dominant-language medium education does not lead to a grounded education as it prevents access to education because of the barriers it creates in the form of linguistic, pedagogical, and psychological barriers.[20] Again, most Indigenous and minority groups that receive education through a language different from their mother tongues do so at the cost of their mother tongues being displaced and replaced with the dominant language. This is an indirect but effective way of transferring these Indigenous and minority groups to the dominant group culturally and linguistically. They suggested a mother tongue-medium education, which must be backed by educational linguistic human rights instruments.[21] This is imperative because an examination of contemporary Indigenous and minority education indicates that the duration of mother-tongue medium education is more predictive of bilingual students' educational performance, including their competency in the dominant language, than any other criterion (including socioeconomic status).[22] She recommended a bilingual or multilingual approach to education, where mother tongue-medium education becomes the language of instruction.

In 2019, Professor Skutnabb-Kangas reflected on her question regarding TESOL's participation in linguistic genocide and crimes against humanity.[23] Unfortunately, she found out that not much has changed, and if TESOL supports only the English Language as a language of instruction to children who are supposed to be multilingual, then TESOL is participating in cultural and linguistic genocide. In this speech, she extended the meaning of 'indigenous, tribal, minority, and minoritised or marginalised groups to include immigrants and refugee minorities and their children'. In Europe especially, this would include migrants crossing the Mediterranean Sea, Ukrainians and other nationals in Ukraine fleeing from the war to different parts of Europe, international students studying in various universities across Europe, and

19 Skutnabb-Kangas and Dunbar, "Forms of Education of Indigenous Children as Crimes Against Humanity?".

20 Skutnabb-Kangas, "Forms of Education of Indigenous Children as Crimes Against Humanity?", 3.

21 Skutnabb-Kangas, "Forms of Education of Indigenous Children as Crimes Against Humanity?".

22 Skutnabb-Kangas, "Forms of Education of Indigenous Children as Crimes Against Humanity?".

23 See: *Imagining Multilingual TESOL Revisited: Where Are We Now?* at https://www.youtube.com/watch?v=lG-bW7oWErE.

migrant workers. She refers to the 2019 United Nations Educational, Scientific and Cultural Organisation (UNESCO) report to buttress her point on the danger Indigenous languages face. In the 2021 updated version of the reports, about 6700 languages are spoken worldwide, and 40% of these languages were in danger of disappearance.[24] The implication is that 40% of the world's population cannot access education in a language they speak or understand.[25] For Professor Skutnabb-Kangas, when Indigenous, tribal, minority and minoritised group members receive education with a dominant-language medium, it does not just lead to a denial of the right to education but linguistic discrimination and genocide.

Skutnabb-Kangas, throughout her research, has developed some interesting concepts like linguicism and linguistic genocide. We will give a brief understanding of these terms and how even though her works have contributed a lot in the field of linguistic human rights, her works and proposals have been the subject of criticism.

2.1. Linguicism

Linguicism is one of the -ism negative concepts like ageism, racism, sexism, tribalism, ethnicism, and classism. In 1986, Skutnabb-Kangas coined the word to cover 'ideologies and structures which are used to legitimate, effectuate and reproduce an unequal division of power and resources (both material and non-material) between groups which are defined based on language (on the basis of their mother tongues)'.[26] Professor Skutnabb-Kangas recognises that linguicism could either be openly exhibited where the agent does not hide it, consciously perpetuate it, visible for all to see, and geared towards an oriented action or be hidden in terms of lack of support to the use of a minority language.[27] The former approach was widely used during colonialism, where the colonisers opposed the linguistic diversity of the colonised peoples. At the same time, the latter is characteristic of Indigenous and immigrant minorities' education in most Western countries

24 UNESCO, *The International Year of Indigenous Languages: Mobilizing the International Community to Preserve, Revitalize and Promote Indigenous Languages*, 12.

25 UNESCO, "Languages in Education: If You Don't Understand, How Can You Learn?".

26 Quoted in Skutnabb-Kangas, "Multilingualism and the Education of Minority Children", 36, 41.

27 Skutnabb-Kangas and Phillipson, "Mother Tongue", 456.

today.[28] In this article, we define linguicism as a form of discrimination based on language, where a language is seen as superior to others and mechanisms are put in place to make the superior language the only language of instruction in education and at the workplace.

2.2. Linguistic Genocide

Another concept often used by Skutnabb-Kangas is linguistic genocide, also called linguicide or physical language death.[29] There is no generally accepted definition of the crime of linguistic genocide. However, several authors use it in reference to what could constitute genocide in the strict meaning of the word.[30] For instance, Skutnabb-Kangas used it while discussing how the use of a dominant-language medium education could constitute crimes against humanity in the context of the Convention on the Prevention and Punishment of the Crime of Genocide[31] (the Genocide Convention).[32] The preparatory work for the Genocide Convention contained linguistic and cultural genocide that was debated alongside physical genocide. All three were deemed to be serious crimes against humanity. In Article III, the ad hoc Committee that drafted the Convention defined the following acts as examples of cultural genocide:

Any deliberate act committed with the intent to destroy the language, religion or culture of a national, racial or religious group on grounds of national or racial origin or religious belief, such as

1. Prohibiting the use of the language of the group in daily intercourse or in schools, or the printing and circulation of publications in the language of the group.

28 Skutnabb-Kangas and Phillipson, "Mother Tongue", 456.

29 Crystal, *Language Death*.

30 For instance, see in Skutnabb-Kangas, "What Can TESOL Do", 340; Arzoz, "The nature of language rights", 3; Zwisler, "Linguistic Genocide or Linguicide?: A Discussion of Terminology in Forced Language Loss", 43-47; Salih, "Kurdish Linguicide in the "Saddamist" State", 34-51; Low, Mcneill, and Day, "Endangered Languages: A Sociocognitive Approach to Language Death, Identity Loss, and Preservation in the Age of Artificial Intelligence", 1-25; Jamallullail and Nordin, "Ethnolinguistics Vitality Theory: The Last Stance for a Language Survival", 27-5; Chayinska, Kende, and Wohl, "National Identity and Beliefs about Historical Linguicide are Associated with Support for Exclusive Language Policies among the Ukrainian Linguistic Majority", 924-940.

31 Convention on the Prevention and Punishment of the Crime of Genocide (UN General Assembly) 9 December 1948, vol. 78, 277 (UNTS, the Genocide Convention).

32 Skutnabb-Kangas, "What Can TESOL Do", 340.

2. Destroying or preventing the use of libraries, museums, schools, historical monuments, places of worship or other cultural institutions and objects of the group.

Again, in the initial draft by the Division of Human Rights of the United Nations Secretariat, what should constitute genocide was divided into three classifications to include biological, physical, and cultural.[33] The cultural classification included 'destroying the specific characteristics of the group' and further referred to the below examples:

a. the forcible transfer of children to another human group; or
b. the forced and systematic exile of individuals representing the culture of a group; or
c. the prohibition on the use of the national language even in private intercourse; or
d. the systematic destruction of books printed in the national language or of religious works or prohibition of new publications; or
e. the systematic destruction of historical or religious monuments or their diversion to alien uses, destruction or dispersion of documents and objects of historical, artistic, or religious value and of objects used in religious worship.[34]

Even though linguistic genocide did not make it to the Genocide Convention, the preparatory work already provides us with what the crime would entail. Still, there are various legal instruments under international law where linguistic human rights are protected, or linguicism and linguistic genocide could be inferred to have been prohibited. Also, the exclusion of linguistic genocide in the Genocide Convention serves as the basis for the criticisms of Skutnabb-Kangas's position. While Skutnabb-Kangas's concept of linguistic genocide has brought attention to the importance of language rights, it is crucial to consider its limitations and take a more nuanced approach to language politics and human rights.

2.3. Limitations and Applicability of Skutnabb-Kangas's Concept

Skutnabb-Kangas's research places undeniable emphasis on the critical issue of language decline and mortality, which Skutnabb-Kangas aptly designated

33 See generally Dunbar et al., "Forms of Education of Indigenous Children as Crimes against Humanity?: Expert Paper Prepared for the Permanent Forum on Indigenous Issues", 9.

34 Dunbar et al., ibidem; Draft Convention on the Crime of Genocide (UN. Secretary-General) 26 June 1947, UN Doc. E/447.

'linguistic genocide'. Prior to delving into our comprehensive analysis of relevant legislation, it is essential to acknowledge certain limitations inherent in Skutnabb-Kangas's concept. One limitation of the concept is its broad definition. Skutnabb-Kangas defines linguistic genocide as the systematic destruction of a language community through the killing of the language in its various forms. This definition can be interpreted in a way that includes many actions that might not necessarily be considered genocidal, such as the promotion of a dominant language, language shift, or language attrition. In this regard, linguicide may exist without attempting to commit mass murder and terror against its targets. However, it still fits the concept of Raphael Lemkin (1900-1959), who previously coined the definition of genocide and presented its possible manifestations (such as ethnocide) in his famous work "Axis Rule in Occupied Europe: Analysis, Proposals for Redress".[35] (hereinafter referred to as Axis Rule). Certainly, Lemkin's definition of genocide was narrowed in the Genocide Convention. For Lemkin, genocide is an inclusive term because it subsumes all of the acts surveyed in his book ranged up to eight different policies, such as cultural,[36] social, economic, biological, physical, religious, and moral.[37] Lemkin sees all of these policies on the spectrum of genocide. Moreover, within this spectrum, genocide applies to the attempts to eliminate the culture(s) and language(s) of occupied peoples and the imposition of the invader's culture

35 In his book, Lemkin referred to Axis policies and duly analysed laws and decrees of territories and states directly or indirectly dependent on Nazi rule in Europe. He believed that those policies followed the same Nazi concept of ruling. However, he distinguishes those regimes associated with the Nazis between three categories: (a) collaborating regimes (as Italy or Hungary), (b) incorporated territories (e.g., parts of Poland and Czechoslovakia), and (c) regimes where total subjugation is the aim of invader (such as in the Soviet Union, Poland, Yugoslavia). It is essential to remember that the book consists of three parts. The parts came into being in reversed chronology. Part III consists of translated laws and decrees. Part II assembles the analysis of public policies for regimes associated with the Nazis in Europe. Significantly, Part I, being the shortest in this book, synthesises the practices of policing described in Part II and documented in Part III. In turn, Chapter 9 of Part I is entitled "Genocide", and it considers eight different techniques of genocide based on reviewed laws and policies in Part II and Part III. See Lemkin, *Axis Rule in Occupied Europe*.

36 For instance, the policy of Germanisation pursued by the Nazis and their collaborators in Czechoslovakian territories attached to the Protectorate of Bohemia and Moravia. See more, ibidem, 188.

37 Mark Mazower touching upon Lemkin's legacy in his research on the United Nations, also confirm the broad construct of genocide in *Axis Rule in Occupied Europe*. See Mazower, *No Enchanted Palace*, 129-130.

and language.[38] In this regard, Lemkin's genocide for many years certainly has been the basis for further developments in the field of genocide studies. Some scholars go beyond the previous scope of Lemkin's Axis Rule and build more advanced concepts based on genocide, such as cultural genocide[39] or the 'genocide-ecocide nexus'.[40] Again, there is a clear distinction between narrowed genocide in the Genocide Convention and the broad theoretical concept of genocide, which has contributed to recent developments in linguicide.

Another limitation is the focus on language as a primary identity marker. While language is certainly an essential aspect of identity, it is not the only one. Cultural and social factors also play a significant role in shaping people's sense of belonging and identity. Skutnabb-Kangas's concept may overlook the impact of broader socio-cultural and political factors that affect language communities. As a result, certain scholars view linguicide as a component of cultural genocide, contending that the loss of language entails the loss of both ethnic identity and culture.[41] Indeed, there is strong evidence to the contrary. There are some examples of ethnic groups surviving the loss of their language and not losing their ethnic identity. Examples of the latter include the Miwok Indigenous people in the USA[42] or the Negidals in the Russian Federation.[43] Also vice versa, there are certain ethnic groups that have undergone substantial cultural transformations without forfeiting their language (for example, the Tatars[44] and Tuva people[45] in the Russian Federation). Furthermore, there are endeavours not necessarily connected to ethnicity aimed at eliminating the languages of colonisers from cultural

38 Also, this component of genocide is called in literature as ethnocide or cultural genocide.

39 Some scholars use the term ethnocide as a substitution for cultural genocide. See Benvenuto and Rutgers, The State University of New Jersey, "What Does Genocide Produce?", 6. For Lemkin ethnocide was a synonym of genocide. Indeed, in the 1970s, ethnologists and anthropologists, including Pierre Clastres and Robert Jaulin, started applying a new interpretation of ethnocide that concentrated on the constant destruction of culture while keeping the people. See Jaulin, "Ethnocide, Tiers Monde et ethnodéveloppement", 913-927.

40 See Crook and Short, "Marx, Lemkin and the Genocide–Ecocide Nexus", 298-319. See also Dunlap, "The 'Solution' Is Now the 'problem", 550-573.

41 Pitarch, Speed, and Solano, *Human Rights in the Maya Region*, 27-50.

42 Zwisler, "Language and indigeneity: A mechanism of identity?", 15-16.

43 Almost 5% of Negidals speak Negidal. See Pakendorf and Aralova, "The Endangered State of Negidal: A Field Report", 1-14.

44 See more on the Sovietisation of Tatars in Rorlich, "History, Collective Memory and Identity: The Tatars of Sovereign Tatarstan", 379-396. On bi-culturalism in Tatarstan see Veinguer and Davis, "Building a Tatar Elite", 186-207.

45 MONGUSH, "Modern Tuvan Identity", 275-296.

and linguistic domains.[46] Hence, pressure on language[s] may not always be directed at traditional minorities. Significantly, it also may affect migrants' communities and refugees.

Skutnabb-Kangas's theory, due to its focus on language loss and public restrictions on the mother tongue, has the possibility of being perfectly expanded beyond the limits of its original application within the discourse on the rights of traditionally minoritised groups as national minorities. It is worth noting that our interpretation of linguicide is contextualised in a more specific way. In our research, we define linguicide as an extreme consequence of past policies and societal attitudes that have led to the preferential treatment of specific languages in society and the marginalisation of other languages (i.e., those that are discriminated against). As a result, linguicide is often manifested through extreme practices of either justified action or inaction as perceived by a politically dominant majority. For instance, the total prohibition of specific languages in the public domain, the closure of educational institutions serving minority populations, or the elimination of the legal recognition of national minority groups exemplify this phenomenon vividly. It is important to note that linguicide is always a manifestation of radical majority sentiment to take away the voice (language) of the minority. In contrast, linguicism is a term that describes the very process of favouritism of a particular language—for example, not being able to study a minoritised group's language in compulsory schooling because the education law does not see this language as a language of instruction or because of a lack of staff or funding. To some extent, linguicism is a slow linguistic death. Significantly, it is essential to note that language decline may also impact refugees and migrants, as disregarding the linguistic requirements of newcomers can give rise to linguicism. In this context, we contend that language human rights serve as a crucial framework that can prevent the phenomenon mentioned above from occurring and simultaneously enable us to identify instances where it does occur.

3. Language (human) Rights

Conflicts raised on culture and language issues are widely seen through the lens of constitutionalism retrospection. In some cases, the lawmakers reached a compromised solution, as seen in Canadian or Belgian federalism

46 This also affects languages with special formal status, as Russian was in Soviet republics.

examples; in others – they [conflicts] were revealed as a malignant tumour that was fatal for the state (such as in Yugoslavia, Sri Lanka, Sudan). Indeed, Stephen May has argued that even though the constitution can construct a multicultural compromise within at least a crowning of particular (minority) languages as a part of the constitutional right, the state will tend to continue its discriminative offensives against non-privileged representatives of language minorities.[47] As a response to the threat mentioned above, following Skutnabb-Kangas's theoretical framework, the idea of personal and collective rights[48] grounded on a language basis shall be transferred to the supra- and inter-national level of human rights protection. However, no hard or soft law regulation directly maps the scope of language (linguistic) rights on the international level. Moreover, considering the concept of Language rights as a law-based part of human rights, it overlaps to a greater extent with other human rights. The argument on indirect essence has its roots in Skutnabb-Kangas's construct of Language rights as human rights since she draws it primarily through two fundamental rights:

1. right to use one's mother tongue in education,[49]
2. right to use one's language in trial proceedings.[50]

As it follows, the first is part of a right to education, and the second is part of a right to a fair trial. In turn, we should clarify that Skutnabb-Kangas's idea advocates the creation of an open catalogue for language rights: she does not limit language rights at all; indeed, [she] tries to identify the 'basic rights', which should be covered by the envelope of language human rights. In turn, within the scope of fundamental rights, Skutnabb-Kangas sees a core right – to learn one's language. To a greater extent, the concept of Language rights has a robust ideological context: firstly, language rights should attract attention to a problem of linguicism where the state is the main offender; secondly, language rights promote multiculturalism and multilingualism, like political pluralism, are not defective for society.

Of course, the short catalogue cannot fulfil the main aim of language rights, which is to limit discriminatory and harmful processes threatening the survival of languages and their speakers. Thus, if we map the ideal effect of a proposed catalogue of rights this way, the following definition

47 May, *Language and Minority Rights*.

48 Skutnabb-Kangas sees LRs as rights addressed to three particular groups of actors: (1) a language as such, (2) a person (language speaker), and (3) collectives.

49 Skutnabb-Kangas and Phillipson, "Linguistic Human Rights, Past and Present", 12.

50 Skutnabb-Kangas and Phillipson, "Linguistic Human Rights, Past and Present", 4-10.

of language rights should be used: 'The language right is every right to use one's language', which also perfectly fits the meaning of 'core rights'.

Notwithstanding, our definition constitutes a new problem because, even dropping the state monopoly in approaches to languages, reaching the balance between the interests of different social groups and, as a result, other groups of rights addressed to a person and collective seems to be a dilemma. Indeed, the concept of language rights is seen in the literature (in most cases) as a part of minority rights.[51] From the perspective of the main aim, that is, the role of LR in preventing linguicism, the direct link to minorities, as collectives maintaining their cultures, seems entirely understandable. However, in Europe, this meaning is strictly limited to the ethnic minorities officially recognised by the state. As an argument, we provide the limitations of the European Charter for Regional or Minority Languages (ECRML).[52] In particular, Article 1 (a) of ECRML defines that the Charter is applicable only for languages traditionally used by a group of citizens numerically smaller than the rest population of particular states and distinguished from the official language(s) of the state. Although the ECRML hints that it consists of an acceptable minimum necessary for language existence and promotion in society (Article 4), thereby promoting the creation of more advanced binding legal instruments for language rights within the jurisdiction, Article 3 (1) of ECRML leaves the initiative to determine languages covered by the Charter in the hands of the state. Furthermore, by this omission, the Charter de facto allows the state to consider whether to become (or not) more and more tolerant *vis-à-vis* the idea of linguistic diversity. Thus, in general, the modern liberal states provide a more comprehensive catalogue of rights than duties for their citizens. Indeed, the 'general' idea is not so obvious when we focus on the problem of language coexistence, and the rights catalogue should be dedicated to third-country nationals.[53]

There is no consensus regarding the scope of rights that should be dedicated to newcomers. Despite the lack of an ethnic connotation in the umbrella term 'migrant', individuals classified under this term possess both linguistic and cultural preferences, placing migrant groups on par with resident ethnic communities in host countries within an ethnocultural context. In other words, refugees who have fled Ukraine due to the war and

51 Arzoz, "The Nature of Language Rights".

52 European Charter for Regional or Minority Languages (EC) ETS 148 (4 November 1992), available at https://www.refworld.org/docid/3de78bc34.html (accessed 21 May 2022).

53 Kochenov and De Varennes, "Language and Law", 56-66.

identify as Ukrainian are naturally inclined to actively participate in the life of the Ukrainian national minority in the Republic of Poland, a country that shares one of the longest land borders with Ukraine and officially recognises the Ukrainian national minority. Members of this ethnic group in Poland have access to publicly funded schools and cultural associations. Moreover, in some local communities, Ukrainian is one of the recognised languages of official communication. However, despite these features, the Polish authorities have repeatedly emphasised that publicly funded programmes for national minorities (particularly educational programmes) are intended for members of these minorities who hold Polish citizenship, thereby excluding newcomers from such programmes.[54]

Indeed, as depicted in the above example, this separation practice can be rationalised in the literature on language rights. For example, Philippe Van Parijs justifies the need for counterfactual reciprocity of migrants. This concept refers to the idea that immigrants must adjust to the linguistic and cultural norms of the host society based on a principle of hypothetical fairness.[55] Van Parijs explains this principle on the ground that, hypothetically, locals would be expected to do the same if the roles were reversed. Hypothetical fairness is a part of the broader Van Parijs's concept of linguistic territoriality, which refers to respect for language boundaries of the regions people move to. In turn, the manifestation of respect is seen as newcomers' absorption of local culture. In this context, from the perspective of a monocultural and monolingual state, placing restrictions on newcomers' access to public goods designated for national minorities may be considered reasonable. On the other hand, from our theoretical lens, we state that this concept could be misused to justify restricting the notion of humanism within the host society, potentially leading to limitations on human rights. Moreover, some scholars argue that the obligation to learn the host society's dominant language(s) is a personal choice inherently made by those who intend to settle

54 For example, see art. 13 of Regulation of the Minister of National Education of 30 August 2017, on the conditions and methods for preschools, schools, and public institutions to carry out tasks enabling the preservation of the national, ethnic, and linguistic identity of students belonging to national and ethnic minorities, as well as communities using a regional language https://sp221.edu.pl/files/58/rozporzadzenie.pdf and the official information from a Ukrainian school in Poland regarding the restriction on non-citizens: https://sp221.edu.pl/miedzyszkolny-zespol-nauczania-mniejszosci-ukrainskiej,58,pl.

55 Van Parijs, "Linguistic justice for Europe and for the world".

in a particular country.[56] While this may apply effectively to economic migrants, it has not been proven to hold true for beneficiaries of international protection as their host country may not be a carefully considered choice for them but rather the only available shelter to ensure their physical survival. With this in mind, we argue that there is no absolute duty to learn the host society's language. Rather, it is a right that aligns with the practical necessity for migrants to become fluent in the languages spoken by the majority in the host society, as it facilitates integration and access to opportunities.[57]

Other works on language rights also propose alternative approaches to addressing the needs of migrants in host countries, offering different approaches for balancing linguistic integration with the preservation of cultural identity. In particular, an accommodative approach[58] emphasizes the host society's responsibilities, particularly in supporting immigrants' rights to maintain and learn their native languages, while also providing institutional recognition and adjustments for ethnic and cultural diversity. Additionally, there is a transformative approach which argues that migrant languages should be incorporated into public services to ensure broader accessibility and enable more effective communication for a more significant number of participants in society.[59]

Thus, based on the concepts mentioned above, three language rights on an individual basis can be identified through four pillars: (1) the right to learn the languages of the host country, (2) the right to learn and use one's native language, (3) the right to access information in one's language when using public services, and (4) right to use one's language in trial proceedings. Considering the main aim of language rights proclaimed by Skutnabb-Kangas, we unpacked the concept of language rights through the lens of currently binding provisions in international and supranational law for classical minorities (i.e., Indigenous peoples and national minorities) in Africa. Conversely, concerning the European context, our inquiry is focused

56 See e.g. Kymlicka, "Multicultural Citizenship: A Liberal Theory of Minority Rights", 15-17. In this regard, the need to learn the host society's language is also seen as a moral duty of migrants. See Hoesch, "Do Immigrants have a Moral Duty to Learn the Host Society's Language?", 23-40.

57 Posing a duty to learn the language for non-citizens creates a disproportion in a society where there are two categories of people (i.e. citizens and non-citizens) treated not equally. See more: Goppel, "Linguistic Integration—Valuable but Voluntary", 6-9.

58 Carens, "Culture, citizenship, and community: A contextual exploration of justice as evenhandedness"; De Schutter, "Language policy and political philosophy: On the emerging linguistic justice debate. Language Problems & Language Planning".

59 Bauböck, "Public culture in societies of immigration".

on examining the legal implications and developments regarding the status of national minorities that could be applicable to newcomers, as their issues have become a significant concern in the European Union's 2022 agenda due to the surge in refugees caused by the ongoing conflict in Ukraine.

3.1. International Law Instruments that Protect Linguistic Rights

One of these instruments, surprisingly, is the Genocide Convention. Even though linguistic genocide did not make it to the final draft of the Convention, Skutnabb-Kangas makes a convincing argument that based on the current definition of genocide by the Genocide Convention, linguistic genocide could be inferred. She argues that since the prohibition of the crime of genocide was to prevent an intention to 'destroy, in whole or in part, a national, ethnical, racial or religious group' by causing serious bodily or mental harm or forcibly transferring children to another group,[60] linguistic genocide should be interpreted to be covered under the Genocide Convention.[61] Her argument is plausible, especially when one considers that using a dominant-language medium education instead of the mother-tongue medium for the Indigenous, tribal, minority and minoritised groups has been attributed to causing mental harm, especially for children.[62] Again, when IT children are forced to use a language other than their mother tongue, they tend to lose their cultural traits and sense of identification with those of the dominant language. Skutnabb-Kangas classifies this as a possible transfer to the dominant group.[63]

Again, the Rome Statute[64] gives some useful provisions regarding the possibility of interpreting whether linguicism or using dominant-language medium education for Indigenous, tribal, minority and minoritised groups could qualify as an element of crimes against humanity. The Rome

60 The Genocide Convention, Art. II. Almost the exact wordings are repeated in pt. 6 of the Rome Statute of the ICC.

61 Dunbar and Skutnabb-Kangas, "Forms of Education of Indigenous Children as Crimes Against Humanity", 11-13.

62 Kalan, "Who's Afraid of Multilingual Education?: Conversations with Tove Skutnabb-Kangas, Jim Cummins, Ajit Mohanty and Stephen Bahry about the Iranian Context and Beyond", 21.

63 Dunbar and Skutnabb-Kangas, "Forms of Education of Indigenous Children as Crimes Against Humanity", 13.

64 Rome Statute of the International Criminal Court (United Nations General Assembly) 17 July 1998, 2187, UNTS 90, last amended 2010.

Statute defines crimes against humanity to mean when, among other acts, the following are 'committed as part of a widespread or systematic attack directed against any civilian population, with knowledge of the attack':[65] 'persecution against any identifiable group or collectivity on... racial, national, ethnic, cultural, religious,... or other grounds that are universally recognised as impermissible under international law'[66] and inhuman acts intentionally causing serious injury to mental health.[67] As already argued, using dominant-language medium education for Indigenous, tribal, minority and minoritised groups has many adverse effects on children, including their mental health. Persecution, as used in Article 7(1)(h), is further defined in Article 7(2)(g) as severe deprivation of 'fundamental rights' by reason of group identification in breach of international law. Again, Skutnabb-Kangas argues that rights to education and the possibility of learning in one's mother tongue are 'fundamental rights' within the meaning of the Rome Statute.[68]

Similarly, both the International Covenant on Economic, Social and Cultural Rights (ICESCR)[69] and the International Covenant on Civil and Political Rights (ICCPR)[70] are useful in the protection of language rights. While State parties to the two covenants undertake to ensure the enjoyment of rights contained therein without discrimination based on, among other grounds, language under Article 2 of both covenants, the ICCPR is more elaborate on the protection of language rights. In its General Comment 13 on the Right to Education, the UN Committee on Economic, Social and Cultural Rights (CESCR) reiterated that education should be accessible to all without discrimination,[71] and it further confirmed this in its General Comment 20 on the non-discrimination in economic, social and cultural rights.[72] The rea-

65 Ibidem, art. 7 (1).

66 Ibidem, art. 7(1) h.

67 Ibidem, art. 7 (1) k.

68 Dunbar and Skutnabb-Kangas, "Forms of Education of Indigenous Children as Crimes Against Humanity", 16.

69 UN General Assembly, International Covenant on Economic, Social and Cultural Rights, United Nations, Treaty Series, vol. 993, p. 3, 16 December 1966.

70 UN General Assembly, *International Covenant on Civil and Political Rights*, United Nations, Treaty Series, vol. 999, p. 171, 16 December 1966.

71 UN Economic and Social Council, *General Comment No. 13: The Right to Education (Art. 13 of the Covenant)*, E/C.12/1999/10, UN Committee on Economic, Social and Cultural Rights (CESCR), 8 December 1999.

72 UN Committee on Economic, Social and Cultural Rights (CESCR), *General comment No. 20: Non-discrimination in economic, social and cultural rights* (art. 2, para. 2, of the International Covenant on Economic, Social and Cultural Rights), E/C.12/GC/20, 2 July 2009

son for this is that discrimination based on language or regional accent is frequently associated with unequal treatment based on national or ethnic origin. Language barriers can impede the fulfilment of numerous Covenant rights, such as the right to engage in cultural activities, as stipulated in Article 15 of the ICESCR.[73] Article 14(3) of the ICCPR provides for the right of an accused 'to be informed promptly and in detail in a language which he understands of the nature and cause of the charge against him' in any criminal trial and to be provided with the free services of an interpreter if he does not understand or speak the language of the court.[74]

Article 27 of the ICCPR is very detailed in underscoring the rights of ethnic, religious, and linguistic minorities to enjoy their culture, profess and practice their religion, and use their language. It 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.

These provisions are similar to the provisions of the International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families,[75] which prohibits any form of discrimination against migrant workers based on several grounds, such as language.[76] It guarantees the right of migrant workers to be informed in the language they understand or be provided with the free services of an interpreter in the case of not being able to understand the language of proceedings against them.[77] Interestingly, there is a provision for State parties to facilitate the education of children of migrant workers in their mother tongue if necessary and in collaboration with States of origin.[78] This conforms with the provision of Article 29(1)(c) of the Convention on the Rights of the Child on the responsibility of States to direct the education of the child to the development of

73 Ibidem, para 21.

74 UN General Assembly, *International Covenant on Civil and Political Rights*, art. 14(3)(f).

75 UN General Assembly, *International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families*, A/RES/45/158, 18 December 1990.

76 Ibidem, arts. 1, 7.

77 Ibidem, see generally arts. 16, 18, 22.

78 Ibidem, art. 45(3).

> his or her own cultural identity, language and values, for the national values of the country in which the child is living, the country from which he or she may originate, and for civilisations different from his or her own.

Furthermore, a child belonging to an ethnic and linguistic minority and of Indigenous origin,

> shall not be denied the right, in community with other members of his or her group, to enjoy his or her own culture, to profess and practise his or her own religion, or to use his or her own language.[79]

Moving forward to soft instruments, the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP)[80] provides for the respect and protection of Indigenous peoples' languages. For instance, Indigenous peoples have the right to preserve, use, develop, and transmit their histories, languages, oral traditions, philosophies, writing systems, and literature to future generations and designate and maintain their own names for communities, places, and individuals.[81] Indigenous peoples have the right to build and manage educational systems and institutions that provide education in their Indigenous languages and in ways that are culturally appropriate for teaching and learning.[82] They also have the right to education at all levels without any form of discrimination[83] and to establish media in their own languages.[84] States are to protect these rights.[85] 'States', as used in these provisions, could be restrictively interpreted to mean the States of origin of the Indigenous peoples. It is arguable that 'States' as used in these provisions are not restricted to the States of origin of the Indigenous peoples but to any states where the Indigenous peoples are found, either because of migration or otherwise. This argument is made more plausible when the wording of Article 14(3) is considered. It provides that States should put measures in place to make it possible for Indigenous peoples to receive education in their own language, including Indigenous peoples 'living outside their communities'. We contend

79 Ibidem, art. 30.
80 United Nations Declaration on the Rights of Indigenous Peoples, resolution adopted by the General Assembly (Nations General Assembly) 2 October 2007, A/RES/61/295.
81 Ibidem, art. 13 (1).
82 Ibidem, art. 14 (1).
83 Ibidem, art. 14 (2).
84 Ibidem, art. 16.
85 Ibidem, arts. 13 (2), 14 (3), and 16 (2).

that states, as large communities, have an obligation to protect Indigenous peoples, even if these groups are not officially recognized within the state as permanent residents. Indigenous peoples, like others, may migrate, and their rights should be upheld regardless of their current location. One drawback of the UNDRIP is that it is soft law and, to that extent, does not create legally binding international law obligations. Its significance stems from the possibility of crystallising into customary international law.[86] Therefore, it is in the interest of democratic states that adhere to the principles of universal human rights to promote the application of the UNDRIP without limitations to any specific groups.

As in the UNDRIP, the Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities,[87] makes similar provisions. Minoritised persons have the right to use their language, publicly or privately, without discrimination.[88] States are also encouraged to implement measures to ensure that minoritised groups develop and use their languages.[89] In the area of education, States should provide education that 'encourage[s] knowledge of the history, traditions, language and culture of the minorities existing within their territory.[90] Finally, having looked at the instruments that protect linguistic human rights, we shall devote the next section on the extent of protection of linguistic rights within the African context.

3.2. The African Legal Regime for the Protection of Language Rights

As observed by Maja, no treaty in Africa particularly addresses language rights. Nevertheless, the protection of minority languages can be derived from either explicit treaty provisions relating to the protection of other rights that might include language rights or can be implied as forming part of other expressly protected rights.[91] The AU's first Conference of Ministers of Culture, which took place in Nairobi from 10-14 December 2005, endorsed

86 Ugwu, "An Examination of Multinational Corporations' Accountability in the Light of Switzerland's Failed Responsible Business Initiative in the Covid-19 Pandemic Era"; Mazel, "Indigenous Health and Human Rights", 1, 6.

87 Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities, (UN General Assembly) 3 February 1992, A/RES/47/135.

88 Ibidem, art. 2(1).

89 Ibidem, art. 4(2).

90 Ibidem, art. 4(3).

91 Maja, "Towards the Human Rights Protection of Minority Languages in Africa".

the Charter for African Cultural Renaissance (the Cultural Charter).[92] It was also adopted by the sixth ordinary session of the African Union Assembly, which took place in Khartoum, Sudan, on 24 January 2006. It entered into force in October 2020 upon receipt by the AU Commission of the 15th instrument of ratification.[93] The Cultural Charter has twelve objectives, among which are 'to promote freedom of expression and cultural democracy, which is inseparable from social and political democracy'[94] and 'to combat and eliminate all forms of alienation, exclusion and cultural oppression everywhere in Africa'.[95] Freedom of expression definitely would entail doing so in one's language, and to prevent this possibility of exclusion, the Cultural Charter encourages cultural cooperation among AU members through the use of African languages.[96] To achieve its objectives, the Cultural Charter has as one of its principles the utilisation of African languages to improve the role of science and technology, particularly endogenous knowledge systems, in the lives of African peoples.[97] Part IV is specifically dedicated to the advancement of African languages. It provides that the African States recognise the importance of developing African languages to ensure cultural advancement and accelerate economic and social development. Consequently, African States should make every effort to develop and implement suitable national language policies,[98] including preparing and implementing 'reforms for the introduction of African languages into the education curriculum'[99] and the production and distribution of books and children's books in African languages.[100] At the international level, African States should ratify treaties, conventions, charters, and other instruments that promote freedom of expression, including those that seek to protect local languages.[101] The provisions of the Cultural Charter are in many ways

92 Charter for African Cultural Renaissance (AU) 24 January 2006, available at https://au.int/en/treaties/charter-african-cultural-renaissance (accessed 13 April 2024).

93 Continental Launch of the Entry into Force of the Charter for African Cultural Renaissance (AU) 2006 and Africa Day Celebrations 25 May 2021, available at https://au.int/en/newsevents/20210525/continental-launch-entry-force-charter-african-cultural-renaissance-2006-and (accessed 13 April 2024).

94 Charter for African Cultural Renaissance, art. 3(b).

95 Ibidem, art. 3(e).

96 Ibidem, art. 3(f).

97 Ibidem, art. 4(d).

98 Ibidem, art. 18.

99 Ibidem, art. 19.

100 Ibidem, art. 21(b).

101 Ibidem, art. 22(d).

different from what Skutnabb-Kangas postulated. The Cultural Charter only seeks the protection of African languages and does not protect Indigenous, tribal, minority and minoritised groups from other continents. For instance, children of refugees from Europe or other migrants will probably have their linguistic rights breached because they will be taught through an African language or receive a dominant-language medium education. Put differently, the Cultural Charter does not advance the use of mother tongue-medium for people who are not Africans.

The African Youth Charter[102] is another instrument that is instructive in the protection of Indigenous languages in Africa. It encourages African States to ensure that all necessary steps, both by way of new legislation and otherwise, are taken to give effect to its provisions[103] equally to all young persons without any form of discrimination. It specifically provides that

> State Parties shall recognise the rights of young people from ethnic, religious and *linguistic marginalised groups* or youth of *Indigenous origin*, to enjoy their own culture, freely practise their own religion or to use *their own language* in community with other members of their group.[104]

It gives many rights to young persons[105] including the right to education[106] and these rights must be enjoyed irrespective of 'race, ethnic group, colour, sex, language, religion, political or other opinion, national and social origin, fortune, birth or other status'.[107] Another important provision is Article 20(1)(e), which mandates African States to '[h]arness the creativity of youth to promote local cultural values and traditions by representing them in a format acceptable to youth and in a language and in forms to which youth are able to relate'.[108] According to Maja, these provisions can support minority languages in three ways: (1) they allow minority-language-speaking children to show their ability and originality in minority languages; (2) they allow young people to access and share information in their mother tongue;

102 The African Youth Charter (AU) 8 August 2009, available at https://au.int/en/treaties/african-youth-charter (accessed 13 April 2024).
103 Ibidem, art. 1(2).
104 Ibidem, art. 2(3).
105 Ibidem, arts. 3-16.
106 Ibidem, art. 13.
107 Ibidem, art. 2(1).
108 Ibidem, art. 20 (1)(e).

(3) they ensure the exposure of minority languages, which are by definition works of human ingenuity.[109]

The African Charter on Human and Peoples' Rights (ACHPR)[110] is an international human rights instrument that promotes and protects human rights and fundamental freedoms in Africa. It makes little or no references to language rights protection apart from Article 2, where it provides that every individual is entitled to the enjoyment of the rights provided in the ACHPR without distinction to factors like language. Frans Viljoen has opined that to achieve the full purpose of the ACHPR as a human rights instrument, the African Commission must adopt the doctrine of implied rights while interpreting the instrument's provisions.[111] By this, he means that rights not expressly provided could be implied from other rights expressly provided. In other words, it is an inference of rights not provided for by purposefully interpreting other rights provided for. The African Commission adopted this approach in the case of *Social and Economic Rights Action Centre (SERAC) and Another v. Nigeria*[112] where it decided that even though the ACHPR did not provide for the right to shelter, this right could, nonetheless, be implied by purposefully interpreting the rights to property, health, and family.[113] For Maja, this method of interpretation shows that 'treaties are living documents that need to be (re)interpreted continuously in the light of changing and contemporaneous circumstances'.[114] In this regard, Maja argues that the African Commission can 'imply the right to use minority languages into the rights enshrined in the ACHPR and other African treaties because the history of marginalisation of minority languages... justifies the need for African treaties to be responsive to such marginalisation'.[115]

Again, Articles 60 and 61 of the ACHPR give the African Commission vast leverage to draw inspiration from other international human rights instruments like 'the Charter of the United Nations, the Charter of the Organisation of African Unity, the Universal Declaration of Human Rights, other instruments adopted by the United Nations and by African

109 Maja, "Towards the Human Rights Protection of Minority Languages in Africa".

110 African Charter on Human and Peoples' Rights ("Banjul Charter") (AU) 27 June 1981, CAB/LEG/67/3 rev. 5, 21 ILM 58.

111 Viljoen, *International Human Rights Law in Africa*, 327.

112 *Social and Economic Rights Action Centre (SERAC) and Another v. Nigeria* (2001) AHRLR 60 (ACHPR 2001).

113 Ibidem, para. 60.

114 Maja, "Towards the Human Rights Protection of Minority Languages in Africa".

115 Ibidem.

countries' regarding the protection of human rights. The African Commission should also draw inspiration from 'customs generally accepted as law, general principles of law recognised by African states, as well as legal precedents and doctrine'.[116] Conversely, the import of these provisions is that the African Commission can rely on other international instruments that protect language rights, whether or not the African country where a language right has been alleged to be breached has signed and ratified the instrument. Furthermore, from these provisions and relying on the doctrine of implied rights, the protection of minority languages can be inferred from the rights to non-discrimination,[117] equality,[118] and freedom of expression.[119] A further reading of the ACHPR will show that the language right of the Indigenous peoples and other minority groups also can be inferred from the right to education, as stated earlier[120] and the right to culture as stipulated in Article 17 (2 and 3). The African Commission, in the case of *Malawi African Association and Others v. Mauritania*[121] inferred language right as part of the right to culture. In this case, some communities claimed slavery and similar abuses existed in Mauritania, as well as institutionalised racial prejudice perpetuated by the governing Moor community against the more populous communities like the Soninke, Wolofs and the Hal-Pulaar groups.[122] Among other things, it was claimed that these Mauritanians were enslaved, routinely expelled, or moved from their lands, which the government then seized along with their animals. It was also claimed that they were forced to speak Arabic and denied the right to speak their own languages,[123] denied employment, and forced to work long and unpaid hours. Even though the African Commission did not find that there was a breach of language rights, while making comments on the allegation by the groups of the denial of the right to speak their native languages, it observed that:

> Language is an integral part of the structure of culture; it in fact constitutes its pillar and means of expression par excellence. Its usage enriches

116 Ibidem, art. 61.
117 ACPHR, art. 2.
118 Ibidem, art. 3.
119 Ibidem, art. 9.
120 Ibidem, art. 17 (1).
121 *Malawi African Association and Others v. Mauritania* (African Commission on Human and Peoples' Rights) 2000, Comm. Nos. 54/91, 61/91, 98/93, 164/97 à 196/97 and 210/98.
122 Ibidem, para 1.
123 Ibidem, para 26.

> the individual and enables him to participate actively in the community and its activities. To deprive a man of such participation amounts to depriving him of his identity.[124]

Even though the above express and implicit provisions are steps in the right direction, there is a need to expand the provisions further to cover newcomers in Africa and not just be restricted to Indigenous languages. We will now turn to the extent of linguistic human rights protection in Europe. We will now turn to the extent of linguistic human rights protection in Europe.

3.3. The European Uncertainty in Language Rights

In Europe, there are basically three means by which language rights are protected – the practice of Court of Justice of the European Union (CJEU), the European Court of Human Rights (ECHR), and the protection at the national level. Protection at the national level varies between states, reflecting differences in legal statuses and instruments. Accordingly, a comprehensive analysis of each state's language policy falls far beyond the scope of this article. In this regard, while our discussion of the jurisprudence of the CJEU and the ECHR addresses the language rights of both newcomers and Indigenous peoples, our analysis of national practices focuses solely on the protection of Indigenous peoples' language rights. This focus arises from the fact that such rights are not derived from EU or Council of Europe law, making them a notable example of differentiation among states with recognised minoritised groups of Indigenous peoples, such as the Sami people.

3.3.1. The Practice of the Court of Justice of the European Union on Language Rights Cases

Similar to African regional and AU law, EU law does not directly affect the state's language policy. The terms 'linguicism', 'linguistic genocide', or 'language rights' notably are not specified in EU law. Moreover, EU treaties regulate the use of language exclusively in the organisation of internal management of EU institutions (e.g., Article 20 (2)(b) of the Treaty on

124 Ibidem, para. 137.

the Functioning of the European Union).[125] As a majority of known legal orders, the EU law prefers particular legal statuses to a pure universality. Although the Charter of Fundamental Rights of the EU (CFR) proclaims in its body the majority of rights for everyone, the scope of rights and duties for EU citizens prevails upon the status of non-citizens.[126] Following the aforementioned, we have unpacked the concept of language as right through the multiple layers of personal possibilities addressed by law to particular groups of people and covered by the current EU legal agenda.

However, the CJEU has been engaged with language rights and migrants' status concerns. The CJEU has played such a notorious role in addressing the concerns of minority linguistic groups that some scholars call the case law of CJEU the most significant source of minority rights.[127]

In the *Groener case*,[128] CJEU highlighted the importance of recognising migrants' language competencies and needs through the prohibition of disproportional requirements for job candidates deriving from measures implemented by the state in its realisation of language policy.[129] The CJEU approved that a citizen of the Netherlands (Dutch native speaker), Groener, should be employed if she could fulfil specific reformulated language criteria. Following the CJEU's opinion, the demand to use the official language of a member state shall not be discriminatory to non-citizens.[130]

Moreover, as it follows from the CJEU's conclusion, language proficiency must correspond to the stated goals (e.g., the post of teacher).[131] As it follows from the Groener case, the CJEU considered whether the language promotion policy infringes the freedom of movement for workers under the meaning of Article 3 of Regulation (EEC) No. 1612/68,[132] which,

125 Article 20 (2)(b) provides a right to use one of the official languages of EU members in communication with EU institutions and obtain a reply in the same language. See more 'EUR-Lex - 12012E/TXT - PL - EUR-Lex' available at https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3A12012E%2FTXT (accessed 13 April 2024).

126 For elucidation, see Kochenov, "Ending the Passport Apartheid. The Alternative to Citizenship Is No Citizenship—A Reply", 1525-1530.

127 Urrutia and Lasagabaster, "Language Rights as a General Principle of Community Law".

128 C-379/87, *Anita Groener v. Minister for Education and the City of Dublin Vocational Educational Committee*, ECLI:EU:C:1989:197.

129 Ibidem, para 19.

130 Ibidem.

131 Ibidem, para. 21.

132 'EUR-Lex - 31968R1612 - PL - EUR-Lex' available at https://eur-lex.europa.eu/legal-content/EN/ALL/?uri=celex%3A31968R1612 (accessed 13 April 2024).

to the point, in its context, constitutes a reasoning problem of applicability for non-EU citizens since third nationals are not nationals of the member state.

Indeed, CJEU emphasised in Groener's case that any language policy should not impinge upon individual rights and freedoms. This conclusion draws a link to the universal pattern of human rights, which is incorporated into EU law and formulated in the CFR and human rights treaties entered into individually by member states through the principle of succession or substitution. In order to find the general principle by which a language policy on migrants is supposed to be governed, we turn our attention to the non-discrimination principle being allocated in Article 21 of CFR. Article 21 of CFR poses language, among other possible reasons for discrimination. Non-discrimination was recorded in the body of CFR as a constant value, continuing the tradition of public international law on the non-discrimination principle.[133] This form of discrimination has also been replicated in other legal instruments established by the EU, including the Staff Regulations.

Conversely, the jurisprudence of the CJEU concerning recruitment procedures implemented by EU institutions allows that the interest of the service may constitute a lawful objective for restrictions on the principles of non-discrimination and proportionality as stipulated in Article 1 (d) of the Staff Regulations.[134] The mentioned thinking pattern constitutes a more rigorous understanding of language proficiency corresponding to specific goals. The CJEU states that 'any limitation must be justified on objective and reasonable grounds and must be aimed at legitimate objectives in the general interest in the framework of staff policy'.[135] Furthermore, CJEU is even more restrictive in the issue of competition notices by formulating that if the information is not accessible in all official languages, it should be treated as a disadvantage for those who do not use omitted languages.[136] Moreover, the CJEU has expanded this approach to the languages of additional tools such as web forms for sending applications, particularly recruitments.[137] Indeed, there is a presumption of sufficient knowledge of at least one official language by the candidate, who, to the point, is required to obtain EU citizenship.[138]

133 The Universal Declaration of Human Rights is the first United Nations instrument that prohibits discrimination on the basis of language in article 2.

134 C-566/10 P, *Italian Republic v. European Commission*, ECLI:EU:C:2012:752, para 82.

135 Ibidem, para. 75.

136 Ibidem, para. 73-74.

137 C-377/16, *Kingdom of Spain v. European Parliament,* ECLI:EU:C:2019:249, para. 66.

138 Regulation no. 31 (EEC), 11 (EAEC) 1962, art. 26(96), available at https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A01962R0031-20140501 (accessed 30 May 2022).

However, the CJEU counts the personal circumstances as well, e.g., providing that in a case when the applicant demonstrates the knowledge of one of the official languages and does not directly indicate linguistic difficulties which prevented him from understanding, there is no discrimination against the grounds of language or infringement of principle to respect linguistic diversity in the EU.[139] Although Article 165(2) of TFEU emphasises that teaching and disseminating the languages of member states is a part of the EU's development of dimension in education, linguistic diversity remains fully recognisable just for official languages of the EU.

As it seems, the universality of the application of human rights means the recognition by EU members of the necessity to treat all humans equally. However, the direct realisation of the general principle of non-discrimination by language, as it follows from the reviewed CJEU case law and particular regulations (i.e., Staff Regulations), is not so predictable. The applicability of CJEU's practice grounded based on internal requirements of EU institutions in the case of migrants also seems to be a problem concerning the different subjects of disputes.

Another critical case is *Bickel and Franz*[140] since it corresponds to the principle of non-discrimination considering the distribution of public services and proclaimed rights. The CJEU insists that non-members of national minorities, who speak the same language, although the EU member's citizenship was not granted to them, should enjoy the same linguistic privileges as it applies to minority groups in member-states. Therefore, CJEU indicates the possibility of using the opportunities of national minorities, even for those who do not formally belong to them. In the *Angonese case*,[141] being a construct of both Bickel and Franz and Groener, the CJEU decided that a language proficiency certificate should be issued without reference to a specific geographical location. However, it should be emphasised that this decision does not exclude the nostrification of third-national diplomas in the meaning of EU law.

However, the CJEU made an ambiguous statement in its preliminary ruling on *Kreis Warendorf v. Alo and Osso v. Region Hannover*.[142] The CJEU recognised that: (a) all people who are granted protection by the state should

139 T-723/18, *João Miguel Barata v. European Parliament*, ECLI:EU:T:2021:113, para 121.

140 C-276/96, *In Re Bickel and Franz*, ECR 1-7637.

141 C-281/98, *Angonese v. Cassa di Risparmio di Bolzano*, ECLI:EU:C:2000:296.

142 C-443/14 and C-444/14, *Kreis Warendorf v. Alo and Osso v. Region Hannover*, ECLI:EU:C:2016:127, para. 64.

receive the same framework of rights and duties as it is applicable for legally permitted non-citizens,[143] (b) excess to public assistance shall be granted at least in accordance with the standards applied to nationals. On the one hand, the CJEU takes a reasonably balanced position on the issue of refugees by setting such boundaries. On the other hand, the merged refugee status with non-citizens illustrates an attempt to be neutral and, therefore, not exert pressure on members' migration policies.

Presently, the aforementioned legal framework is unable to address the significant consequences that have already emerged. A significant illustration of this is the emerging conflict over educational programmes in Estonia, where the Ministry of Education has expressed apprehension regarding the online school established by Ukrainian government officials and has proposed the placement of Ukrainian children in schools utilising the Estonian language as the medium of instruction.[144]

Apart from the law of direct action, which is applicable to case law and treaties (i.e., primary law), EU institutions offer a significant conceptual framework that encompasses assessment methodologies (e.g., the European benchmark for refugee integration), statistical data and public materials, as well as programmes with specific objectives and recommendations targeted at national systems.

The EU's political agenda currently demonstrates a more unequivocal and robust approach. The EU's Action Plan on Integration and Inclusion 2021-2027 (the Action Plan 2021-2027),[145] together with the Action Plan on the Integration of Third-Country Nationals (the Action Plan 2016),[146] recognising a more uncertain status of non-citizens, provides a framework for integrating migrants and refugees in the EU member states. The plan sets out a comprehensive approach to integration, encompassing education,

143 Ibidem, para. 56.

144 Estonian authorities view online education for Ukrainian refugees as a supplementary option to mandatory in-person education in Estonia, which does not exempt parents from their obligation to enrol their children in Estonian schools. See Министерство напомнило об обязанности детей украинских беженцев учиться в эстонских школах, *ERR*, available at https://rus.err.ee/1609054850/ministerstvo-napomnilo-ob-objazannosti-detej-ukrainskih-bezhencev-uchitsja-v-jestonskih-shkolah (accessed 13 April 2024).

145 Action Plan on Integration and Inclusion 2021-2027, available at https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A52020DC0758&qid=1632299185798 (accessed 13 April 2024).

146 Action Plan on the Integration of Third Country Nationals, available at https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A52016DC0377&qid=1632298272980 (accessed 13 April 2024).

employment, social inclusion, and access to essential services. This political agenda enables the monitoring of a shared strategy of the EU member states towards the integration and inclusion of migrants and refugees in Europe. In both documents, multilingualism is seen as a preferred feature for education programmes, among other practical instruments. In particular, Action Plan 2016 proclaims that knowledge of the host country's (official) language is crucial for third-country nationals. Thus, *de facto*, the EU sees knowledge of its official languages as a resource for refugees to be a part of society. Indeed, the idea of refugees' cultural rights, which includes the right to know their first (native) language, remains hidden or defunct. Furthermore, Action Plan 2021-2027 proclaims that schools should be 'real hubs' for students with refugee backgrounds and their families. The plan highlights that multilingual classrooms are the prominent solution for integration. It is also mentioned that states should fight segregation and create inclusiveness by fostering interactions between migrant and native children. Likewise, the Organisation for Economic Cooperation and Development (OECD) highlights language support for multilingual students as key to ensuring school achievement and societal equity.[147] The mentioned political documents (i.e., plans) construct a recommendation that may not be adhered to by EU members.

Again, based on the cases analysed above, the CJEU has primarily concentrated on resolving issues related to the economic integration of Member States and their citizens. Consequently, the cases discussed above predominantly concern the free movement of workers, except *Kreis Warendorf v. Alo and Osso v. Region Hannover*. It is unequivocal that the EU's fundamental principle of the free movement of workers cannot be directly applied to the legal status of beneficiaries of international protection, as this status explicitly excludes individuals holding the citizenship of the EU's Member States. Furthermore, it does not substantially enhance the state of rights of all kinds of minoritised groups. A pivot example is the *Bickel and Franz* case, which demonstrates that its outcomes are applicable only when an officially recognised ethnic group exists in both Member State A and Member State B (e.g., the German minority in Italy and the German majority in Germany). However, the jurisprudence of the CJEU does not provide grounds to conclude that any Member State is obligated (e.g., due to migration processes) to recognise or

147 Simon et al., "No More Failures. Ten Steps to Equity in Education. Summary and Policy Recommendations".

grant corresponding rights to newly emerging ethnic groups already officially recognised in other EU Member States.

The EU lacks specific legal instruments exclusively dedicated to the protection of Indigenous peoples, including the Sámi. However, certain political declarations, albeit non-binding, provide insight into the EU's position and approach toward Indigenous-related issues. For instance, the EU Action Plan on Human Rights and Democracy (2020-2024)[148] emphasizes that the EU should '[...] [e]nsure visibility, support activities and raise individual cases related to [...] Indigenous peoples' rights as set out in the UN Declaration on the Rights of Indigenous Peoples, climate change, and those resulting from corporate abuses'.[149] As indicated in the plan's introduction, this document's primary objective is to strengthen and refine the EU's efforts to promote human rights and democracy globally.[150] While the action plan itself underscores the necessity for institutions of the EU to adhere to universal standards for the protection of Indigenous peoples' rights (such as the UN Declaration on the Rights of Indigenous Peoples), its provisions primarily outline a desired course of action for EU institutions in their relations with third countries, rather than addressing the internal policies of Member States.

3.3.2. The Jurisprudence of the European Court of Human Rights on Language Rights

Given the aforementioned specifics of the approach developed through the legal practices of EU institutions towards beneficiaries of international protection and other minoritised groups, such as Indigenous people, it is essential to consider the framework of human rights protection developed by the Council of Europe, particularly the longstanding jurisprudence of the ECHR which rooted in provisions of the Convention for the Protection of Human Rights and Fundamental Freedoms of 1950 (Convention). [151] It is important to note that the Convention is a part of EU law and, as such, binding on all its Member States and institutions.[152]

148 EU Action Plan on Human Rights and Democracy (2020-2024), available at https://www.eeas.europa.eu/sites/default/files/eu_action_plan_on_human_rights_and_democracy_2020-2024.pdf (accessed 2 January 2025).

149 Ibidem, 12.

150 Ibidem, 5-6.

151 European Convention on Human Rights, available at https://www.echr.coe.int/documents/d/echr/convention_eng (accessed 2 January 2025).

152 The Treaty on European Union (Article 6) explicitly recognises the ECHR as a fundamental rights framework for the EU, and adherence to its principles is a prerequisite for EU membership.

The Convention is also among the most important instruments of international public law, protecting human rights and fundamental freedoms across Europe, extending beyond the borders of European Union members. Among the issues the ECHR formulates, the grounds are linguistic matters, which play a crucial role in preserving identity, culture, and individual equality. Indeed, such issues are predominantly examined within the jurisprudence of the ECHR rather than being explicitly articulated in the provisions of the Convention. In the ECHR practice, a general understanding of rights related to language usage exists, but this does not expressly address issues specific to minoritised groups. In this regard, The ECHR case law concerning freedom of expression (Article 10 of the Convention) warrants particular attention. According to the ECHR's case law, freedom of expression encompasses all forms of expression, regardless of their content or the method of communication, including, in particular, political expression,[153] artistic expression,[154] and even entertainment music.[155] In the case of *Mestan v. Bulgaria*,[156] the ECHR found that the fines imposed under the Bulgarian Electoral Code, which prohibited campaigning in languages other than the official language, were incompatible with Article 10 of the Convention. The Court stated:

See: Consolidated version of the Treaty on European Union (C 326/13), available at https://eur-lex.europa.eu/resource.html?uri=cellar:2bf140bf-a3f8-4ab2-b506-fd71826e6da6.0023.02/DOC_1&format=PDF (accessed 2 January 2025). To this point, CJEU accepts all international agreements that comply with EU law, which have been signed or participated by EU Member States, as tools for interpreting the content and scope of 'fundamental rights (e.g., see judgment of the CJEU of 14 May 1974, 4/73, *Nold v. Commission*, [1974] ECR 491). However, it is essential to note that EU Member States may approach this treaty differently, as the ECHR is supplemented by 16 additional protocols consisting of amendment, substantive and procedural mechanisms. For instance, the Republic of Poland is a party to Protocols nos. 1, 4, 6, 7, and 13, which expand the scope of rights and freedoms protected by the Convention, as well as Protocols nos. 11 and 14, which reform the complaint system. See the complete list of all documents ratified by the Republic of Poland within the system of the Council of Europe: https://www.coe.int/en/web/conventions/full-list?module=treaties-full-list-signature&CodePays=POL (accessed 3 January 2025).

153 See para. 43 in *Arnold Nilsen and Jan Gerhard Johnsen against Norway*, App. no. 23118/93, available at https://hudoc.echr.coe.int/eng#{%22itemid%22:[%22001-58364%22]} (accessed 3 January 2025).

154 *Ekmadenis LTD. v. Lithuania*, App. no. 69317/14, available at https://hudoc.echr.coe.int/fre?i=001-180506 (accessed 3 January 2025).

155 See para. 54-55 *in Groppera Radio AG and others v. Switzerland*, App. no. 10890/84, available at https://hudoc.echr.coe.int/eng?i=001-57623 (accessed 3 January 2025).

156 *Affaire Mestan c. Bulgarie*, Requête no. 24108/15, available at https://hudoc.echr.coe.int/eng?i=001-224437 (accessed 3 January 2025).

> [The Court] acknowledges that, in principle, states have the right to regulate the use of languages in specific forms or circumstances related to public communication by candidates and other persons during election campaigns, and, where appropriate, to impose certain restrictions or conditions that respond to a 'pressing social need' (para. 60).

However, in the same paragraph, the Court emphasized:

> [...] Regulatory frameworks that impose a complete ban on the use of unofficial languages under threat of administrative sanctions cannot be regarded as compatible with the fundamental values of a democratic society, which include the freedom of expression guaranteed by Article 10 of the Convention (para. 60).

Additionally, the ECHR noted in the same paragraph that expressing opinions would be meaningless without free access to means of communication, especially under the threat of sanctions, even if those sanctions are administrative. It can be concluded that the freedom to choose the language of communication is protected under Article 10 of the Convention. Indeed, the ECHR accepts the possibility of Member States setting limits for this freedom by stipulating that any restriction on such freedom may be justified only if it is proportionate to the legitimate aims outlined in Article 10(2) of the Convention (para. 63).

Language can also serve as a form of social protest as a sort of symbolic manifestation: individuals can use a particular language(s) to express their stance toward the state or its policies. Such actions also fall under Article 10 of the Convention. To this point, Article 10 protects even symbols displayed on clothing when they convey a social position. In the case of *Tatár and Fáber v. Hungary*,[157] the ECHR recognised that hanging dirty laundry on the fence of the Parliament building in Budapest constituted an expression protected under Article 10 of the Convention. This symbolic act was intended to protest the political crisis in the country, with the dirty laundry symbolizing 'problems that need to be resolved'. The Court did not doubt that these were instances of symbolic expression protected by Article 10 of the Convention.

157 *Tatár and Fáber v. Hungary*, App. no. 26005/08 and 26160/0, https://hudoc.echr.coe.int/eng?i=001-111421 (accessed 3 January 2025).

The ECHR also addressed the issue of the right to one's own name. In this context, it is worth highlighting the case of *Mentzen v. Latvia*,[158] which concerned the refusal of the Latvian authorities to change the applicant's surname. Juta Mentzen, also known as Juta Mencena, requested a change to the spelling of her surname to align with the phonetic principles of the Latvian language, reflecting her German heritage. The authorities refused, citing the existing regulations governing the registration of surnames. In examining the case, the ECHR based its considerations on Article 8 of the Convention, which guarantees the right to respect for private and family life. The ECHR recognised the applicability of Article 8 to disputes concerning personal names, encompassing both aspects of 'private life' and 'family life'.

The ECHR then examined whether Latvian regulations and application procedures provided sufficient safeguards against arbitrariness and whether they were necessary in a democratic society. The ECHR accepted the applicant's argument that the transcription of the affricate consonant 'tz' to 'c' and the addition of the inflectional ending 'a' by the Latvian authorities could cause difficulties and inconveniences in the applicant's social and professional life. In this context, the ECHR noted that the right to respect private life, as understood under Article 8 of the Convention, includes the right to maintain relationships with others and to lead an everyday social life. Furthermore, the ECHR found that the phonetic transcription and grammatical adaptation of the applicant's surname, to the detriment of its original spelling, constituted an interference with the applicant's right to respect for private and family life. Interestingly, while the ECHR acknowledged the interference, it concluded that such interference would not violate the Convention if it was 'in accordance with the law', pursued one or more legitimate aims under Article 8(2), and was 'necessary in a democratic society' to achieve those aims. On this point, the ECHR refrained from further assessing the compliance of Latvia's constitutional provisions regarding the state language and the limits of interference with private life in implementing these norms. Instead, it held that it was primarily for the Latvian authorities, rather than the ECHR, to evaluate the actual situation of the Latvian language within the country and to assess the validity of the factors considered as potentially putting the language at risk. Additionally, the ECHR

158 *Mentzen v. Latvia*, App. no. 71074/01, ECtHR, https://hudoc.echr.coe.int/eng#{%22itemid%22:[%22001-70407%22]} (accessed 3 January 2025).

referred to the judgment of the Latvian Constitutional Court of 21 December 2001, which stated that the situation of the Latvian language in the overall social relations of the country remained relatively unstable and that additional protection was therefore necessary. The ECHR noted that it could only challenge this assessment if it were arbitrary, which was clearly not the case in the present matter.

Thus, the ECHR's practice significantly complements the EU's limited legal framework regarding language issues. However, despite some decisions in the ECHR's jurisprudence that provide grounds for justifying the use of certain languages in private life or under the freedom of expression, the ECHR has, until recently, refrained from directly intervening in the language policies of Member States, let alone evaluating the appropriateness of such policies. This restraint aligns with the principle of subsidiarity, which places these matters within the remit of national authorities and aims to prevent the imposition of uniform European conceptions of morals.[159] In this context, the recent case of *Mestan v. Bulgaria* is a landmark ruling concerning the extent to which a state may regulate language-related issues. However, it is important to emphasise that the ECHR has not addressed issues related to the establishment of special regimes for the languages of migrants or Indigenous peoples. All the aforementioned judicial decisions concerning language complement the universal framework for the protection of fundamental rights—one of which is freedom of speech—and apply equally to both minorities and majorities.

3.3.3. The Protection of Indigenous Peoples' Language Rights at the National Level

Although the issues concerning Indigenous peoples are not directly addressed within the European regional human rights protection system, this does not mean that the problem of the use and, consequently, the preservation of their languages is absent in Europe. As earlier mentioned, the Sámi people are regarded as the only recognised Indigenous peoples in Europe. According to Olga Shchukina and others, the Sámi language is a Finno-Ugric language mostly spoken in northern parts of Norway, Sweden, Finland, and Russia.[160] To point to the language's dialectal differences, Shchukina and others argue that ten Sámi dialects exist and do not depend on state borders. Instead, these

159 See additional discussion on the principle of subsidiarity in: Huijbers, „The European Court of Human Rights' procedural approach in the age of subsidiarity", 184.

160 Shchukina et al, "Norwegian Policy on Sami Language", 188.

dialects extend beyond state borders and include Southern, Ume, Pite, Lule, Northern, Inari, Skolt, Akkala, Kildin and Ter Sami.[161] Most of the dialects of Sámi are now seriously threatened, especially the Southern Sámi, because it is primarily spoken by the grandparent generation.[162] Consequently, UNESCO recognises the Sámi language as an endangered language.[163]

This has prompted national governments to implement measures to protect the Sámi people and their language rights. For instance, Article 108 of the Norwegian Constitution, headed the 'Sámi Article', provides that 'authorities of the state shall create conditions enabling the Sámi people, as an indigenous people, to preserve and develop its language, culture and way of life'.[164] To complement this provision, the Sámi Act of 1987 aims 'to enable the Sámi people in Norway to safeguard and develop their language, culture and way of life'.[165] It recognises that 'Sámi and Norwegian are languages of equal worth' and should be accorded the same level of protection.[166] One basis for including a person in a separate register of Sámi electors in a particular municipality of residence is the proof of Sámi language. So, in addition to declaring that one is a Sámi, one also has to show that they either have Sámi as their domestic language or have or have had a parent, grandparent or great-grandparent with Sámi as his or her domestic language before they can request to be included in the Sámi electoral register.[167] This language right extends to the use of the Sámi language in judicial proceedings.[168]

The fundamental provisions regarding Sámi rights are established in the Finnish Constitution. As an indigenous group, the Constitution grants Sámi the right to preserve and maintain their language and culture.[169] Furthermore, the Act on the Sámi Parliament reiterates this language right

161 Ibidem.
162 Norwegian Ministry of Labour and Social Inclusion, "Action Plan for Sami Languages", 18.
163 Ibidem.
164 The Constitution of the Kingdom of Norway, https://lovdata.no/dokument/NLE/lov/1814-05-17 (accessed 5 January 2025).
165 The Sami Act, "Act of 12 June 1987, no. 56," [art. 1-1] https://www.regjeringen.no/en/dokumenter/the-sami-act-/id449701/ (accessed 5 January 2025).
166 Ibidem, art. 1-5.
167 Ibidem, art. 2-6.
168 Ibidem, art. 3-4.
169 The Constitution of Finland, [section 17] https://oikeusministerio.fi/en/constitution-of-finland (accessed 5 January 2025).

of the Sámi people[170] and provides the criteria for identifying as a Sámi, among which is that the person or at least one of their parents or grandparents has learned the Sámi language as their first language.[171] Additionally, the authorities in Finland are obligated to negotiate with the Sámi people on measures that will affect the development of the Sámi language and Sámi-language school education and social and health services and other similar matters affecting the Sámi language, culture or their status as an Indigenous people.[172]

The Russian Constitution in Article 68(3), guarantees to all of its peoples the right to preserve their native language and to create conditions for its study and development.[173] There are 47 recognised Indigenous peoples in Russia,[174] including the Sámi people, so this constitutional provision should be understood as also guaranteeing the language rights of the Sámi people. According to Article 26(2) of the Constitution, '[e]ach person shall have the right to use one's mother tongue and to the free choice of language of communication, upbringing, learning, and creativity'. Unfortunately, the current advancement in the protection of the language rights of the Sámi Indigenous peoples in Norway and Finland is not apparent in Russia. For instance, Sámi people in Russia are forced to conceal their identities and live outside the law for fear of being imprisoned or persecuted.[175] Over the past decade, many events have occurred in Russia, among which, arguably, the most critical as threats to minority protection are the constitutional reform that established Russian as the primary and mandatory language,[176] Russia's withdrawal from the Council of Europe, and the subsequent refusal of Russian authorities to comply with decisions of the European Court of Human Rights, effective from 16 March 2022.[177] In July 2024, the Russian Ministry of Justice updated

170 Act on the Sámi Parliament [section 1] https://www.finlex.fi/fi/laki/ajantasa/1995/19950974 (accessed 5 January 20250

171 Ibidem, section 3.

172 Ibidem, section 9.

173 The Constitution of the Russian Federation, http://www.constitution.ru/en/10003000-04.htm (accessed 5 January 2025).

174 Zmyvalova, "The Right to Language in School: Russian Sámi", 807.

175 Bryant, "They Want Total Control': How Russia is Forcing Sami People to Hide their Identity".

176 See more on the constitutional reform in Russian Federation and language rights in Klinytskyi, "Prawa językowe w Federacji Rosyjskiej: commùne bònum czy bonorum privata? Język v. konstytucja", 307-322.

177 See more on the withdrawal in Fikfak and Izvorova, "Language and persuasion: Human dignity at the European Court of Human Rights", 3.

its list of terrorists and extremists to include 55 Indigenous organisations.[178] Finally, Zmyvalova summarises the challenges in the realisation of language rights by the Sámi people in Russia thus:

> the lack of legal implementation mechanisms, the prevalence of the Russian language in all spheres of life, and internal incoherence and gaps in the legal regulations. Also, the legal regulations concerning the educational system often contain the clause on 'opportunities provided by educational system', thus, allowing the non-implementation of these provisions.[179]

4. Conclusion

Linguicism and linguistic genocide are still rife in Africa and Europe, even though it is now over three decades since Skutnabb-Kangas conceptualised these ideas. The situation in Africa needs to be well-developed, and the little protections that could be gleaned from other instruments tend to protect only African Indigenous languages. The legal regime does not take into consideration the possibility of migrants who are not of African origin. It is understandable why this might be so; only a few people migrate to Africa from other continents, unlike the situation in Europe. Again, the situation in Europe is uncertain since regional law well established the language rights for native national minorities constituted by citizens of a particular state, although states (not the national minorities themselves) decide who will be granted this status. In turn, a more indecisive situation occurs in the case of newcomers.

On the one hand, migrants can use the same framework of language rights granted to national minorities (e.g., Ukrainians can benefit from already established public institutions for Polish citizens of Ukrainian nationality in Poland). In addition, the CJEU sets the border between the status of EU citizens and non-citizens, allowing EU members to implement the lowest measures for non-natives. We have to admit that today's Europe has an attempt to come to a common social denominator under the influence of old-state concepts. Old states representing a culture of duties try to limit the opportunity to exercise rights by establishing lists (of recognised

178 Ibidem.
179 Zmyvalova, "The Right to Language in School: Russian Sámi", 845.

minorities) and other necessary documents and provisions, giving preference to one language and not seeing others. They habitually confirm that the state's existence is higher than man's and, consequently, set boundaries. What is the ultimate solution, then?

The concept of language rights, according to our conviction, should be implemented in two substances: (a) language development and promotion and (b) personal non-discrimination. The first one matches Skutnabb-Kangas's 'rights for a language'. In turn, the second one makes day-to-day life in society more comfortable for people with non-official language backgrounds. While international institutions may lack the authority to dictate which minorities or languages should be recognised or what rights should be granted to these groups, the issue of non-discrimination can be addressed more effectively on an individual level. In this context, we emphasise the term 'personal non-discrimination' regarding language rights, contrasting it with collective language rights issues. Unlike personal non-discrimination, non-discrimination of a minoritised group (ethnic, indigenous, etc.) often encompasses more complex and politically charged considerations, such as the autonomy of that group and their role in a state policy. These matters traditionally remain beyond the purview of the European regional system of human rights institutions, which focus on individual rights rather than engaging with broader political and collective dynamics. This distinction is particularly evident in the case law of the CJEU and the ECHR, which has consistently upheld fundamental rights in contexts where language plays a critical role on a personal, rather than collective, level. Likewise, further research requires a broader consideration of linguistic rights. Indeed, eco-linguistic attempt to conserve languages is lifeless since society develops the language, and then the imperative form of retaining a language against the will of society might raise issues.

Moreover, the need for a broad consideration of linguistic rights is necessary now more than ever, considering the recent increase in the movement of people to Europe caused by the war in Ukraine and other migrants moving into Europe and the discrimination against Indigenous languages in Africa. The concept of linguistic rights should encompass language development, promotion, and personal non-discrimination. It is crucial to recognise that languages are used and modified by people, and any linguistic rights must primarily correspond to the individual's needs, not the language itself.

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