LINGUISTIC MINORITY RIGHTS UNDER INTERNATIONAL LAW: HARD VS. SOFT LAW PROTECTIONS AND AN ANALYSIS ON THE LINGUISTIC RIGHTS OF KURDS IN TURKEY

by

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ABSTRACT

In this thesis, the question posed is whether there's an appropriate international linguistic rights regime in place and what are the implications of an undefined regime to the international community. The thesis argues that there is a lack of definition and scope within the current hard law paradigm in international human rights law when dealing with linguistic minority rights and this deficiency is apparent in how the UN human rights bodies respond to current domestic issues such as the one concerning the Kurdish-speaking minority in Turkey. This research question is answered and analyzed by examining the current hard law in place via the major UN human rights treaties and jurisprudence coming out of the HRC. Hard law on a regional level is also looked at through the European system and the jurisprudence from the ECtHR. Soft law developments on the regional and international level are also examined to highlight how an appropriate linguistic rights regime could be structured. Turkey's rights regime towards its Kurdish-speaking minority is used as a case study to highlight the deficiencies of the current international system and the urgency for its improvement.

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Introduction

Conflicts regarding language rights have affected societies from indigenous communities in the Americas, Africa, and Oceania to minority groups in Europe. Certain contemporary conflicts have even turned violent with linguistic rights being a key issue, such as with the Basque Nationalist Movement in Spain. The Organization for Security and Co-operation in Europe (OSCE), the world's largest security-oriented organization in the world, values conflicts arising out of linguistic rights as one of the most, if not the greatest threat to collective security.[1] Linguistic rights (or the lack of such rights) not only have geopolitical consequences but also sociocultural ones. Sociolinguists have time and again cited an extraordinary amount of languages that are in danger of becoming virtually extinct within the century. The United Nations Educational, Scientific and Cultural Organization (UNESCO) have stated that over 2,000 languages are endangered currently.[2]

The primary function of international human rights law is to provide "a set of rules governing State behavior vis-a-vis individuals and, at its most basic, requires States to ensure that people can enjoy their fundamental freedoms"[3]. This means that it is imperative on international human rights law to generate an appropriate regime for the protection of such rights for States to follow:

> The driving idea behind international human rights law is that – because it is States who are in a position to violate individuals' freedoms – respect for those freedoms may be hard to come by without international consensus and oversight. That is, a State which does not guarantee basic freedoms to its citizens is unlikely to punish or correct its own behavior, particularly in the absence of international consensus as to the substance of those freedoms and a binding commitment to the international community to respect them.[4]

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[1] Sally Holt and John Packer, OSCE Developments and Linguistic Minorities, UNESCO International Journal on Multicultural Societies (IJMS) Vol. 3, No. 2, 2001 at 100, 101.

[2] United Nations Educational, Scientific and Cultural Organization (UNESCO) Atlas of the World's Languages in Danger (2010) http://www.unesco.org/languages-atlas/

[3] Overview of the Human Rights Framework, International Justice Resource Center http://www.ijrcenter.org/ihr-reading-room/overview-of-the-human-rights-framework/

[4] Id.

It is within this context that the current question is posed: What is the scope of protections for linguistic rights under international law and does the current international human rights regime appropriately accommodate the needs of linguistic minorities? An automatic sub-question is to ask: What are the implications of this framework's lack of scope to groups such as the Kurdish-speaking minority in Turkey?

To answer this research question, the thesis analyzes the current international human rights regime and defines to what extent it protects linguistic rights. It will also then examine the current state of this rights protection regime in international law in terms of negotiating state responses to protecting linguistic rights through employing the case study of linguistic rights of Kurdish-speaking citizens in Turkey. The linguistic rights of Kurds in Turkey has been chosen to show the effects of the current linguistic rights regime due to the lack of constitutional protections regarding their linguistic rights as Turkish citizens. Turkey is also well embedded in the international human rights law regime, through its ratification of United Nations Human Rights treaties[5] and the acceptance of the compulsory jurisdiction of the European Court of Human Rights[6], albeit with important reservations to the minority rights-related articles of the UN human rights treaties.[7]

This thesis makes a two-fold argument. First, the analysis aims to demonstrate that the hard law protections for linguistic minorities in international human rights law grants limited protections to these groups. Namely that it has been confined to the promotion of linguistic rights in the private sphere and the state's negative obligations to not interfere with its development in this area. Protections that seek to advance linguistic rights as part of the public sphere, however, are seen within soft law developments at the UN and regional levels, through the Council of Europe, UNESCO, and the UN Human Rights Office of the High Commissioner (OHCHR) which expand the minimum standard requirements for states to protect linguistic rights by proposing positive obligations in public use, education, and preservation of language. The second prong of the argument advanced by this thesis

[5] Turkey has ratified the following UN human rights treaties: Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT) in 1988, Convention on the Rights of the Child (CRC) in 1995, International Convention on the Elimination of All Forms of Racial Discrimination (CERD) in 2002, International Covenant on Civil and Political Rights (ICCPR) in 2003, International Covenant on Economic, Social and Cultural Rights (ICESCR) in 2003, International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families (CMW) in 2004, and the Convention on the Rights of Persons with Disabilities (CRPD) in 2009.
http://tbinternet.ohchr.org/_layouts/TreatyBodyExternal/Treaty.aspx?CountryID=179&Lang=EN

[6] Turkey ratified the European Convention on Human Rights (ECHR) in 1954.

[7] Most notably Turkey has reservations with the ICCPR and CRC.

concerns the actions of the Turkish state, which has gradually sought to align itself with the current hard international law regime for the protection of linguistic rights in the private domain but not in the public one, including measures such as protecting the public use of the Kurdish language, its place in education curricula, or its recognition and preservation as an official language even in the predominantly Kurdish regions of Turkey. Such public domain efforts would be in line with Turkey's obligations under the soft international law instruments.

In what follows, Chapter 1 addresses the historical and theoretical progression of hard linguistic rights under international law as well as its interaction with the development of the international human rights law regime after 1945. This chapter not only provides us the historical context of the interplay between minority rights and international law but analyzes where the international attention was focused on within this issue during certain eras which also explains the present-day discrepancy between hard and soft law on the level of protections to linguistic rights. This chapter also provides the current developments in the international legal framework for linguistic minority rights.

Chapter 2 analyzes the current scope of the international hard law on linguistic rights regime, with a special emphasis on the protection of linguistic rights under the auspices of the Human Rights Committee. This extends the rubrics of non-discrimination protections and the private use of language by citizens. The analysis of the HRC jurisprudence will establish the extent and content of the current international legal protections, highlight the special areas of attention within these developments and expose issues in which this normative framework lacks clarity and direction.

In Chapter 3, the thesis focuses on regional approaches using the European system given Turkey's membership in numerous European institutions: the OSCE, the European Union (EU), and most notably the Council of Europe. The European linguistic rights regime is examined primarily through the hard law that is brought by key instruments: the European Charter for Regional or Minority Languages (ECRML) and the European Convention on Human Rights along with its judicial arm: the European Court of Human Rights. Developments in soft law will also be looked at through the Framework Convention for the Protection of National Minorities as well as relevant documents by the EU and OSCE. Similar to the HRC, the European Court has a limited approach in defining a proper linguistic rights regime. However, the European Charter makes up for this deficiency with many other European institutions following suit on the Charter's expansive and detailed legal scheme.

The analysis on the European system in this chapter will lay the groundwork for the direction the United Nations and the international system as a whole is going towards.

Chapter 4 focuses on the current soft law trends and efforts being made to improve the international linguistic rights regime by stating positive obligations of states in recognizing, protecting and promoting language rights. The main documents to be examined for this purpose are the Universal Declaration of Linguistic Rights (UDLR) and reports by the Special Rapporteur on Minority Issues as indications and guides into what is exactly being proposed to improve the system. In this portion we will see that there is soft international consensus on the definition of State obligations in various sectors of state activity, which breaks from the current hard law paradigm.

Chapter 5 focuses on the domestic legal protections afforded by Turkey to the Kurdish language. This includes an examination of the current legal framework and political discourse in the Turkish Republic and how it is affecting the linguistic rights of the Kurdish community. In this section the fragility and minimal progress of an effective rights regime in Turkey will be iterated.

Chapter 6 will examine whether and to what extent Turkey's domestic practice aligns with the current international linguistic rights regime as it has been developed in hard and soft law and analyze how the current international rights regime has responded to the issues plaguing the Kurdish-speaking minority in Turkey This analysis shows that that the soft law addresses substantially more issues than what is prescribed under hard law and gives tangible steps in order to correct the deficiencies within the rights regime in place in Turkey that should be addressed with Turkey directly under its hard law obligations.

The concluding chapter summarizes the scope and direction of the hard and soft law protections under international law and the implications that they have had on states in particular with the linguistic rights regime in Turkey. The conclusion will show that the need for cohesion between the positive and negative rights of states is definite and is the only effective route to fully promote, preserve and protect linguistic minority rights.

Chapter 1

The Internationalization of Linguistic Rights

When discussing linguistic rights we are specifically speaking about the rights of linguistic minorities. This places the topic of linguistic rights into minority rights and more broadly international human rights law. Although the concept of minority rights has been intertwined within international human rights law for years, the scope of what those rights should be and how the specific protection of human rights for minorities differs from the general protection of human rights for all is still a highly contested issue. This tension is clearly captured in Patrick Macklem's discussion of minority rights and international law:

> Why should international human rights law vest members of a minority community – either individually or collectively – with rights that secure a measure of autonomy from the state in which they are located? To the extent that the field offers answers to this question, it does so from its deep commitment to the protection of certain universal attributes of human identity from the exercise of sovereign power. It protects minority rights on the assumption that religious, cultural and linguistic affiliations are essential features of what it means to be a human being. But its acceptance of this assumption is wary and partial. Minority rights might protect key features of human identity, but they possess the capacity to divide people into different communities, create insiders and outsiders, pit ethnicity against ethnicity, and threaten the universal aspirations that inform the dominant understanding of the mission of the field.[8]

Considering the intricate nature of this topic it is therefore incumbent to define what exactly a minority is under international law and how rights to minorities have developed in international law literature. This is all the more necessary as linguistic minorities historically have been dealt with alongside or corresponding to ethnic and religious minorities when it comes to minority protections on the international level. In this chapter, the evolution of international minority rights as a whole will be discussed with a particular emphasis on rights

[8] Patrick Macklem, Minority Rights in International Law, University of Toronto Faculty of Law, Legal Studies Research Series No. 08-19 at 2.

to linguistic minorities in order to show the major theoretical concepts that surround minority rights within international law.

I. The Internationalization of Minority Protections

The 1814 Congress of Vienna was one of the first international documents that touched upon the protection of linguistic minorities, most notably the Polish-speaking minorities under German control. Article 1 of the Final Act had a provision regarding the Polish minorities in several empires: "The Poles, respectively subjects of Russia, Austria and Prussia, shall obtain a representation of their National Institutions regulated according to the mode of political existence that each of these Governments to which they belong will judge useful and appropriate to grant them."[9] The Congress granted Poles the right to use their language alongside German for official business transactions. This congregation came after the backdrop of the French Revolutionary and Napoleonic Wars that ravaged the European continent. Throughout the 19th century, Congresses by the Great Powers of Europe were convened after major wars to settle peace terms and boundaries. Agreements were also made to protect religious and ethnic minorities within the borders of the empires. The particular European powers were primarily concerned with groups that they had links to either ethnically, linguistically or (more commonly) through religion.

The First World War brought global attention to the efforts of nationalism as well as its effects on international security. With the breakup and dissolution of certain European powers, the idea of minorities as rights holders was brought to the international front (more specifically at the regional/European level) mainly through bilateral treaties. The 1919 Paris Peace Conference brought about an end to the war with the Treaty of Versailles. Peace among the European powers may have not lasted from this event but the developments within the Paris Conference had an enormous impact on international law that can still be felt today and serves as the forerunner to our current minority rights discourse and systems in place. Issues surrounding racial equality and minority rights were at the forefront of discussions among the great powers which not only included Europe but representation from the United States and Japan as well.

[9] Rehman Hidayat and Muhammad Zubair, Development of Minorities' Rights and Critical Analysis of Contemporary Comparative International Human Rights Law for their Protection, International Research Journal of Social Sciences Vol. 2(7) (July 2013) at 54.

The first Minority Treaty (coincidentally much like the 1814 Congress of Vienna) concerned the Polish nation, which was partitioned over a century ago by the Great Powers of Europe. The sovereignty and independence of the Polish Republic was recognized and signed on the same day as the Treaty of Versailles. Poland would in turn recognize the rights of its ethnic, religious, and linguistic minorities. This was accepted initially under the Treaty of Versailles which mentioned that "Poland accepts and agrees to embody in a Treaty with the Principal Allied and Associated Powers such provisions as may be deemed necessary by the said Powers to protect the interests of inhabitants of Poland who differ from the majority of the population in race, language, or religion."[10] It was here that the definition of a minority is provided in an international legal document for the first time as any racial, linguistic, or religious group that is a not a part of the majority respective group within a nation-state. The Polish Minority Treaty afforded specific rights and protections to these minorities and was also used as a template for subsequent minority treaties signed during the Interwar period.

> Poland nationals who belong to racial, religious or linguistic minorities shall enjoy the same treatment and security in law and in fact as the other Polish nationals. In particular they shall have an equal right to establish, manage and control at their own expense charitable, religious and social institutions, schools and other educational establishments, with the right to use their own language and to exercise their religion freely therein.[11]

Articles such as the one above were used in the Treaty of St. Germain-en-Laye (dealing with Austria, Czechoslovakia, and Yugoslavia), Treaty of Paris (dealing with Romania), Treaty of Sevres (in regards to the Greeks), Treaty of Trianon (Hungarians), Treaty of Neuilly-sur-Seine (Bulgarians), and the Treaty of Lausanne (for the Turkish Republic which we will be examined at length later). Linguistic rights as well as self-determination of minorities were great concerns for the international community in the aftermath of World War I and these bilateral minority treaties helped shaped how international law dealt with these concepts during this time along with how the Permanent Court of International Justice (PCIJ)

[10] Treaty of Versailles art. 93, Paris, June 28, 1919.

[11] Minorities Treaty between the Principal Allied and Associated Powers art. 8, (The British Empire, France, Italy, Japan and the United States) and Poland, June 28, 1919.

responded to such matters, which derived its jurisdiction from the League of Nations Covenant as well as these Minority Treaties.

Much like the Minority Treaties it was structured upon, the PCIJ was not initially hesitant in dealing with self-determination and rights demands from minorities of Contracting States. In fact, one of the Court's very first advisory opinions (and arguably one of its most successful ones) was the resolution presented in regards to the Finnish/Swedish dispute over the Aaland Islands. Through the PCIJ, the League of Nations was able to provide international guarantees for the Swedish-speaking Aaland Islanders with significant political and cultural autonomy from Finland to protect their language and culture, which is still being recognized to this day. The legal process alone was unprecedented along with the successful results of the outcome.

> "Other conclusions of the Committee of Jurists and the Commission of Rapporteurs on the relationship between the principle of self-determination and the protection of minorities are still of relevance today. It was established that if the rights of minorities are being respected and its cultural identity is fully protected in situations such as the one in question, a demand for secession does not seem to be justified. The Åland solution has often been referred to as a model for the constructive and successful settlement of minority conflicts."[12]

The PCIJ continued to expand on minority protections and was highly influential in the development of international law. The 1930 advisory opinions concerning the Greco-Bulgarian "Communities" essentially provided a broader definition of what constitutes a minority with the Court concluding that it "is a group of persons living in a given country or locality, having a race, religion, language and traditions of their own and united by this identity of race, religion, language and traditions in a sentiment of solidarity, with a view to preserving their traditions, maintaining their form of worship, ensuring the instruction and upbringing of their children in accordance with the spirit and traditions of their race and rendering mutual assistance to each other."[13] This definition expanded protections partially in

[12] Patricia O'Brien, The Åland Islands Solution: A precedent for successful international disputes settlement. Under-Secretary-General for Legal Affairs, The Legal Counsel, January 17 2012.

[13] Collection of Advisory Opinions – The Greco-Bulgarian "Communities", Permanent Court of International Justice, Series B.-No. 17, July 31, 1930.

that it emphasized the right for minority groups to educate their children in order to preserve their ethnic, religious, and linguistic heritage. It also did not place a numerical attribute to define a group as a minority. This educational aspect along with a group's religious affiliation and language were understood by the PCIJ as a key element to a minority's identity and continued the tradition of trying to protect such liberties. Another case to highlight the PCIJ's approach was their 1935 advisory opinion regarding the closure of Greek schools in Albania. The Court found that Albania was violating the right of Greek nationals and went on to state that "there would be no true equality between a majority and a minority if the latter were deprived of their own institutions, and were consequently compelled to renounce that which constitutes the very essence of its being a minority."[14]

These historical instances were primarily focused in Europe and were unique to the continent and its history at the time in regards to the redrawing of imperial boundaries after successive major wars. However, the rise to prominence albeit limited during this era should not be understated. Linguistic minorities (along with their religious and ethnic counterparts) did not find their official recognition under international law as well as their need to be protected until after World War II. The end of World War II sparked interest in international human rights law and it is within this field that linguistic minority rights have seen its current and most significant development as international standards.

II. Minority Rights and International Human Rights Law (IHRL)

Human rights rose to the international level after the atrocities of World War II and the advent of the United Nations (UN). In 1948, the general principles and standards of human rights were set forth in the Universal Declaration of Human Rights (UDHR), while subsequent major conventions were drafted, signed, and effected outlining specific rights and their limitations. Despite the historical precedent in the PCIJ, the UN Charter and the UDHR did not make an explicit reference to minorities, indicating a break from the previous era on its focus. Currently there are eight major international human rights treaties with monitoring bodies that also hear individual complaints related to their respective conventions.[15] Four of

[14] Macklem at 12 (citing Case Concerning the Minority Schools in Albania, Advisory Opinion, 6.04.1935 P.C.I.L. REP. (SER. A/B) No. 64)

[15] International Covenant on Civil and Political Rights (ICCPR), International Covenant on Economic, Social and Cultural Rights (ICESCR), International Convention on the Elimination of All Forms of Racial Discrimination (ICERD), Convention on the Rights of the Child (CRC), Convention on the Elimination of All Forms of

them do not directly reference minorities since they specifically focus on women's rights (CEDAW), the rights of the disabled (CRPD), migrant workers (CMW), and enforced disappearances (CED). The International Convention on the Elimination of All Forms of Racial Discrimination (ICERD) was particularly focused on the eradication of racial segregation and the crime of apartheid without any explicit mention of minorities. It did however provide the international community a legal definition for discrimination, which would prove beneficial to minority protections:

> "Any distinction, exclusion, restriction or preference based on race, colour, descent, or national or ethnic origin which has the purpose or effect of nullifying or impairing the recognition, enjoyment or exercise, on an equal footing, of human rights and fundamental freedoms in the political, economic, social, cultural or any other field of public life."[16]

Although drafts of the International Covenant on Civil and Political Rights (ICCPR) and International Covenant on Economic, Social and Cultural Rights (ICESCR) were presented to the UN General Assembly in 1954, their adoptions did not take place until 1966, a year after the adoption of ICERD.[17] The ICESCR does not speak to minorities in any specific terms but has some beneficial points in that it references self-determination and non-discrimination.[18] Distinctively, it does promote the right of one's participation in the cultural life and the ability to facilitate social and cultural development, which ties not only ethnic but linguistic minorities as well.[19]

The ICCPR however was the first of this generation of human rights instruments to outline minority rights and specifically linguistic rights. The ICCPR outlines minority rights through its Article 27:

Discrimination Against Women (CEDAW), Convention on the Rights of Persons with Disabilities (CRPD), Convention against Torture and Other Cruel, Inhuman, or Degrading Treatment (CAT), International Convention for the Protection of all Persons from Enforced Disappearance (CED), and the pending International Convention on the Protection of the Rights of All Migrant Workers (CMW).

[16] International Convention on the Elimination of All Forms of Discrimination art. 1, UN General Assembly, United Nations, Treaty Series, vol. 660, p. 195, December 21, 1965 (ICERD).

[17] International Covenant on Civil and Political Rights, UN General Assembly, United Nations, Treaty Series, vol. 999, p. 171, December 16, 1966 (ICCPR). International Covenant on Economic, Social and Cultural Rights, UN General Assembly, United Nations, Treaty Series, vol. 993, p. 3 December 16, 1966 (ICESCR).

[18] ICESCR arts. 1-2

[19] CESCR General Comment No. 21: Article 15(1)(a) - Right of everyone to take part in cultural life para. 32, Committee on Economic, Social and Cultural Rights (CESCR), E/C.12/GC/21, December 21, 2009.

> "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."[20]

Through its monitoring body, the Human Rights Committee (HRC), ICCPR Article 27 has been the most significant area to produce jurisprudence on the recognition of minority rights within the UN System.

The last major human rights treaty to come out of the UN to mention minorities and rights afforded to them is the CRC, which was adopted in 1989. The CRC is first off unique in that it makes a distinction between children that belong to a minority and indigenous children however the rights afforded to both groups are identical. Article 30 is devoted entirely to these rights:

> "In those States in which ethnic, religious or linguistic minorities or persons of indigenous origin exist, a child belonging to such a minority or who is indigenous 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."[21]

The second unique character to the CRC in regards to minority rights is the emphasis that it places on State parties to "encourage the mass media to have particular regard to the linguistic needs of the child who belongs to a minority group or who is indigenous"[22]. If the mass media is not state-owned in a particular country that is a party to the CRC, it could easily be foreseeable that private actors such as new agencies and social media companies may be exposed to such monitoring by a UN human rights treaty body. The CRC has not seen a

[20] ICCPR art. 27

[21] Convention on the Rights of the Child art. 30, UN General Assembly, United Nations, Treaty Series, vol. 1577, p. 3, November 20, 1989 (CRC).

[22] Id. at art. 17(d)

communication arise out of this article[23] which therefore leaves us however with the jurisprudence of the HRC to detail and outline the current linguistic rights regime.

III. Conclusion

Linguistic rights and minority rights as a whole have experienced a more pronounced role within the international law scheme in the past couple of centuries, especially with instruments and systems that have been put into place after significant wars. Even more significant is the shift in focus on how best to approach minority rights. The pre-WWII era and the PCIJ focused on the collective rights of groups primarily through bilateral treaties. The advent of international human rights law and the coinciding multilateral treaties focused on the rights of individuals belonging to minorities. The collective rights given to certain minority groups versus the individual rights given to members of such groups has been a focal point of the current international linguistic rights regimes in regards to how best to provide the content and scope of such rights. The next chapter will parse out the details of this legal development and outline the current hard law protections that are in place for linguistic minorities on the international level.

[23] Issues concerning children belonging to minorities have however been addressed in Concluding Observations within the country-specific periodic reports that are conducted by the Committee on the Rights of the Child.

Chapter 2

The International Linguistic Rights Regime in Hard Law

The ICCPR and CRC have lumped linguistic minorities and their rights with those of ethnic and religious minority groups. There is little reference to what linguistic rights should entail within the international human rights system. Generally, linguistic rights have been characterized as the right to use one's own language[24] and the right to use that language in the upbringing and instruction of their child.[25] These two rights coincide in particular with individual liberties that are considered fundamental in human rights law: freedom of speech, expression, and education. It is in these spheres that linguistic rights have had the most attention and development. However, it is in these exact circles that linguistic rights have had the most confrontation to its theoretical underpinnings. Aside from the aforementioned areas, the HRC has also tackled or at least has been exposed to linguistic rights within the context of state activity via their public administration and judicial systems. This confrontation is part of a larger discussion of how minority rights, which is focused on rights to a particular group, fits or weighs against the individualistic nature of human rights. This chapter will examine relevant individual rights and freedoms and how they advance or inhibit the group/collective rights sought for under minority rights. The current nature and extent of the hard international linguistic rights regime will also be extrapolated primarily through the jurisprudence of the HRC and the Committee's General Comments.

I. Individual v. Collective Rights

Group and/or collective rights force us to examine what specifically needs to be protected when it comes to the recognized minorities under international law. This is distinguishable from individual rights, which focuses on freedoms granted to all citizens of one country. Individual rights' inability to specifically tailor certain protections to groups fosters the need for a more narrow and nuanced approach in order to tackle issues directly concerning minorities. Not only that but the HRC under its General Comment No. 23 starkly distinguishes group rights as a separate right "which is conferred on individuals belonging to

[24] ICCPR art. 27 *see also* Treaty of Versailles art. 93.
[25] CRC art. 30 *see also* "Collection of Advisory Opinions – The Greco-Bulgarian "Communities""

minority groups and which is distinct from, and additional to, all the other rights which, as individuals in common with everyone else, they are already entitled to enjoy under the Covenant."[26] The ICCPR helps us only to a certain extent by stating that rights should be granted to religious, ethnic, and linguistic minorities under international law. The HRC is however hesitant on how expansive and broad the powers of Article 27 should be and are cautious not to be seen as a force that threatens state sovereignty. This hesitancy of intrusion could be seen clearly in the HRC communication, Lubicon Lake Band v. Canada, where the Committee mentioned that the authors do have the right to self-determination but it was not its place to define and constitute what a "people" is under the Optional Protocol.[27] It is important to delineate these individual rights from rights to linguistic minorities under Article 27 in order to have a proper linguistic rights regime. To put into perspective, the HRC has examined forty-three communications under Article 27. Out of these forty-three communications, fifteen have been regarding linguistic minorities.[28] The authors of these fifteen communications have all coupled their claims of violations under ICCPR Article 27 with other individual rights protected under the Covenant as well. The most prevalent is the principle of equality before the courts and tribunals (Article 14), the right to privacy (Article 17), the freedom of expression (Article 19), and the principles of equality before the law and non-discrimination (Article 26). It is therefore difficult to look at linguistic rights as a free-standing set of rights and will need to be examined in relation with other human rights under the ICCPR and its interpretation of such rights by the HRC.

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[26] CCPR General Comment No. 23: Article 27 (Rights of Minorities) para 1, UN Human Rights Committee (HRC), CCPR/C/21/Rev.1/Add.5, April 8, 1994.

[27] Chief Bernard Ominayak and Lubicon Lake Band v. Canada, UN Human Rights Committee, UN Doc. CCPR/C/38/D/167/1984, March 26, 1990 at para 6.2.

[28] T.K. v. France, UN Human Rights Committee, UN Doc. CCPR/C/37/D/220/1987, November 8, 1989; M.K. v. France, UN Human Rights Committee, UN Doc. CCPR/C/37/D/222/1987, November 8, 1989; Dominique Guesdon v. France, UN Human Rights Committee, UN Doc. CCPR/C/39/D/219/1986, July 25 1990; Yves Cadoret, Hervé Le Bihan v. France, UN Human Rights Committee, UN Doc. CCPR/C/41/D/323/1988, April 11, 1991; Hervé Barzhig v. France, UN Human Rights Committee, UN Doc. CCPR/C/41/D/327/1988 at 92, 11 April 1991; C.L.D. v. France, UN Human Rights Committee, UN Doc. CCPR/C/43/D/439/1990, November 8, 1991 at para. 4.2; S.G. v. France, UN Human Rights Committee, UN Doc. CCPR/C/43/D/347/1988, November 1, 1991 at para 2.1; G.B. v. France, UN Human Rights Committee, UN Doc. CCPR/C/43/D/348/1989, November 1, 1991 at para 2.1; Kleckovski v. Lithuania, UN Human Rights Committee, UN Doc. CCPR/C/90/D/1285/2004, August 29, 2007; Raihman v. Latvia, UN Human Rights Committee, UN Doc. CCPR/C/100/D/1621/2007, November 30, 2010; John Ballantyne and Elizabeth Davidson, and Gordon McIntyre v. Canada, UN Human Rights Committee, UN Doc. CCPR/C/47/D/359/1989 and 385/1989/Rev.1 (1993); Mavlonov v. Uzbekistan, UN Human Rights Committee, UN Doc CCPR/C/95/D/1334/2004, April 29, 2009; Diergaardt et al. v. Namibia, UN Human Rights Committee, UN Doc CCPR/C/69/D/760/1996, July 25, 2000; Titiahonjo v. Cameroon, UN Human Rights Committee, UN Doc. CCPR/C/ 91/D/1186/2003, October 26 2007; R.L.M. v. France, UN Human Rights Committee, UN Doc. CCPR Communication No. 363/1989, April 6, 1992.

II. Article 14 – Language of Choice in Courts Proceedings and the Breton Cases

Out of the fifteen HRC communications dealing with linguistic minorities, nine of them were considerations submitted by members of France's Breton-speaking minority. The initial two communications brought before the HRC had to do with the authors' inability to use Breton as their language of choice in the French judicial system for proceedings they had against them.[29] All of these considerations were deemed inadmissible due to the French Government's statement that "in the light of article 2 of the Constitution of the French Republic, the French Government declares that article 27 is not applicable so far as the Republic is concerned."[30] This "declaration" has been interpreted by the Committee has a reservation to Article 27 and therefore the issue has not been examined under that particular article.

The subsequent three communications were however brought before the HRC under Article 14.[31] In these three submissions, the authors were native Breton speakers but also fluent in French. The authors requested to speak in Breton during the proceedings as they would be better able to express themselves in their mother tongue. The Committee in all three communications took the French Republic's side and stated:

> That the notion of a fair trial in article 14, paragraph 1, juncto paragraph 3(f), does not imply that the accused be afforded the possibility to express himself in the language which he normally speaks or speaks with a maximum of ease. If the court is certain, as it follows from the decision of the Tribunal Correctionnel and of the Court of Appeal of Rennes, that the accused is sufficiently proficient in the court's language, it is not required to ascertain whether it would be preferable for the accused to express himself in a language other than the court language.[32]

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[29] T.K. v. France, UN Human Rights Committee, UN Doc. CCPR/C/37/D/220/1987, November 8, 1989. *See also* M.K. v. France, UN Human Rights Committee, UN Doc. CCPR/C/37/D/222/1987, November 8, 1989.

[30] T.K. at para 8.5

[31] *See* Dominique Guesdon v. France, UN Human Rights Committee, UN Doc. CCPR/C/39/D/219/1986, July 25 1990 and Yves Cadoret, Hervé Le Bihan v. France, UN Human Rights Committee, UN Doc. CCPR/C/41/D/323/1988, April 11, 1991 and Hervé Barzhig v. France, UN Human Rights Committee, UN Doc. CCPR/C/41/D/327/1988 at 92, 11 April 1991.

[32] Guesdon at para 10.3

This opinion has been cited in later communications[33] and considering the amount of communications arising from this particular issue, the HRC found it noteworthy to address it in their General Comment No. 23:

> The right protected under article 27 should be distinguished from the particular right which article 14.3(f) of the Covenant confers on accused persons to interpretation where they cannot understand or speak the language used in the courts. Article 14.3(f) does not, in any other circumstances, confer on accused persons the right to use or speak the language of their choice in court proceedings.[34]

These communications were brought before the HRC in connection to a movement among Bretons to retain their language rights and identity in their ancestral homeland of Brittany with groups such as the "Stourm ar Brezhoneg" (Fight for the Breton Language), which has been mentioned in a couple of HRC communications.[35] The Bretons argue that retention of their language rights should include having the use of their language in areas such as the judicial system. The HRC wants to accommodate linguistic minorities at least within the judicial system only if it's absolutely necessary and finds no need for a special language rights regime within domestic judicial systems as long as the individual understands the official language.

III. Article 17 – Privacy and Names

Another set of communications dealing with Article 27 and linguistic minorities comes from the other side of the European continent within the Baltic region. The authors of the two considerations: Kleckovski v. Lithuania[36] and Raihman v. Latvia[37] both complained that their names were changed arbitrarily from their traditional spelling to ones that are in line with the

[33] C.L.D. v. France, UN Human Rights Committee, UN Doc. CCPR/C/43/D/439/1990, November 8, 1991 at para. 4.2.
[34] CCPR General Comment No. 23 at para 5.3.
[35] S.G. v. France, UN Human Rights Committee, UN Doc. CCPR/C/43/D/347/1988, November 1, 1991 at para 2.1 and G.B. v. France, UN Human Rights Committee, UN Doc. CCPR/C/43/D/348/1989, November 1, 1991 at para 2.1.
[36] Kleckovski v. Lithuania, UN Human Rights Committee, UN Doc. CCPR/C/90/D/1285/2004, August 29, 2007.
[37] Raihman v. Latvia, UN Human Rights Committee, UN Doc. CCPR/C/100/D/1621/2007, November 30, 2010.

official languages of the State parties (Lithuanian and Latvian respectively). Both authors are members of linguistic minorities within their respective countries and their names reflect their ethnic origin. Both considerations argued that these forced changes were a violation of Article 27 as well as Article 17, which enshrines the right to privacy.[38]

The Committee in Kleckovski found the author's claims that his name is part of his identity which is protected under Article 27 and that the name change was an "arbitrary and unlawful interference" to his right to privacy under Article 17[39] inadmissible. The author in the Raihman communication fared somewhat better in that the Committee found that the name change was arbitrary and in violation of Article 17.[40] The Committee did not believe it was necessary to consider whether this State action was also a violation under Article 27, which was also argued by the author. It is important to note that in this particular communication the Committee only believed that the name change was arbitrary but not unlawful and essentially took the State party's side in regards to its legislative efforts to protect the official Latvian language.[41] Deference was given to the State party's history with Russian occupation. Although Article 27 was not considered, a sense of how the Committee may have leaned can be gained from the dissenting opinions of Committee members Mr. Rafael Rivas Posada and Mr. Krister Thelin:

> With regard to article 27, the Committee first notes that it is undisputed that the author is a member of the Jewish, and Russian-speaking minorities in Latvia. The Committee, referring to its earlier jurisprudence, recalls that States parties to the Covenant may regulate activities that constitute an essential element in the culture of a minority, provided that the regulation does not amount to a de facto denial of this right. In the circumstances of the case, the Committee considers that the imposition of a declinable termination on his name and surname did not adversely affect his right, in community with the other members of the Jewish and Russian

[38] ICCPR Article 17 states that "1) No one shall be subjected to arbitrary or unlawful interference with his privacy, family, home or correspondence, nor to unlawful attacks on his honour and reputation. 2) Everyone has the right to the protection of the law against such interference or attacks."
[39] Kleckovski, at para 3.2
[40] Raihman, at para 8.3
[41] Id.

speaking minorities of Latvia, to enjoy his own culture, to profess and practice the Jewish religion, or to use the Russian language.[42]

Therefore, we can see that the HRC, although recognizing names as an essential part of one's human right to identity and culture, does not seem to suggest any special protections are due with regards to this issue and that it would not necessarily trigger a violation under Article 27.

IV. Article 19 - Freedom of Expression and Linguistic Rights

With respect to ICCPR Article 19 and the freedom of expression, the HRC has also made it a point to clarify the distinction between this right and linguistic rights in its General Comment:

> The right of individuals belonging to a linguistic minority to use their language among themselves, in private or in public, is distinct from other language rights protected under the Covenant. In particular, it should be distinguished from the general right to freedom of expression protected under article 19. The latter right is available to all persons, irrespective of whether they belong to minorities or not.[43]

Freedom of expression would seem to naturally help progress linguistic rights under international human rights law. However, even in this sphere conflicts arise.

The HRC was confronted with such a situation where the individual freedom of expression under ICCPR Article 19 came into a supposed clash with Article 27 in Ballantyne v. Canada.[44] The law at issue here was Quebec's language law which forbids the use of English in advertising or in the name of their firms. The Committee found that this was in

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[42] Id. at Appendix para 8.6 citing, inter alia, George Howard v. Canada, UN Human Rights Committee, UN Doc. CCPR/C/84/D/879/1999, July 26 2005 at para. 12.7, and Kitok v. Sweden, UN Human Rights Committee, UN Doc. CCPR/C/33/D/197/1985, July 27, 1988 at para 9.8, and Länsmann v. Finland, UN Human Rights Committee, UN Doc. CCPR/C/52/D/511/1992, October 30, 1996 at para 7.9

[43] CCPR General Comment No. 23 at para 5.3

[44] John Ballantyne and Elizabeth Davidson, and Gordon McIntyre v. Canada, UN Human Rights Committee, UN Doc. CCPR/C/47/D/359/1989 and 385/1989/Rev.1 (1993)

violation of Article 19 for the author's freedom of expression however did not find a violation of Article 27 since the English-speaking people of Quebec are not considered a linguistic minority due to their majority in Canada. This was not a unanimous decision with numerous concurring and dissenting opinions by the Committee members. Mr. Birame Ndiaye even mentioned that Quebec's existence is essentially to protect its French-speaking population and therefore found the limitation on the freedom of expression justifiable in this case.[45] Therefore, although finding a violation for the members of the English-speaking majority in Canada, at least some members of the HRC do recognize and respect the linguistic legal protections sought and needed by the Quebecois.

V. Education and Mass Media

In Mavlonov v. Uzbekistan, we find the only instance where the HRC found a violation under Article 27 in regards to a linguistic minority. In this communication, a Tajik-language newspaper was denied re-registration.[46] The Committee also found a violation under Article 19 but most importantly is the reasoning that the HRC gave in regards to finding an Article 27 violation:

> "Committee has noted the authors' uncontested claim that "Oina" published articles containing educational and other materials for Tajik students and young persons on events and matters of cultural interest to this readership, as well as reported on the particular difficulties facing the continued provision of education to Tajik youth in their own language, including shortages in Tajik-language textbooks, low wages for teachers and the forced opening of Uzbek-language classes in some Tajik schools. The Committee considers that in the context of article 27, education in a minority language is a fundamental part of minority culture. Finally, the Committee refers to its jurisprudence, where it has made clear that the question of whether Article 27 has been violated is whether the challenged restriction has an 'impact […] [so] substantial that it does effectively deny to the [complainants] the right to enjoy their cultural rights […]'. In the circumstances of the present case, the Committee is of the opinion that the use of

[45] Id. at Annex

[46] Mavlonov v. Uzbekistan, UN Human Rights Committee, UN Doc CCPR/C/95/D/1334/2004, April 29, 2009.

> a minority language press as means of airing issues of significance and importance to the Tajik minority community in Uzbekistan, by both editors and readers, is an essential element of the Tajik minority's culture. Taking into account the denial of the right to enjoy minority Tajik culture, the Committee finds a violation of article 27, read together with article 2."[47]

The Committee took into consideration not just the newspaper itself but its content and effect of being instructive to the Tajik minority community in Uzbekistan. The importance of language education in minority cultures was also emphasized. Yet, the Committee focused solely on the negative obligations of the State to not interfere with its publication and circulation rather than imposing any positive obligations on the part of the State.

VI. Article 26 and Discrimination

The CCPR General Comment No. 23 also emphasized the differences between the rights under Article 2.1 (discrimination) and 26 (equality before the law) along with their relation to minority rights:

> The Covenant also distinguishes the rights protected under article 27 from the guarantees under articles 2.1 and 26. The entitlement, under article 2.1, to enjoy the rights under the Covenant without discrimination applies to all individuals within the territory or under the jurisdiction of the State whether or not those persons belong to a minority. In addition, there is a distinct right provided under article 26 for equality before the law, equal protection of the law, and non-discrimination in respect of rights granted and obligations imposed by the States. It governs the exercise of all rights, whether protected under the Covenant or not, which the State party confers by law on individuals within its territory or under its

[47] Mavlonov at para 8.7

jurisdiction, irrespective of whether they belong to the minorities specified in article 27 or not.[48]

This is similar to the distinction that has been made with other individual freedoms outlined in the General Comment to separate it from the rights that minorities enjoy under Article 27. A majority of the communications dealing with linguistic minorities that were outlined in this chapter also had claims of violations under these articles as well. The only successful violation came from Diergaardt et al. v. Namibia[49], which found that the lack of language legislation in Namibia has denied the use of the Afrikaners' mother tongue in administration, justice, education and public life with no use of an English interpreter and therefore constituted a violation under Article 26.[50] Article 27 was argued in this communication but in regards to the Afrikaners being an ethnic minority and their right to protect their culture rather than their linguistic rights.

It is important to note that in this case the Committee recommends the State party put into place a linguistic rights regime to properly accommodate the Afrikaners needs, which shows that the HRC does expect at least some sort of positive obligation on the part of the State to promote linguistic rights however does not provide any specifics. This communication was also won in the light of non-discrimination in that Afrikaners were being specifically targeted by the State's inaction. The HRC did not take the steps to bring this violation under the fold of linguistic minority rights referenced in ICCPR Article 27, thereby not adding any substantive detail to the hard law linguistic rights regime.

VII. Scope of the Rights Regime and State Obligations

There has been limited delimitation within the HRC jurisprudence in regards to the content and scope of linguistic rights. Topics varying from name changes to language use in courts have been brought before the Committee but the only clear violation and limitation of state action within the sphere of Article 27 and linguistic rights was from the Mavlonov

[48] CCPR General Comment No. 23, para 4, citing Forty-second Session, Supplement No. 40 (A/42/40), annex VIII, section D, U.N. Doc. CCPR/C/OP/2 at 209 (F.H. Zwaan-de Vries v. the Netherlands), views adopted on April 9, 1987; ibid., section C and U.N. Doc. CCPR/C/OP/2 at 205 (L.G. Danning v. the Netherlands), views adopted on April 9, 1987.

[49] Diergaardt et al. v. Namibia, UN Human Rights Committee, UN Doc CCPR/C/69/D/760/1996, July 25, 2000.

[50] Id. at para 10.10

communication. Other violations were found in the Kleckovski and Diergaardt communications but within the rights of privacy and non-discrimination. Like the holding in Diergaardt, the HRC has been clear that protection of linguistic rights is crucial and it is incumbent on States to have a proper linguistic rights regime. The HRC has recognized that this regime needs to purport the negative rights where the State does not interfere in certain matters and to also include positive obligations by the State. With respect to positive obligations the HRC has taken a cautious stance though:

> Although the rights protected under article 27 are individual rights, they depend in turn on the ability of the minority group to maintain its culture, language or religion. Accordingly, positive measures by States may also be necessary to protect the identity of a minority and the rights of its members to enjoy and develop their culture and language and to practise their religion, in community with the other members of the group. In this connection, it has to be observed that such positive measures must respect the provisions of articles 2.1 and 26 of the Covenant both as regards the treatment between different minorities and the treatment between the persons belonging to them and the remaining part of the population. However, as long as those measures are aimed at correcting conditions which prevent or impair the enjoyment of the rights guaranteed under article 27, they may constitute a legitimate differentiation under the Covenant, provided that they are based on reasonable and objective criteria.[51]

The Committee went further to state that "the protection of these rights is directed towards ensuring the survival and continued development of the cultural, religious and social identity of the minorities concerned, thus enriching the fabric of society as a whole."[52] This is an indication at least that international human rights law perceives linguistic rights to not only be protected from interference by the State but also obligates the State to support its continued development. Of course the caveat here is that it cannot be in violation of national law, which in some cases can be in direct contradiction to linguistic human rights in countries.

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[51] CCPR General Comment No. 23, para 6.2

[52] Id. at para 9

VIII. Conclusion

All in all, international law and specifically human rights law does recognize the issues facing linguistic minorities and understands the importance that language has on an individual's culture and more importantly their identity. The current rights regime however within international human rights law is limited in the sense that it does not provide a proper framework for states to further linguistic rights. The hard law provided by the ICCPR and the subsequent development of HRC jurisprudence has not been specific enough in regards to what is required of state governments and authorities in its protections for linguistic minorities. They have predominantly been focused on the State's negative obligations in not interfering with the private use of language but have not tangibly touched on the State's positive obligations with regards to linguistic rights. The need for such positive State measures is promoted by the HRC through its General Comment on Article 27, yet what those measures should be is still left unanswered by the current hard law.

Chapter 3

Regional Approaches and the European Charter for Regional or Minority Languages

The ICCPR has provided limited direction internally in forming an appropriate linguistic rights regime to cope with the challenges that linguistic minorities face especially in regards to positive obligations. International law and in particular international human rights law has often looked to regional human rights systems as sources or to provide perspective and guidance on particular rights. With the confined scope coming from the UN and the HRC it is almost imperative to see if there is any development for linguistic rights in other supranational institutions such as the regional human rights systems in place in the Americas, Africa, and Europe.

The focus in this chapter will be specifically towards the European human rights system, which is anchored primarily from the Council of Europe and its judicial arm, the European Court of Human Rights (ECtHR). The European system is being chosen due not only because of Turkey's inclusion in its scheme, but also that this particular regional system has made considerable contributions to linguistic rights in hard law through the jurisprudence of the ECtHR and major influential documents such as the Framework Convention for the Protection of National Minorities and the European Charter for Regional or Minority Languages.[53] We will examine the European system in depth and see how linguistic rights fares within its borders and see if it provides us a more appropriate linguistic rights regime.

[53] For the Organization of American States (OAS) the American Convention on Human Rights is the primary human rights instrument with the Inter-American Commission on Human on Rights and the Inter-American Court on Human Rights overseeing compliance. The Inter-American human rights scheme lags behind in its lack of recognition for linguistic minorities and the OAS Charter barely references minority rights as a whole.

For the African Union (AU), the primary human rights instrument is the African Charter on Human and Peoples' Rights with the African Commission on Human and Peoples' Rights and the African Court on Human and Peoples' Rights overseeing compliance. The African Charter is relatively progressive in its recognition of collective and group rights. This is evident in how the Charter distinguishes individuals and "peoples" within its title and body. Article 19 is particularly important for its equality among groups stating that "all peoples shall be equal; they shall enjoy the same respect and shall have the same rights. Nothing shall justify the domination of a people by another." Groups are also entitled to cultural development (Article 22), natural resources (Article 21), and assistance in the struggle against cultural domination (Article 20). Yet linguistic rights are not explicitly mentioned in the Charter but we can however deduce that the African Court does recognize the importance of language when talking about peoples' rights. *See* Kevin Mgwanga Gunme et al/Cameroon, para 170, African Court 266/03, May 27, 2009 citing Final Report and Recommendations of the Meeting of Experts on extending of the debate on the concept of "peoples' rights", UNESCO, 27 to 30 November 1989, (SHS-89/CONF.602/COL.1) §22.

Although primarily shown through soft law, we will also look at actions taken by the European Union and the OSCE in regards to linguistic minority protections due to their overall impact on the continent and international law as well.

I. Linguistic Rights Regime in Hard Law

a. European Court of Human Rights Jurisprudence

The European Convention on Human Rights first mentioned minorities in just Article 14, which pertains to the prohibition of discrimination:

> The enjoyment of the rights and freedoms set forth in this Convention shall be secured without discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status.[54]

This right had a secondary nature in that it could only be brought up before the Court in connection with another right enshrined in the Convention. This was changed with Protocol No. 12, which created a general prohibition against discrimination in the application of any rights guaranteed by law or by any public authority.[55] It is important to note that within the European context, national minorities are also included within the minority rights discourse along with religious, cultural, and linguistic ones. However, a formal legal definition has not adopted in any international instrument thus far.[56] In the case for Turkey, "the Court

[54] European Convention for the Protection of Human Rights and Fundamental Freedoms, art. 14, Council of Europe, ETS 5, November 4, 1950.

[55] Protocol 12 to the European Convention on Human Rights and Fundamental Freedoms on the Prohibition of Discrimination, Council of Europe, ETS 177, November 4, 2000 art. 1 reads: "1) The enjoyment of any right set forth by law shall be secured without discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status. 2) No one shall be discriminated against by any public authority on any ground such as those mentioned in paragraph 1."

[56] Most recently, the Central European Initiative (CEI) presented their Instrument for the protection of minority rights in 2001, which included a definition of a national minority as "a group that is smaller in number than the rest of the population of a State, whose members being nationals of that State, have ethnical, religious or linguistic features different from those of the rest of the population, and are guided by the will to safeguard their culture, traditions, religion or language." (Article 1). However, there is no European consensus on the

functions (1) as a kind of High Cassation Court when it comes to procedure, (2) as an international watchdog when it comes to grave human rights violations and massive breakdowns in rule of law, and (3) as an oracle of constitutional rights interpretation when it comes to fine-tuning the qualified rights of Article 8-11 and 14 ECHR."[57] The European Convention does not specifically grant group/collective rights such as linguistic rights in the text but have been able to protect minorities and their interests through several relevant Articles.

i. Education (Article 14)

The most prominent ECtHR case(s) regarding minority language education are the Belgian Linguistic Cases, which involved applicants stating that the Belgian linguistic litigation, which outlines that the respective Dutch, French, and German regions of the country must provide public school education only in the respective language and that withdrew subsidies for the private education taught in languages other than the dominant language in each respective region, was in violation of Article 8 (family life), Article 14, and Article 2 of the Protocol 1 (right to education).[58] Here the ECtHR held that the right to education enshrined in Protocol 1 Article 2 implied that an individual has a right to be educated in the national language of the State they're in, not the language of one's choice.[59] This set a precedent in that the European Court was essentially more concerned with the general right to education in a State's national language rather than the protection of a minority language. This was evident in the Orsus and Others v. Croatia case where the ECtHR noted that Croatia was under obligation to take appropriate positive measures to assist the Romani applicants in acquiring the necessary language skills [in the majority language] in the shortest time possible, notably by means of special language lessons, so that they could be

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term thus far. CEI Instrument for the protection of minority rights, Central European Initiative – Executive Secretariat, Trieste, 2001.

[57] Helen Keller and Alec Stone Sweet, A Europe of Rights: The Impact of the ECHR on National Legal Systems p. 695, Oxford University Press (2008)

[58] Case "Relating to Certain Aspects of the Laws on the Use of Languages in Education in Belgium v. Belgium", European Court of Human Rights, ECHR Application nos 1474/62; 1677/62; 1691/62; 1769/63; 1994/63; 2126/64, July 23, 1968.

[59] Id. at para 7

quickly integrated into mixed classes," where education "was in Croatian only."[60] The implications of this tactic show that the ECtHR prefers a system of language assimilation rather than providing protections for linguistic diversity:

> The Court here took a narrowly utilitarian approach to the Romani language, forcing Croatia to accept the use of the minority language only in the process of its elimination. Romani is treated as an obstacle that Roma pupils must overcome in order to participate in the school environment, rather than as a valuable cultural possession worthy of legal protection.[61]

Another noteworthy decision regarding minority language education comes in Cyprus v. Turkey, where the Turkish Republic of Northern Cyprus (TRNC) allowed for Greek primary education but abolished Greek-language secondary education creating an "unrealistic" situation for Greek-Cypriot parents to continue their children's education in the occupied northern third of the island.[62] The Court found that the TRNC assumed the responsibility of providing Greek-language primary education and must continue it for secondary education.[63] It is not a requirement for States to provide minority language education but here the State placed itself in such a precarious situation by providing it on the primary school level but not secondary level.

ii. Public Administration (Article 6)

Similar to the jurisprudence coming from the HRC, linguistic minorities have not been particularly successful in having their rights protected in the public administration and court proceedings of States party to the European Convention. In Isop v. Austria, the author was an Austrian national of Slovenian origin who had requested that he be able to file his civil

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[60] Moria Paz, The Failed Promise of Language Rights: A Critique of the International Language Rights Regime, Harvard International Law Journal / Vol. 54, Number 1, Winter 2013 at pp. 186-87 citing Case of Orsus and Others v. Croatia, European Court of Human Rights, ECHR Application No. 15766/03 at para 165.
[61] Id. at p. 187
[62] Case of Cyprus v. Turkey, European Court of Human Rights, ECHR Application No. 25781/94 at para 277.
[63] Id.

complaint with the State in his mother-tongue Slovene.[64] The European Commission of Human Rights dismissed the case stating that the language requirement under the right to fair trial (Article 6) was satisfied enough by counsel being proficient in the language and that it was not necessary for the State party to accommodate the minority language unless they needed an interpreter if they lacked representation.[65]

iii. Private and Family Life (Article 8)

The ECtHR has stated that disputes regarding the spelling of surnames and forenames accorded to minority languages fall within Article 8 which guarantees the right to respect for private and family life.[66] In Güzel Erdagöz v. Turkey, the ECtHR ruled in favor of the defendant who was blocked from having her name spelled in the Kurdish/regional pronunciation even though it used Turkish letters and in its original form is a common Turkish name.[67] The Court did however mention that States have a wide margin of appreciation in controlling names, which implies that if Turkey made this legally justified then the Court would not have found a violation. The ECtHR does not feel that a special regime needs to be in place that includes positive obligations for states to protect names, which is line with the HRC on this matter as well.

iv. Freedom of Expression (Article 10)

In the realm of freedom of expression, linguistic minorities have had measured success under the ECHR[68] as well. Here, Turkey has found itself in violation in regards to banning Kurdish-language publications[69] and trade unions/organizations that advocated for the usage

[64] Isop v. Austria, European Court of Human Rights, ECHR App. No. 808/60, 1962 Y.B. Eur. Conv. on H.R. 108, March 8, 1962.
[65] Id.
[66] ECHR at art. 8. See *Güzel Erdagöz v. Turkey*, European Court of Human Rights, ECHR Application no. 37483/02, October 21, 2008.
[67] Id.
[68] ECHR at art. 10
[69] See *Mesut Yurtsever and Others v. Turkey*, European Court of Human Rights, ECHR Applications nos. 14946/08, 21030/08, 24309/08, 24505/08, 26964/08, 26966/08, 27088/08, 27090//08, 27092/08, 38752/08, 38778/08 and 38807/08, April 20, 2015.

of Kurdish.[70] With these rights, along with the other qualified rights, the ECtHR states that limitations cannot be made "unless it is "prescribed by law" and pursues one or more legitimate aims…and is, moreover "necessary in a democratic society" to attain those aims."[71] Although there are not any specific protections given to linguistic minorities it is important to note that they have been able to use this route to promote and protect themselves. This however only focuses primarily on the State's negative rights and does not reference any positive obligations for the State in question.

v. Freedom of Assembly and Association (Article 11)

Some of the most prominent cases from the ECtHR regarding linguistic minorities and the Kurdish-speaking minority in Turkey in general have been Turkey's violations under Article 11[72] concerning the banning of pro-Kurdish political parties.[73] To date the following pro-Kurdish political parties have been banned from the Turkish Constitutional Court and have also had their cases brought before the European Court: People's Labor Party (HEP), Freedom and Democracy Party (OZDEP), Democracy Party (DEP), People's Democracy Party (HADEP), and the Democratic Society Party (DTP). All of these cases determined that the Republic of Turkey violated their rights under Article 11. The European Court has mentioned that limitations on Article 11 when concerning political parties are under stricter scrutiny then other qualified rights within the European Convention.[74] The Court did accept that principles of a political party that stand for rights such as self-determination or language

[70] See *Eğitim ve Bilim Emekçileri Sendikası v. Turkey*, European Court of Human Rights, ECHR Application no. 20641/05, December 25, 2012.
[71] Yurtsever at para 102
[72] ECHR at art. 11(1): "Everyone has the right to freedom of peaceful assembly and to freedom of association with others, including the right to form and to join trade unions for the protection of his interests."
[73] See Case of Yazar and Others v. Turkey, European Court of Human Rights, ECHR Applications nos. 22723/93, 22724/93 and 22725/93, April 9, 2002, and *OZDEP v. Turkey*, European Court of Human Rights, ECHR Application no. 23885/94, December 8, 1999, and Case of Dicle for the Democratic Party, European Court of Human Rights, ECHR Application No. 25141/94, December 10, 2002, and *HADEP v. Turkey*, European Court of Human Rights, ECHR Application no. 28003/03, December 14, 2010 and *Party for a Democratic Society (DTP) v. Turkey*, European Court of Human Rights, ECHR applications nos. 3870/10, 3870/10, 3878/10, 15616/10, 21919/10, 39118/10 and 37272/10, January 12, 2016.
[74] Case of Refah Partisi (The Welfare Party) and Others v. Turkey, European Court of Human Rights, ECHR Applications nos. 41340/98, 41342/98, 41343/98 and 41344/98, February 13, 2003.

rights are not "contrary to the fundamental principles of democracy"[75] nor threatens the sovereignty or territorial integrity of a State, which the Turkish Republic continued to argue.

The ECtHR in many ways has acted similarly to the HRC in their approach towards linguistic minorities. In fact, since the ECHR does not specifically have a specific right for minorities within its Convention like the ICCPR Article 27 it is has been even more limited in regards to granting specific protections for linguistic minorities. Yet, linguistic minorities have been able to progress further albeit inadvertently through the qualified rights protected under the European Convention than through the ICCPR and the HRC. The Council of Europe has taken steps to rectify this lack of specific minority protections within its borders by ratifying two significant documents in their efforts to place an appropriate rights regime for minorities. These are the European Charter for Regional or Minority Languages (ratified in 1998) and the Framework Convention for the Protection of National Minorities (ratified in 2009). The European Charter provides a comprehensive scheme of how best to protect minority languages and it is the most detailed rights regime in place on the international level thus far. The Charter will be examined in depth and the Framework Convention will also be covered with respect to the relevant sections pertaining to linguistic rights.

b. The European Charter for Regional or Minority Languages (ECRML)

The ECRML is the premier international document that provides a comprehensive legal scheme for the protection of linguistic rights. This prominence warrants a detailed look and dissection of the document to see what it offers. Part I provides us with some general provisions and key definitions that are pertinent to the ECRML. This includes the definition of "regional and minority languages" as:

> "languages that are i) traditionally used within a given territory of a State by nationals of that State who form a group numerically smaller than the rest of the State's population; and, ii) different from the official language(s) of that State; it does not include either dialects of the official language(s) of the State or the languages of migrants."[76]

[75] HEP v. Turkey at para 57.
[76] European Charter for Regional or Minority Languages art. 1, Council of Europe, ETS 148, November 4, 1992.

This is important in that the languages sought to be protected by this Charter must have a territorial and historical component to them. All of the measures in place are to be implemented at the very least in the "territory which the regional or minority language is used" which is defined as "the geographical area in which the said language is the mode of expression of a number of people justifying the adoption of the various protective and promotional measures provided for in this Charter."[77] Languages used by immigrants to these States are not languages sought to be covered by this Charter. Another important section in this Part is Article 4(1) which states that: "Nothing in this Charter shall be construed as limiting or derogating from any of the rights guaranteed by the European Convention on Human Rights."[78] This is similar in spirit to the HRC's General Comment No. 23 where a distinction was made between minority rights and individual rights. Here the Charter wants to emphasize that the protections and rights granted here to minority language groups does not have the intention to interfere with the individual rights granted by the European Convention. Part II covers the objectives and principles of the Charter. Some noteworthy aims that the Charter furthers include the protection of such languages is an "expression of cultural wealth"[79] and that the State parties must safeguard and eliminate "any unjustified distinction, exclusion, restriction or preference relating to the use of a regional or minority language and intended to discourage or endanger the maintenance or development of it."[80] Part IV deals with the application of the Charter and its monitoring requirements while Part V deals with procedural issues and general ratification requirements for the Charter. Part III is the substantive section that outlines the linguistic rights regime. This section has outlined seven areas in which measures need to be taken by State parties in order to have proper linguistic rights protections. Each area will be examined separately.

i. Education (Article 8)

The field of education is tackled first, which is unsurprising with the topic of minority language instruction being front and center in both the Human Rights Committee and the

[77] Id. at art. 1(b)
[78] Id. at art. 4(1)
[79] Id at art. 7(1)(a)
[80] Id. at art. 7(2)

European Court of Human Rights when it comes to linguistic rights. The Charter specifies that instruction in the regional and minority languages protected under this scheme must be available at various levels of education. These levels include pre-school, primary, secondary, technical and vocational, university and higher, and adult and continuing education.[81] Additionally, State parties "must make arrangements to ensure the teaching of the history and the culture which is reflected by the regional or minority language."[82] For all of these levels the Charter instructs the State to "provide the basic and further training of the teachers required to implement"[83] such measures and "set up a supervisory body or bodies responsible for monitoring the measures taken and progress achieved in establishing or developing the teaching of regional or minority languages and for drawing up periodic reports of their findings, which will be made public."[84] Minority language education is not a newly proposed right but has been generally limited to restricting State inference in allowing for such education to be given within its borders. The Charter extends this obligation to one where the State must provide education in the minority language at all levels. The Charter does however limit this obligation and the subsequent ones to "within the territory in which such languages are used, according to the situation of each of these languages, and without prejudice to the teaching of the official language(s) of the State."[85]

ii. Judicial Authorities (Article 9)

In this Article, the Charter covers State actions within the judicial system. The measures here obligate courts to conduct criminal, civil, and administrative proceedings in the regional or minority language at the request of one of the parties. The absolute ability to request the language is divergent from the ECtHR and HRC, which does not promote such a direct service to be given unless needed if the defendant doesn't understand the official language being used. The Charter guarantees that the accused can use his/her regional or minority language during the proceedings, allows for documents and evidence to be presented

[81] Id. at art. 8(1)(a)-(f)
[82] Id. at art. 8(1)(g)
[83] Id. at art. 8(1)(h)
[84] Id. at art. 8(1)(i)
[85] Id. at art. 8(1)

in the language and use of interpreters and translations are free of cost.[86] Legal documents and important national statutory texts should be translated into the relevant languages.[87]

iii. Administrative Authorities and Public Services (Article 10)

This section provides users of regional or minority languages the ability to submit their applications in their language (written or orally) to administrative authorities. These authorities must also be able to communicate in the relevant language. Administrative texts and forms must also be provided in the language. Particularly significant in this section is the use and adoption of place-names and family names where relevant for the territory and individual respectively.[88] This contradicts the ECtHR's margin of appreciation principle on this matter.

iv. Media (Article 11)

With respect to media, the Charter ensures that there be at least one television channel and one radio station if these two venues are areas where States carry out a public mission.[89] The Charter also obligates the State to encourage, facilitate, and financially assist audio and audiovisual works in the language as well as at least one newspaper publication with training support for journalists in that language.[90]

v. Cultural Activities and Facilities (Article 12)

The Charter mentions certain cultural activities and facilities: "libraries, video libraries, cultural centres, museums, archives, academies, theatres and cinemas, as well as literary work and film production, vernacular forms of cultural expression, festivals and the culture industries, including inter alia the use of new technologies"[91] that the State parties

[86] Id. at art. 9(1)(a)-(c)
[87] Id. at art. 9(2)-(3)
[88] Id. at art. 10
[89] Id. at art. 11
[90] Id. at art. 11(d)-(g)
[91] Id. at art. 12(1)

should encourage and help foster in the regional or minority language. This includes translating other cultural works into the language as well.

vi. Economic and Social Life (Article 13)

The main objective within this article is to lessen any hindrances that regional or minority languages might face within the private sector such as internal regulations within companies, banking and financial regulations, and other financial instruments not being translated into the relevant language. The public sector must organize activities to promote the use of the regional or minority language.[92]

vii. Trans-frontier Exchanges (Article 14)

This Article deals with bilateral and multilateral agreements as well as cross-border cooperation to ensure that agreements are translated "in such a way as to foster contacts between the users of the same language in the States concerned in the fields of culture, education, information, vocational training and permanent education"[93]. This is important in that the territory of a certain regional language may be located within multiple states and therefore such cooperation and assistance is needed to ensure the language is developing properly in its ancestral homeland.

II. Linguistic Rights Regime in Soft Law

a. European Union

Although the European Union is primarily a political and economic union and not an organization focused on human rights, it has become a powerful driver for its members and candidate states to respect certain international human rights. Minorities are only mentioned in Article 2 of the EU Treaty: "The Union is founded on the values of respect for human dignity, freedom, democracy, equality, the rule of law and respect for human rights, including

[92] Id. at art. 13
[93] Id. at art. 14(a)

the rights of persons belonging to minorities. These values are common to the Member States in a society in which pluralism, non-discrimination, tolerance, justice, solidarity and equality between women and men prevail."[94] One Article in the EU Charter on Fundamental Rights is devoted to non-discrimination as well with a specific mention to national minorities: "Any discrimination based on any ground such as sex, race, colour, ethnic or social origin, genetic features, language, religion or belief, political or any other opinion, membership of a national minority, property, birth, disability, age or sexual orientation shall be prohibited."[95] The EU Charter also expects member states to "respect, cultural, religious, and linguistic diversity."[96]

Aside from urging current member states to enhance minority rights, the EU's true weight comes during the accession process of candidate countries.

> The 1993 Copenhagen political criteria that an applicant country must meet include respect for and protection of minorities. Similar references are included in the Accession and European Partnerships, which form the framework of the pre-accession process for each candidate country. Minority issues are regularly raised in political dialogue meetings with candidate countries, and, during accession negotiations, minority issues are covered by the negotiating Chapter 23 ('Judiciary and fundamental rights').[97]

It is with the Copenhagen political criteria that religious, ethnic, national, and linguistic minorities within candidate countries receive the most attention and push to have protections in place if the relevant candidate countries want to accede into the Union. As per the accession process, annual progress reports are made to evaluate the political, social, and economic conditions of the candidate state of which Turkey has been formally in the progress since 1997. There is however no specific rights regime that the European Union goes by but has been explicit in their support and advocacy for the Council of Europe by requiring

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[94] Treaty on European Union (Consolidated Version), Treaty of Maastricht art. 2, Official Journal of the European Communities C 325/5, February 7, 1992.

[95] Charter of Fundamental Rights of the European Union, art. 21, Office Journal of the European Union, 2012/C/326/02, October 26, 2012.

[96] Id. at Article 22

[97] The European Union and the protection of the rights of persons belonging to minorities, p. 9, The European Instrument for Democracy and Human Rights, http://www.eidhr.eu/files/dmfile/minorities-guide_en.pdf (2017), citing Conclusions of the Presidency, European Council DOC/93/3, June 21-22, 1993.

member states to accede to their European Convention for the Protection of Human Rights and Fundamental Freedoms.[98]

b. Organization for Security and Co-operation in Europe (OSCE)

Similar to the EU, the OSCE's objectives are not centered on human rights like the Council of Europe is. The OSCE (or formerly the Conference on Security and Co-Operation in Europe – CSCE) is a security-oriented intergovernmental organization that not only includes all of Europe but spans into certain North American and Central Asian nation-states as well. Since the inception of the CSCE, respect for human rights was enshrined as one of its guiding principles.[99] They also recognized and promoted the contributions made by national minorities and regional groups in the field of education and culture.[100] The Paris Charter transformed the CSCE into what is now the OSCE and continued to recognize national minorities but expanded the protections to include the "ethnic, cultural, linguistic and religious identity of national minorities" and allow them to freely "express, preserve, and develop" that identity.[101] What those protections would be was not drawn out however. The Yugoslav Wars of the 1990s propelled the issue of minority rights front and center for the security organization. The sectarian violence from the breakup of Yugoslavia spurred the OSCE to establish a High Commissioner on National Minorities (HCNM).[102]

It is with the Office of the HCNM that two very key documents were created in regards to linguistic minority rights: The Hague Recommendations Regarding the Education Rights of National Minorities (1996) and The Oslo Recommendations Regarding the Linguistic Rights of National Minorities (1998). Like the name suggests, the Hague Recommendations only touches upon the area of education. The OSCE makes the case that national minorities should have proper knowledge of their minority language as well as a State language to improve integration.[103] The Recommendations suggest that this should be a

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[98] Treaty of Lisbon amending the Treaty on European Union and the Treaty establishing the European Community, art. 188N(6)(a)(ii), 2007/C 306/01, December 13, 2007

[99] Conference on Security and Co-operation in Europe (CSCE) : Final Act of Helsinki, art. 1(a)(VII), Organization for Security and Co-operation in Europe (OSCE), August 1, 1975.

[100] Id. at Questions relating to Security and Co-operation in the Mediterranean (3) – (4)

[101] Charter of Paris for a New Europe, p. 4, OSCE, November 21, 1990.

[102] Helsinki Document 1992: The Challenges of Change, Decision II, CSCE, July 9-10, 1992

[103] The Hague Recommendations Regarding the Education Rights of National Minorities, High Commissioner on National Minorities, art. 1, Office of the High Commissioner on National Minorities, OSCE, October 1, 1996.

positive obligation on the part of the State to have a proactive manner in helping national minorities with resources and cooperation.[104] They also reiterate the historic international standard that minorities have the right to establish and manage their own private schools as long as it conforms to the relevant domestic law.[105] The Hague Recommendations emphasized the importance of having children belonging to a linguistic minority be taught in that language early on and offers a gradual scale with regards to how inclusive the minority language should be in a child's education. Pre-school, kindergarten, and primary school should ideally be taught exclusively in the minority language.[106] On the secondary level, a substantial part of the curriculum should be taught in the minority language,[107] while the minority language should be accessible for vocational training[108] and at the university level[109] along with offering courses highlighting "minority histories, cultures, and traditions."[110] The State language should also be incorporated at all levels according to these Recommendations.

The Oslo Recommendations come after the European Charter and it is easy to see the influence it has had on the OSCE. The Recommendations acknowledges the expansive nature of linguistic rights and address its importance to security and human rights: "Certainly, the use of language bears on numerous aspects of a State's functioning. In a democratic State committed to human rights, the accommodation of existing diversity thus becomes an important matter of policy and law. Failure to achieve the appropriate balance may be the source of inter-ethnic tensions."[111] The Recommendations touch upon nine areas in which the linguistic rights of national minorities should be protected and the measures that need to be taken in order to properly do so.

i. Names

The Oslo Recommendations state that national minorities have the "right to use their personal names in their own language according to their own traditions and linguistic systems.

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[104] Id. at art. 4
[105] Id. at art. 8
[106] Id. at art. 11-12
[107] Id. at art 13
[108] Id. at art. 15
[109] Id. at art. 17
[110] Id. at art. 19
[111] The Oslo Recommendations Regarding the Linguistic Rights of National Minorities, p. 2, OSCE Office of the High Commissioner on National Minorities, February 1998.

These shall be given official recognition and be used by the public authorities."[112] The right to use the names in the minority language is applied also to private institutions that the individual of the national minority might be a member of. States should impose for place names to be in the minority language in "areas inhabited by significant numbers of persons belonging to a national minority and when there is sufficient demand"[113]. This is similar to the European Charter's territorial requirement on this same issue as well.

ii. Religion

An area not specifically touched upon on other international instruments regarding linguistic rights is the realm of religion. The Recommendations states that every person is allowed to use the language of their choice when practicing their religion.[114] The allowance of every person having this right has more of an individual character than a group or collective right, which could be a reason why other instruments have not specifically touched on this issue.

iii. Community Life and NGOs

Like in religion, everyone has the "right to establish and manage their own non-governmental organizations, associations and institutions"[115]. These entities may use any language they choose and the State should actively support them in their social and cultural aims.[116] This is similar to the rights granted by the European Charter's Cultural Activities and Facilities section

iv. The Media

One of the largest sections in this set of Recommendations, the High Commissioner emphasizes that national minorities have the right to establish and maintain their own

[112] Id. at art. 1
[113] Id. at art. 3
[114] Id. at art. 4
[115] Id. at art. 6
[116] Id. at art. 7

minority language media.[117] The Recommendations also set a proportionality principle here in that minority language media should have broadcasting time on public outlets "commensurate with the numerical size and concentration of the national minority and appropriate to its situation and needs"[118]. Supervision of these minority media outlets should be independent and access to content originating from abroad should not be restricted.[119]

v. Economic Life

Similar to the European Charter's Socioeconomic Life section, the Recommendations allows for the "right to operate private enterprises in the language or languages of their choice."[120] The Recommendations does however allow States to require additional use of a State or the official language where there is a "legitimate public interest", which may include if the private organization has dealings with government authorities.[121]

vi. Administrative Authorities and Public Services

Like the ECRML the Recommendations state that administrative and public documents and services must be provided in the areas that there is substantial need.[122] This also includes placing regional and local authorities that have the ability to communicate in the relevant minority language.[123]

vii. Independent National Institutions

The Recommendations also wants to ensure that national minorities have proper access to institutions where they can submit their formal complaints if their rights have been violated: "States in which persons belonging to national minorities live should ensure that these persons have, in addition to appropriate judicial recourses, access to independent

[117] Id. at art. 8
[118] Id. at art. 9
[119] Id. at arts. 10-11
[120] Id. at art. 12
[121] Id.
[122] Id. at arts 13-14
[123] Id. at art. 15

national institutions, such as ombudspersons or human rights commissions, in cases where they feel that their linguistic rights have been violated."[124]

viii. Judicial Authorities

People belonging to national minorities have the right to be informed properly in a language they understand, which is in line with the major international human rights instrument that have been covered in this thesis. However, the Oslo Recommendations also allows individuals to "express themselves in their own language in judicial proceedings, if necessary with the free assistance of an interpreter and/or translator."[125] This again has a territoriality component and must at the very least be provided in the relevant regions where the need is greatest.

ix. Deprivation of Liberty

Another area not explicitly found in other instruments is in regards to the penal system and how minority inmates are treated. The Recommendations gives detainees the right to use the language of their choice in communicating with authorities and other inmates. The penal institutions should make relevant accommodations to such needs especially in areas where the minority languages are predominant.[126]

III. Conclusion

Overall the European Charter has provided the most extensive linguistic rights regime on the international level. The sentiment and objectives aimed here was also echoed in the Framework Convention for the Protection of National Minorities, which understood "that the upheavals of European history have shown that the protection of national minorities is essential to stability, democratic security and peace in this continent" and "that a pluralist and genuinely democratic society should not only respect the ethnic, cultural, linguistic and

[124] Id. at art. 16
[125] Id. at art. 18
[126] Id. at arts. 20-21

religious identity of each person belonging to a national minority, but also create appropriate conditions enabling them to express, preserve and develop this identity".[127] Even in the Framework Convention a definition was not provided for national minorities but it did aim to protect their linguistic rights in the areas that were listed within the European Charter as well. This is evident with the OSCE as well who has also taken steps to be in line with the Council of Europe. Comparing the lack of an international linguistic rights regime to the comprehensive one under the European Charter, we see there is a significant discrepancy. The Council of Europe has successfully expanded the hard law protections for linguistic minorities through the ECRML. The focus now turns to see if there has been any push to change or develop the current international linguistic rights regime through soft law.

[127] Framework Convention for the Protection of National Minorities Preamble, Council of Europe, ETS 157, February 1, 1995.

Chapter 4

Push for An Expansive Regime: Developments in International Soft Law

By examining the European linguistic rights regime that is in place we see there is room for development within the current regime in place under the UN system. The need for a more expansive rights regime has been emphasized by numerous international and regional organizations by placing them in certain human rights instruments. Even organizations that are not primarily focused on human rights like the EU and OSCE have turned their attention to linguistic minority rights. The need for one can be summed up well by an excerpt from the OSCE's Oslo Recommendations Regarding the Linguistic Rights of National Minorities:

> The linguistic rights of national minorities, i.e. the right of persons belonging to national minorities to use their language in the private and public spheres, is such an issue. International human rights instruments refer to this right in a number of different contexts. On the one hand, language is a personal matter closely connected with identity. On the other hand, language is an essential tool of social organisation which in many situations becomes a matter of public interest. Certainly, the use of language bears on numerous aspects of a State's functioning. In a democratic State committed to human rights, the accommodation of existing diversity thus becomes an important matter of policy and law. Failure to achieve the appropriate balance may be the source of interethnic tensions.[128]

The pressure to resolve interethnic tensions is an obvious international issue and therefore the United Nations needs to uniquely position itself to deal with security and human rights issues such as this one. This is acknowledged by the UN General Assembly through its 1992 Declaration on the Rights of Persons Belonging to National or Ethnic, Religious, and Ethnic Minorities: "States shall take measures to create favourable conditions to enable persons belonging to minorities to express their characteristics and to develop their culture, language,

[128] Oslo Recommendations, at p. 2.

religion, traditions and customs, except where specific practices are in violation of national law and contrary to international standards."[129]

The movement for a more proper international linguistic rights regime has been made primarily through two routes: the UN Special Rapporteur on Minority Issues and UNESCO. Both approaches will be examined in detail in this chapter. It is evident why the UN Special Rapporteur would be interested in such matters but this is also not a surprising route for UNESCO since the organization has made it known that they aim to promote and protect linguistic diversity where they can before. This can be seen from their Declaration on Cultural Diversity where a couple of their objectives included references to language groups:

> The Member States commit themselves to taking appropriate steps to disseminate widely the "UNESCO Universal Declaration on Cultural Diversity" and to encourage its effective application, in particular by cooperating with a view to achieving the following objectives…(5) Safeguarding the linguistic heritage of humanity and giving support to expression, creation and dissemination in the greatest possible number of languages. (6) Encouraging linguistic diversity – while respecting the mother tongue – at all levels of education, wherever possible, and fostering the learning of several languages from the earliest age.[130]

PEN International, a global association of writers which has formal consultative relations with UNESCO as well as a Special Consultative Status with the UN Economic and Social Council, has been at the forefront of discussions with UNESCO in regards to linguistic rights.[131] In 1996, along with numerous other non-governmental organizations (NGOs), PEN International drafted the Universal Declaration of Linguistic Rights (UDLR) at the World Conference on Linguistic Rights, which was held in Barcelona, Spain. This Declaration was presented to the UNESCO Director General that same year and is the first comprehensive document related to specifically implementing a linguistic rights regime that has been considered by the United Nations. The UDLR has not gained formal approval from UNESCO but the global consensus around the Declaration is important to note:

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[129] UN Declaration on the Rights of Persons Belonging to National or Ethnic, Religious, and Ethnic Minorities art. 4.2.

[130] UNESCO Universal Declaration on Cultural Diversity Annex II, UNESCO, November 2, 2001

[131] PEN International, http://www.pen-international.org (2014)

> The 66 NGOs, the 44 PEN Centres and 61 experts from some ninety countries around the World who took part in producing the Universal Declaration of Linguistic Rights in Barcelona (1996) trusted that growing sensibility around the world to this enormous crisis of linguistic diversity and having the support of the UNESCO Director-General, Federico Mayor Zaragoza would enable them to achieve United Nations backing for an initiative of this kind. This hope was bolstered by numerous declarations of support from well-known personalities around the world.[132]

This Declaration proved to be too aggressive for UNESCO, which "confirmed that a declaration of this kind —affirming equality among all languages without exception and both the individual and collective nature of linguistic rights— was disturbing for State powers-that-be, which, after all, would have to agree to its processing and official proclamation."[133] However, the support it garnered from civil society organizations and prominent individuals within the field is noteworthy. To have a proposal of this kind comes to this level does merit an analysis of the UDLR to see where the trend of international linguistic rights is going even if the UN is not prepared at the moment to take such steps.

I. Universal Declaration of Linguistic Rights

The Universal Declaration of Linguistic Rights (UDLR) is divided into a Preliminaries section, a Preamble, three Titles, and two sets of Dispositions. The Preliminaries section lists the major international documents that have had an impact on this Declaration. Some notable ones are the ICCPR Article 27, the International Covenant on Economic, Social, and Cultural Rights (ICESCR), the UN Declaration on the Rights of Persons belonging to National, Ethnic, Religious, and Linguistic Minorities. Regional instruments are also mentioned and in particular many European documents such as the European Convention, the Framework Convention for the Protection of National Minorities, and the European Charter for Regional

[132] Isidor Mari, Globalisation and linguistic rights: Towards a universal framework of linguistic sustainability, pp. 78-79, 2006
[133] Id.

or Minority Languages. In the Preamble, the term "language communities"[134] is brought up and states that to tackle the issues threatening these communities solutions must come from the political, economic, and cultural perspectives.

The Preliminary Title provides us with the general concepts covered in the Declaration along with some key definitions. The first is language communities which is one of the groups that the Declaration is seeking to protect. A language community is defined as "any human society established historically in a particular territorial space, whether this space be recognized or not, which identifies itself as a people and has developed a common language as a natural means of communication and cultural cohesion among its members."[135] The other group that the Declaration seeks to protect is language groups which are defined as "any group of persons sharing the same language which is established in the territorial space of another language community but does not possess historical antecedents' equivalent to those of that community. Examples of such groups are immigrants, refugees, deported persons and members of diasporas."[136] Whereas the language community is in line with the European Charter's regional and minority languages, we see that the Declaration also protects language groups that do not have a territorial or historical component to it therefore making the granting of linguistic rights in a particular State more of an objective test.

Another important concept that comes from this title is "the principle that linguistic rights are individual and collective at one and the same time."[137] This serves as a response to the HRC's General Comment No. 23 in that the Declaration recognizes both individual and collective rights as well. However, here we see that the Declaration sees them as equal whereas the HRC has mentioned that the collective rights of minorities are satisfactory as long as they do not limit an individual right which indicates a hierarchy of sorts. This is not the case with this Declaration and was one of the main concerns of UNESCO when this Declaration was proposed. Title One continues with some general principles while the dispositions dictate how the dispositions talk about the procedural implementation of this Declaration with the UN and recommends that the United Nations set up a non-governmental consultative body regarding international linguistic rights and the principles set forth in this Declaration. The Second Title speaks of the overall linguistic rights regime that the Declaration seeks to implement. Like the European Charter, the rights regime under the

[134] Universal Declaration of Linguistic Rights, Preamble, UDLR Follow-Up Committee, April 1998.
[135] Id. at Preliminary Title Article 1(1)
[136] Id. at art. 1(5)
[137] Id. at art. 1(2)

Universal Declaration pervades through multiple sectors and has been divided into separate sections which will be examined in detail.

a. Public Administration and Official Bodies (Section I)

The Second Title starts off by stating that "all language communities are entitled to the official use of their language within their territory."[138] This includes having public and private legal documents be made available in the particular relevant languages. This also includes administrative documents and court proceedings. Unlike the European Charter there is no provision here that the language availability and use is limited to the territory that the language group or community dominates and therefore implies that these services must be provided State-wide.

b. Education (Section II)

In regards to education, the Universal Declaration is in line with the European Charter in that it stipulates that "all language communities have the right to decide to what extent their language is to be present, as a vehicular language and as an object of study, at all levels of education within their territory: preschool, primary, secondary, technical and vocational, university, and adult education."[139] This also extends to having the cultural heritage of particular language groups taught as well all the way up to the university level.[140]

c. Proper Names (Section III)

The first article in this section states that "all language communities have the right to preserve and use their own system of proper names in all spheres and on all occasions."[141] Again the Declaration diverges from the European Charter in that it does not outline a territorial limitation here but does contain the same rights. The Universal Declaration does also add that "everyone has the right to the use of his/her own name in his/her own language

[138] Id. at art. 15(1)
[139] Id. at art. 24
[140] Id. at art. 30
[141] Id. at art. 31

in all spheres, as well as the right, only when necessary, to the most accurate possible phonetic transcription of his/her name in another writing system."[142] This particular stance on the phonetics and writing system is unique and becomes particularly relevant in the Turkish-Kurdish issue that will be discussed in detail in the next chapter.

d. Communications Media and New Technologies (Section IV)

The Universal Declaration does not specify the forms of communications media that a State must provide to language groups but only that the groups are "entitled to have at their disposal all the human and material resources required in order to ensure the desired degree of presence of their language and the desired degree of cultural self-expression in the communications media in their territory: properly trained personnel, finance, buildings and equipment, traditional and innovative technology."[143] This specific material resource requirement differs from the European Charter along with no mention of a minimum newspaper, television channel, or radio channel requirement that the European Charter dictates.

e. Culture (Section V)

In this section, the Declaration mentions that "all language communities have the right to full development within their own cultural sphere."[144] This development includes allowing cultural works to be produced in the language as well as translations and dubbing to be made to and from other cultural works from other languages. In a rare move, the Declaration does add a particular territorial component stating that "all language communities have the right for the language proper to the territory to occupy a preeminent position in cultural events and services (libraries, videoteques, cinemas, theatres, museums, archives, folklore, cultural industries, and all other manifestations of cultural life)."[145]

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[142] Id. at art. 34
[143] Id. at art. 36
[144] Id. at art. 42
[145] Id. at art. 45

f. Socioeconomic Sphere (Section VI)

The last section enshrines that "all language communities have the right to establish the use of their language in all socioeconomic activities within their territory."[146] This includes conducting financial transactions in their language and being able to have relevant documents, advertising, products, and services conducted within the language as well. Due to the universality of the Declaration there is not a section on transfrontier exchanges like the one in the European Charter.

II. United Nations Special Rapporteur on Minority Issues

Aside from the external push that UNESCO has gotten from PEN International and the Universal Declaration of Linguistic Rights, there has also been movement within the UN system itself to push for a more appropriate linguistic rights regime. This has come most recently and comprehensively from the UN Special Rapporteur on Minority Issues. The Special Rapporteur directly informs the Office of the United Nations High Commissioner for Human Rights[147], which supervises the Human Rights Council and coordinates activities involving human rights throughout the UN system. In March 2017, the Special Rapporteur published Language Rights of Linguistic Minorities: A Practical Guide for Implementation, which seeks to fulfill four objectives:

> 1) Clarify the various rights of linguistic minorities relevant to language use and preferences; 2) Clarify the obligations of state authorities towards linguistic minorities; 3) Support the development and continuous improvement of effective (including cost-efficient) approaches to and practices for, these rights of linguistic minorities; and 4) Promote consistent approaches to the participation and inclusion of minorities in public life and the implementation of their language rights.[148]

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[146] Id. at art. 47(1)

[147] Agency that works to promote and protect the rights that are guaranteed under international law and stipulated in the Universal Declaration of Human Rights (1948).

[148] Language Rights of Linguistic Minorities: A Practical Guide for Implementation, p. 3, United Nations Special Rapporteur on minority issues c/o Office of the High Commissioner for Human Rights, March 2017.

The first two points are telling in that the Special Rapporteur has noted that even after five decades since the ICCPR was drafted, the rights to linguistic minorities stands vague on the international level. The Special Rapporteur points out six reasons why this clarification and improvement on linguistic rights is needed. First point is that it improves access to and the quality of education for minority children. Secondly, that it promotes equality and the empowerment of minority women. Third, that it is fiscally more efficient to teach children in their mother tongue than the official language. Fourth, that it improves communication and public services. Fifth, like the OSCE has mentioned, linguistic rights contributes to stability and conflict prevention. And lastly, in the spirit of the UNESCO's aims, it promotes diversity in heritage and culture.[149]

The Special Rapporteur means to place linguistic rights squarely within international human rights law by recommending a "human-rights based approach to language" with "a 'recognize-implement-improve' method for ensuring that state authorities effectively comply with their obligations."[150] The Guide pillars linguistic rights on four core human rights concepts: 1) Dignity, 2) Individual Liberty, 3) Equality and non-discrimination, and 4) Identity. The Guide then goes into depth about the linguistic rights regime it recommends to implement. This implementation is divided between eight areas in which linguistic rights need to be applied. The Special Rapporteur justifies each application with a substantial array of international (ICESCR, ICCPR, ICERD, CRC, UNESCO, UN Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities, International Labor Organization) and regional (Council of Europe, OSCE) human rights instruments. For each area they have also highlighted domestic examples that have implemented a proper relevant structure already.

a. Public Education (Section 4.1)

The arena the Guide first confronts is predictably public education. The Special Rapporteur recommends a proportional approach where public education should be provided

[149] Id. at pp. 5-10
[150] Id. at p. 11

by the State where there is "sufficiently high numerical demand"[151]. This numerical demand is not exactly quantified but does state that if the minority language education is provided that it should be included in all levels of education from kindergarten to the university, an opinion shared by the European Charter and the Universal Declaration. The kindergarten-university range is considered the highest expectation that a State should embark on when it comes to minority language education, however the Guide places a minimum requirement of six to eight years if the range is impractical.[152] Along with proportionality, the Special Rapporteur offers two other basic principles when applying linguistic rights to public education: "The principle of *active offer*, where public education in minority languages is accessible and actively encouraged; the principle of *inclusiveness*, by which all students are given an opportunity to learn the official language and about inter-cultural understanding."[153]

b. Private Education (Section 4.2)

The Special Rapporteur draws from historical precedent to state that "linguistic minorities should always be entitled to their own schools where they can be taught in their own language, regardless of the general educational policies of a state."[154] The Guide asks that States actively support and promote private institutions that teach minority languages. The State may also financially support such institutions but must comply with the prohibition on discrimination unless the difference in treatment between particular languages reasonable and justified.[155]

c. Administrative, Health and Other Public Services (Section 4.3)

This section focuses on the State's efforts to provide administrative, health, and other public services in a minority language. Like in the public education section, the Guide implements a proportionality principle in regards to the need to provide such services to a

[151] Id. at p. 16
[152] Id. at p. 18
[153] Id.
[154] Id. at p. 21 citing Minority Schools in Albania, Permanent Court of International Justice, A/B64, Advisory Opinion, April 6, 1935.
[155] Id. at p. 23

given territory. It states that this principle "depends largely, although not exclusively, on the number and concentration of speakers. This will determine the extent to which and areas where the use of minority languages will be seen by the relevant authorities as reasonable and practicable."[156] Here again an exact bar as to what the numerical demand needs to be is not set however the US and Canada are exemplified in this section with both having a requirement that for each census division with at least 5% of the population speaking a minority language must be provided with public services in that language.[157]

d. Minority Languages and Identity (Section 4.4)

The Guide then addresses the connection between linguistic rights and an individual's identity: "Central to the rights of minorities are the promotion and protection of identity. This is also deeply significant in relation to a private life and dignity. For many individuals, one of the most important markers of their identity is their own name in their own language."[158] The right to privacy is also intertwined here in this section, which focuses on allowing linguistic minorities to have their names, surnames, and where appropriate place names in their own minority language. The Guide gives specific actions to the State such as allowing individuals to revert their names back to their original language if it was forcibly changed.[159] The Special Rapporteur has also included a procedure that a name which uses a different script from the official language and script of a State but must be transliterated approximately with the pronunciation of the original name and language. If they use the same script then the State must reproduce the name "letter by letter" to match with the original name. Bulgaria's restoration of Bulgarian Turks' names to their original linguistic form was mentioned as a good example among others.[160]

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[156] Id. at p. 25
[157] Id. at p. 26
[158] Id. at p. 27
[159] Id.
[160] Id. at p. 28

e. Minority Languages in the Area of Justice (Section 4.5)

In regards to a State's judiciary system, the Special Rapporteur has been considerably more restrained with linguistic rights than the UDLR and European Charter. The Guide emphasizes the importance to providing minority languages in court proceedings yet applies not only the proportionality principle but a subjective test as well. The Guide states that a person charged with a criminal offence must be informed promptly and in detail in a language which he or she understands of the nature and cause of the accusation.[161] This implies that there must be a need for the minority language essentially. Much like the Breton communications that came before the HRC, if the defendants can understand the official language and their charges then there is no need for minority language use even if an individual' mother tongue may be more comfortable and useful for that same person.

f. Media and Minority Languages (Section 4.6)

In this section, broadcast, print, and electronic media are all mentioned. The Guide focuses more on accessibility and coverage of minority languages in media. It does employ the proportionality principle but more relaxed than the standards used in other sections. Some specific actions requested by the Guide is for States to avoid official language quotas with regards to media as well as flexibility in public programming to showcase the cultural and linguistic diversity of the State population.[162] Overall, this Section has more guidelines rather than minimum requirements such as the ones imposed in the UDLR and European Charter for media.

g. Linguistic Rights in Private Activities (Section 4.7)

By far the smallest section within the Guide, the Special Rapporteur here emphasizes that "the use of any minority language in all private activities must be guaranteed, whether economic, social, political, cultural or religious, including when this occurs in public view or

[161] Id. at p. 31
[162] Id. pp. 32-33

locations."[163] The Guide notes that this right includes allowing minority languages to participate and be vocal in private conversations, private cultural and electoral events. No limitations to this right at any point makes it more absolute than most of the rights mentioned before.

h. The Effective Participation of Minorities in Public Life and Language (Section 4.8)

The last section concerns linguistic rights in electoral, consultative and other public participation processes.[164] Versions for documents pertaining to these processes (i.e. ballots, polls, public documents, etc.) should be made available in the minority language where it's practicable, which gives this right a territorial and proportionality component as well. This also includes allowing the minority language use in public meetings and campaign events. Two specific State actions that the Guide scrutinizes are any linguistic requirements for voting or political participation and denial of citizenship on the basis of not knowing the official language.[165] Both of these recommendations are unique with respect to the timing of this guide and the growing populism and nationalism around the globe.\

III. Conclusion

The linguistic rights regime provided by this guide along with the European Charter and the UDLR advocated by PEN International show an emerging soft consensus on the direction and the measures that states should do to protect linguistic rights. From these three major documents we can extrapolate a global trend that breaks from the hard law paradigm arising from the HRC and ECHR which focuses more on the positive obligations of the State. The new rights regime places new emphasis on the use of language within the administrative and judicial activities of the state but most importantly public education. It also more clearly defines and expands the State's role in the political and private spheres, which has been left in vague terms in the current hard law structure. This proposed expansion of the current international linguistic rights regime exemplifies the need for greater protections for linguistic

[163] Id. at p. 34
[164] Id. at p. 36
[165] Id. at p. 37

minorities. That need can also be seen clearly in one of the longest continuing modern inter-ethnic conflicts: The Turkish-Kurdish situation.

Chapter 5

The Linguistic Rights Regime in Turkey

A prime example of where the current international linguistic rights regime's contested legal framework can be analyzed is the situation in Turkey with regards to its Kurdish-speaking minority. In this chapter, we will examine the current linguistic rights regime in place in the Turkish Republic. Minority rights and the implementation of a rights regime are not new concepts for Turkey, which has a related history that dates back to the Ottoman imperial era. The same goes for the Kurdish struggle, which has fought for recognition both politically and culturally for centuries. This chapter will briefly overview the historical past of linguistic minority rights in Turkey and then focus on the current system.

I. Ottoman Era and Minority Rights Recognition

Stretching out to the Middle East, North Africa, and Southeastern Europe, the Ottoman Empire was a significant multiethnic and multilingual polity for its time. Due to the demographics of its subjects, the Ottomans were not only familiar with minority rights but had certain ways of accommodating such a societal fabric. The most prominent example was the *millet* system, which granted Christian and Jewish subjects a separate legal court system that allowed them to rule themselves according to their customs and laws. "In Millet System, dhimmis under Ottoman rule were protected according to the Islamic laws by the Empire; their life, religion and language was under guarantee. In return, dhimmis were required to pay special taxes like "*haraç*" and "*cizye*". This culture protection resulted with a multilingual empire in which different languages are spoken in different regions."[166] These courts were conducted in their own languages and with little interference from the Empire. Yet, Ottoman Turkish was the official language of the Empire and the only one used in regards to government and administration. This was also the case for public schools, which centered on Islamic education and was taught predominantly in Ottoman Turkish. The only other languages that were intensively taught were Arabic and Persian, which was used mainly for

[166] Emrah Dolgunsöz, Language Policies and Multilingual Education in Minority Schools in Ottoman Empire: Outcomes and Future Insights, p. 100 İDİL, Volume 3, Issue 12, 2014.

religious purposes.[167] Only during the late Ottoman period and the *Tanzimat*[168] was there public support or funding for education in other languages such as French, Bulgarian, Armenian, and Greek.[169]

When it came to the private sector, minority languages were able to have their own schools and newspapers. There was no public facilitation for these services and additional taxes were levied against these schools and newspapers. However, it should be noted that they existed and no restrictions were placed on such institutions. With this tolerance, predominantly Greek, Armenian, and Jewish schools populated the Empire along with newspaper publications.

This tolerance was given primarily to non-Muslim minorities, which was granted not only in accordance with Islamic law but also to appease the Christian European powers. An example of this appeasement was the Ottoman Reform Edict of 1865, which was decreed by Sultan Abdulmecid I and presented to the other empires of Europe. The Edict stated that all of the reforms placed through *Tanzimat* applied "to all the subjects of [my] Empire, without distinction of classes or of religion, for the security of their persons and property and the preservation of their honour"[170] Muslims as a whole fared better within the Empire but linguistic divisions among them were not recognized or given such a status as to allow them to create their own institutions or publications like the non-Muslim minorities were. This division in regards to recognition was based on Islamic law, which was the official religion of the Empire. Ottoman law did not recognize citizenship or ethnic divisions among the Muslim millet and therefore no special privileges were given to linguistic minorities within the religion. This structure of dividing treatment between Muslim and non-Muslim minorities during the Ottoman era would further be practiced during the more contemporary Republican times of the Turkish Republic as well.

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[167] Dr. Selami Sönmez, Primary Education System in Ottoman Empire pp. 166-67, International Journal of Humanities and Social Science Vol. 3 No. 5; March 2013.

[168] Literally meaning "reorganization", the term refers to the reformation period in the Ottoman Empire between 1839 to 1876.

[169] Dolgunsöz p. 102

[170] Rescript of Reform – Islahat Fermani, Sultan Abdulmecid I, Ottoman Empire, February 18, 1865.

II. Republican Era and linguistic rights failure of negative obligations (1923-82)

World War I brought the collapse of the Ottoman Empire and in its ashes the Turkish Republic was formed. The Republic of Turkey was officially recognized in 1923 with the signing of the Lausanne Treaty. The Lausanne Treaty is significant in that the Allied Powers stipulated protections for minorities within the Turkish Republic. "The Turkish Government undertakes to assure full and complete protection of life and liberty to all inhabitants of Turkey without distinction of birth, nationality, language, race or religion."[171] This goes in line with the minority rights protections afforded by the League of Nations at the time, which were provided to this and numerous other Minority Treaties then. The treaty in the subsequent Articles deals directly with the religious minorities within the borders of the Turkish Republic. Article 39 directly stipulates that "Turkish nationals belonging to non-Moslem minorities will enjoy the same civil and political rights as Moslems. All the inhabitants of Turkey, without distinction of religion, shall be equal before the law."[172] The Treaty goes further to state that the non-Muslim minorities will not be prejudiced in any way because of their beliefs and cannot be penalized for their refusal to do certain duties due to their faith. There is even a positive obligation for the Turkish Government to "grant full protection to the churches, synagogues, cemeteries, and other religious establishments of the above-mentioned minorities [non-Moslems]."[173]

Along with the general principles of non-discrimination and equality, linguistic rights were also included within the Treaty. The most expansive linguistic rights can also be found in Article 39 regarding the private sector: "No restrictions shall be imposed on the free use by any Turkish national of any language in private intercourse, in commerce, religion, in the press, or in publications of any kind or at public meetings."[174] Another vital provision was in regards to minority language in courts: "Notwithstanding the existence of the official language, adequate facilities shall be given to Turkish nationals of non-Turkish speech for the oral use of their own language before the Courts."[175]

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[171] Treaty of Peace with Turkey Signed at Lausanne, art. 38, 28 LTS 11, July 24, 1923.
[172] Id. at art. 39
[173] Id.
[174] Id.
[175] Id.

Whereas the last two provisions applied to all Turkish citizens, a special provision regarding linguistic rights for non-Muslim nationals was added with respect to primary school education.

> As regards public instruction, the Turkish Government will grant in those towns and districts, where a considerable proportion of non-Moslem nationals are resident, adequate facilities for ensuring that in the primary schools the instruction shall be given to the children of such Turkish nationals through the medium of their own language. This provision will not prevent the Turkish Government from making the teaching of the Turkish language obligatory in the said schools.[176]

This position mirrors the proportionality principle that was offered by the Special Rapporteur's implementation guide in regards to providing minority language education.[177]

The linguistic rights regime instituted in the Lausanne Treaty is seen in many ways as an extension of the Ottoman millet system for non-Muslim within the borders of Turkey and was meant to reassure Allied Powers over their concerns for the ethnoreligious minorities of Turkey. However the State obligations go beyond just negative rights and places positive obligations for the Turkish Republic to protect, promote, and facilitate non-Muslim minorities in regards to minority language education. However, Turkey falls short of meeting these obligations:

> There is a clear case that the Lausanne minorities should face no bureaucratic barriers regarding education in their mother tongue. Quite to the contrary, they should receive state assistance and funding for their schools. Although these minorities do have their own schools since the signing of the Treaty, on the whole their educational institutions lack funding, qualified teachers, and therefore the number of students wishing to attend them are diminishing.[178]

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[176] Id. at art. 41

[177] Language Rights of Linguistic Minorities: A Practical Guide for Implementation, p. 3, United Nations Special Rapporteur on minority issues c/o Office of the High Commissioner for Human Rights, March 2017.

[178] Sezin Oney, "De Facto Rights": Language rights in Turkey – from active repression to passive denial, p. 22, Dominated Languages in the 21st Century: Papers from the International Conference on Minority Languages XIV, 2015

Even though the treaty stipulates that all minorities (Muslim or not) should not face discrimination and be free of restrictions in the private sector, the early years of the Republic were characterized with authoritarian measures aimed at bringing the citizenry under the banner of Turkish ethno-nationalism. Such efforts include the "Citizen, speak Turkish" campaign, which was started in the late 1920s which gained government sponsorship with many municipal governments imposing fines on individuals who publicly spoke any language other than Turkish.

> "The Language Revolution had the important role of advancing national culture and the idea of a pure Turkish language. The revolution was to ensure that all citizens could consider themselves part of the new nation through a common language. Being able to speak Turkish was the single most important criterion for being considered Turkish, as Atatürk noted, "it is difficult to believe a person who claims to belong to Turkish culture and society if they don't speak Turkish"[179]

In 1934, culturally repressive laws were adopted most notably the Turkish Resettlement Law and the Surname Law. The Surname Law required all Turkish citizens to adopt a Turkish surname even if you already had one previously, which affected many of the Christian and Jewish citizens.[180] The Turkish Resettlement Law established settlement zones to ensure unity across the Republic in "language, culture, and blood". This meant forcibly resettling ethnic, religious, and linguistic minorities from areas that were considered to have a low density of Turkish culture to areas where there were in order to have these minorities forced to assimilate to their surroundings.[181]

The Kurds being the largest distinct non-Turkish group received the brunt of this nationalistic project with active assaults to institutions that provided Kurdish language such as the closure of medreses to changing place names into Turkish[182].

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[179] Welat Zeydanlıoğlu, Turkey's Kurdish language policy p. 122, De Gruyter Mouton, IJSL 2012; 217.
[180] Soyadı Kanunu, Sayi 2741, Turkish Republic Official Gazette, July 2, 1934.
[181] İskan Kanunu, Sayi 2733, Turkish Republic Official Gazette, June 21, 1934.
[182] Zeydanlıoğlu p. 107 citing Law No. 7267, Turkish Republic Official Gazette, May 11, 1959 which stipulated that "village names that are not Turkish and give rise to confusion are to be changed in the shortest possible time by the Interior Ministry after receiving the opinion of the Provincial Permanent Committee" (Kerim Yildiz and Georgina Fryer, The Kurds: Culture and Language Rights, p. 23, Kurdish Human Rights Project, 2004)

> The Law on the Unification of Education (*Tevhid-i Tedrisat Kanunu*) (1924), with its roots in nineteenth century Ottoman reforms, secularised and centralised the education system introducing mixed gender education. This law banned the medrese, traditional religious institutions that had provided education in non-Turkish languages such as Kurdish.[183]

The Kurdish identity was actively denied by the Turkish state and such staunch efforts to break and/or lessen Kurdish consciousness was labeled as an effort to modernize and civilize the "mountain Turks" that have lost their true identity.[184] Another later effort which can be seen as an extension of Surname Law was the 1972 Registration Law which "stipulated that names which do not conform to national culture, moral norms, customs and traditions and which offend the public could not be given to children."[185] What conformed to "national culture" was left to the local authorities to decide.[186] This overall language policy has been famously referred to as "linguicide" or "linguistic genocide", which is the deliberate extermination of a language.[187]

III. Contemporary Turkey and the Current Legal Framework

Following the 1980 coup, the 1982 Constitution provides the current legal framework for the Turkish Republic. The 1982 Constitution was drafted in the aftermath of the 1980 military coup, which came after years of political violence along with the rise and militarization of the Kurdish Worker's Party (PKK). The military-backed 1982 Constitution was therefore stringent in regards to minority rights and dissent with an imposition of a very restrictive rights regime. Linguistic rights can be seen present right at the start of the Constitution. Article 3 states that the Turkish Republic is an "indivisible unity" with the

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[183] Id. at p. 103

[184] Ceng, Sağnıç, Mountain Turks: State Ideology and the Kurds in Turkey, p. 131. Information, Society and Justice, Volume 3 No. 2, July 2010.

[185] Civic Registry Law No. 5490, Turkish Republic Official Gazette, April 25, 2006.

[186] Senem Aslan, Incoherent State: The Controversy over Kurdish Naming in Turkey, p. 5 European Journal of Turkish Studies, 2009

[187] Tove Skutnabb-Kangas, Kurds in Turkey and in (Iraqi) Kurdistan: A Comparison of Kurdish Educational Language Policy in Two Situations of Occupation p. 52, Genocide Studies and Prevention: An International Journal, International Association of Genocide Scholars, Volume 3 Issue 1 Article 5, 2008.

official language being Turkish.[188] Article 4 enshrines the absoluteness of Article 2 in that they cannot be amended.[189] Although having official languages is not an uncommon feature of national constitutions, it is its conjunction with the "indivisible unity" phrase and how the Turkish government and judiciary have interpreted the relationship between state unity and the Turkish language. This relationship will be examined in depth further on in subsequent sections.

Chapter Two of the Turkish Constitution deals with individual rights and duties where specific restrictions were placed on minority languages, which disproportionately affected the Kurdish minority. Article 26 stated that "no language prohibited by law shall be used in the expression and dissemination of thought"[190]. Article 28 dealt with the freedom of press and stipulated that "no publications or broadcasts may be made in any language prohibited by law".[191] Both of these articles would later be amended[192], which will be discussed in length shortly but it is important to initially note the repressive nature of the Constitution in its original form. Another important section that is still in force is Article 42:

> No language other than Turkish shall be taught as a mother tongue to Turkish citizens at any institution of education. Foreign languages to be taught in institutions of education and the rules to be followed by schools conducting education in a foreign language shall be determined by law. The provisions of international treaties are reserved.[193]

The last sentence is a clear reference to Turkey's commitment under the Lausanne Treaty to allow for the establishment of schools for the non-Muslim minority population. However, other linguistic minorities are specifically excluded from this right due to this Article. Since the adoption of the most recent Constitution in 1982 there has been significant movement, both negative and positive, in regards to linguistic rights which will be examined in the following sections.

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[188] Constitution of the Republic of Turkey art. 3
[189] Id. at art. 4
[190] Id. at art. 26 (Original)
[191] Id. at art. 28 (Original)
[192] Amended by Act No. 4709, October 3, 2001.
[193] Id. at art. 42

a. Administrative and Judicial Services

In regards to public administration and services there hasn't been much accommodation for minority languages in the Turkish Republic with no minority language use in areas such as public health. The significant changes that have been made in this area are in the case of family names and minority language use in the judicial system. In 2003, the Turkish Parliament revised the Registration Law Article 16 by dropping the terms "national culture" and "Turkish customs and traditions" so that only first names that disregard moral norms and offend the public would be prohibited.[194] This allowed for Kurdish names to be used however the use of the letters: 'q', 'w', and 'z', which are not found in the Turkish alphabet but prominent in Kurdish, are still not in use under the current system.

Kurdish language use in court, which was enshrined in the Lausanne Treaty in a general clause[195], was not directly provided for criminal proceedings by the courts and did not allow defendants to express themselves in Kurdish. In 2013, the Turkish Parliament passed legislation that allows suspects to use their native languages in court when giving defense statements with courtroom translators being paid by the state.[196] No such provision has been made for civil proceedings to allow for Kurdish or any other language besides Turkish to be used.

b. Public Participation (Political Parties)

The Kurdish minority has had minimal protection in regards to political participation. Along with the Constitution, Law 2820 on Political Parties was enacted in 1982. Article 81 of the law, which is aptly "preventing the creation of minorities"[197] allows for the dissolution of political parties based on language:

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[194] Aslan p. 14

[195] Treaty of Lausanne art 39(5) reads as follows: "Notwithstanding the existence of the official language, adequate facilities shall be given to Turkish nationals of non-Turkish speech for the oral use of their own language before the Courts."

[196] Law No. 5275 on the Execution of Punitive and Security Measures, Act No. 5271, Code of Criminal Procedure Article 202, amended January 23, 2013.

[197] Law No. 2820 on Political Parties art. 81, Turkish Republic Official Gazette, April 22, 1983.

> `Political parties shall not assert that there exist within the territory of the Turkish Republic any national minorities based on differences relating to national or religious culture, membership of a religious sect, race or language; or aim to destroy national unity by proposing, on the pretext of protecting, promoting or disseminating a non-Turkish language or culture, to create minorities on the territory of the Turkish Republic or to engage in similar activities.[198]

This particular legislation has been the source of the party closure cases in 1990's and 2000's by the Turkish Constitutional Court that were sent to the European Court of Human Rights. Another restrictive measure comes from the high election threshold set by Electoral Law no. 2839 on the Election of Members of the National Assembly, which dictates that political parties must have at least 10% of the national popular vote to win parliamentary seats.[199] Both of these laws have (and were meant to) directly affect the Kurdish minority and restrict their access in the public arena. Both laws were created in the early 1980's and are still in place now. Another language restriction to the electoral process was the use of any language other than Turkish in electoral propaganda is also prohibited by law.[200] Following an ECHR decision on the conviction for speaking Kurdish during election campaigns breached freedom of expression[201], amendments were made to allow electioneering in Kurdish since 2011. The strict limitations placed on political parties in Turkey have had many members of the academic community in Turkey and Europe equating the laws to "anti-terrorism legislation"[202].

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[198] Sinem Yargıç, The Need to Amend Turkish Legislation to Ensure Political Participation in Turkey, p. 208, Yönetim Bilimler Dergisi Cilt 11 Sayı 22 p. 208, 2013

[199] Law No. 2820 on Political Parties and the Electoral Law No. 2839 on the Election of Members of the National Assembly, Turkish Republic Official Gazette, June 10, 1983.

[200] Law No. 298 on Basic Provisions on Elections and Voter Registers art. 58, Turkish Republic Official Gazette, April 26, 1961.

[201] Case of Sukran Aydin and Others v. Turkey, ECHR Applications nos. 49197/06, 23196/07, 50242/08, 60912/08 and 14871/09, May 27, 2013.

[202] Akbulut, Olgun. Criteria Developed by the European Court of Human Rights on the Dissolution of Political Parties page 70, Fordham International Law Journal Vol. 34 Issue 1 Article 2 (2010).

c. Freedom of Expression (Speech/Media)

One of the strictest laws against Kurds came in the form of the Anti-Terror Law Act No. 3713 in 1991:

> The Act defined terrorism so vaguely that not only were the PKK directly targeted by this legislation but also anyone involved in the promotion of Kurdish language or culture (*Terörle Mücadele Kanunu 3713*). Article 8 of the Act enabled prosecutors to charge individuals on the basis of engaging in "verbal and written propaganda [that] aims to destroy the national unity and the indivisibility of the Turkish Republic" and has been systematically used against Kurdish politicians, intellectuals and activists.[203]

Article 8 was eventually repealed in 2013[204] however terrorism is still defined loosely and is the cause of mass imprisonment and arrests of Kurds many of whom work in civil society.[205]

Media has had some moderate success compared to other areas. Initially Law No. 2932 concerning Publications and Broadcasts in Languages Other than Turkish prohibited "languages other than those which are the primary official languages of states recognised by the Turkish State"[206] to be used in publications or broadcasts. It also stated that the mother language of Turkish citizens is Turkish.[207] This law was annulled in 1991 yet broadcasting in Kurdish and other languages have faced enormous scrutiny. In 2001, a package of constitutional amendments was passed by the Turkish Grand National Assembly in an effort to liberalize the 1982 Constitution and bring it into more alignment with European standards. Most notably Articles 26 and 28 were amended to take out the clause "language prohibited by law", which extinguished any possibility in the future for legislation to ban any language in expression or in the press.[208] The state-run television company TRT launched the first-ever

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[203] Zeydanlioglu at p. 112

[204] Repealed by Law No: 4928 art. 19, Turkish Official Gazette, July 15, 2003.

[205] Turkey: Crackdown on Kurdish Opposition, Human Rights Watch, March 20, 2017, https://www.hrw.org/news/2017/03/20/turkey-crackdown-kurdish-opposition

[206] Law No. 2932 Concerning Publications and Broadcasts in Languages Other Than Turkish, Turkish Official Gazette, September 12, 1983

[207] Id.

[208] Gönenç, Levent. The 2001 Amendments to the 1982 Constitution of Turkey, Ankara Law Review Volume 1. No. 1 (Summer: 2004) p. 103

Kurdish language channel with content containing Kurdish culture, literature, cuisine, music and history as well as programs for children. However, regulations on content with the TRT channel and other Kurdish-language channels are still increasingly stringent.

The coup attempt on July 15, 2016 has led to an intense crackdown on opposition and pro-Kurdish outlets[209] with the Turkish government instituting a state of emergency that continues to this day[210]. The most recent EU progress report states that "the government also used post-coup measures to suspend many municipal counsellors and mayors and teachers and to close a number of Kurdish-language media outlets. In November, several HDP Members of Parliament, including the two Co-Chairs, were detained and/or arrested on charges alleging support for terrorist activities."[211] The report states that over half of the 39 Kurdish-language television and radio stations have been closed on terrorist propaganda charges.[212] The rest have seen numerous sanctions and have been imposed with fines and suspensions.[213]

d. Education (Private/Public)

Minority language education in public schools has made fewer advances than its private counterparts. Political proposals have been made to have Kurdish be an elective course primary and secondary schools however there has not been a consolidated effort on this part or any progress in allowing Kurdish to be the mother-language mode of instruction for children especially in the southeastern provinces where the demographic need is the most. Kurdish language courses have begun to be offered on the university level however.[214]

Private Kurdish language education has had some progress with the 2003 Regulation on Teaching in Different Languages and Dialects Traditionally Used by Turkish Citizens in their Daily Lives which has allowed for private education in

[209] Cunningham, Eric. Turkey's Kurds are in the crosshairs as government crackdown widens, The Washington Post, October 10, 2016. https://www.washingtonpost.com/world/turkeys-kurds-are-in-the-crosshairs-as-government-crackdown-widens/2016/10/09/6be368f8-8a82-11e6-8cdc-4fbb1973b506_story.html?utm_term=.dbd13255613a

[210] Turkish Parliament extends state of emergency for an additional 3 months, Daily Sabah, October 17, 2017. https://www.dailysabah.com/politics/2017/10/17/turkish-parliament-extends-state-of-emergency-for-an-additional-3-months

[211] Turkey 2016 Report, p. 27 European Commission COM(2016) 715 final, November 9, 2016.

[212] Id. at p. 29

[213] Id. at p. 40

[214] Id. at p. 77

Kurdish. In 2007, Law No. 5580 on Private Educational Institutions also passed to specifically regulate foreign and minority schools.[215] Yet, intense regulation of these institutions have hindered the growth and development with numerous schools forced to shut their doors. The state's nonchalance towards this fact is similar to the administrative and financial issues faced by non-Muslim minority in having their schools are sustainable and developed. A prime example is "the Armenian Patriarchate's proposal to open a university department for Armenian language and clergy has been pending for several years."[216] To better map the history of Turkey's dealings with linguistic minority rights, a table summarizing the relevant legislative changes and constitutional amendments since 1982 are provided below:

RELEVANT LEGISLATIVE AND CONSTITUTIONAL PROVISIONS

Provision	Relevant Section(s)/Language	Status
Treaty of Lausanne (1923)	Section III: Protection of Minorities	In Effect
Law on the Unification of Education (1924)	Brought minority schools under stricter government scrutiny.	In Effect
Resettlement Law No. 2733 (1934)	Established settlement zones to ensure unity across the Republic in "language, culture, and blood".	In Effect
Surname Law No. 2741 (1934)	Required all Turkish citizens to adopt a Turkish surname.	In Effect
Provincial Administration Law No. 5442	Article 2 - Village names that are not Turkish and give rise to confusion are to be changed.	In Effect with minor amendments in 1959 by Law No. 7567.
Law on Basic Provisions on Elections and Voter Registers No. 298 (1961)	Article 58 – No electioneering in another language besides Turkish.	Amended in 1979. Regulations have changed allowing electioneering in other languages since 2011.
Civil Registration Law No. 5490 (1972)	Article 16 stipulated that names which do not conform to national	Amended in 2003, dropping "national culture" and "Turkish

[215] Hadimoğlu, Asst. Prof. Dr. Nimet Özbek. Minority Schools, Foreign and International Schools in the New Law on Private Educational Institutions. Ankara Law Review, Vol. 5 No. 1 (Summer 2008), pp. 53-100, p. 54.
[216] Id. at p. 73

	culture, moral norms, Turkish customs and traditions and which offend the public could not be given to children.	customs and traditions".
1982 Constitution	Articles 3 (official language is Turkish), 4 (absoluteness of Article 3), 26 (freedom of expression and dissemination of thought), 28 (freedom of the press), 42 (mother language of instruction in public schools must be Turkish)	Articles 26 and 28 were amended to have no prohibitions on language in 2001. Articles 3, 4, and 42 still in effect.
Law on Political Parties No. 2820 (1983)	Article 81 states that `Political parties shall not assert that there exist within the territory of the Turkish Republic any national minorities based on differences relating to national or religious culture, membership of a religious sect, race or language; or aim to destroy national unity by proposing, on the pretext of protecting, promoting or disseminating a non-Turkish language or culture, to create minorities on the territory of the Turkish Republic or to engage in similar activities.	In Effect
Electoral Law No. 2839 (1983)	Dictates that political parties must have at least 10% of the national popular vote to win parliamentary seats	In Effect
Law No. 2932 (1983) Concerning Publications and Broadcasts in	Prohibited "languages other than those which are the primary official languages of states	Annulled in 1991.

Languages Other Than Turkish	recognised by the Turkish State" to be used in publications or broadcasts. It also stated that the mother language of Turkish citizens is Turkish.	
Anti-Terror Law No. 3713 (1991)	Article 8 prohibited "verbal and written propaganda [that] aims to destroy the national unity and the indivisibility of the Turkish Republic".	Repealed by Law No. 4920 (2013)
Regulation No. 25307 on Teaching in Different Languages and Dialects Traditionally Used by Turkish Citizens in their Daily Lives (2003)	Allows private education in Kurdish.	In Effect
Law No. 5580 on Private Educational Institutions (2007)	Regulation of minority and foreign schools.	In Effect

IV. Conclusion

As is evident, Turkey's dealings with minority rights have a long and complex history. The Kurdish minority have seen their language rights repeatedly suppressed under the Republic's guise and goal to maintain public security and territorial integrity. Notable improvements have been made since the birth of the Republic within the private sphere but even those are in question and danger due to the current political climate. Dr. Olgun Akbulut sums up this climate and its treatment of minority rights particularly in the area of minorities' participation in political life descriptively:

> In Turkey's understanding of minority rights there exists a direct link between minority rights, minorities' participation in political life and the exercise of the right to self-determination by minorities in the form of secession. Whenever the problems of minorities are raised in public, discussions have always included the peril of secession…Because of the artificially established link between minority rights and the right to self-determination, the subject of minority rights even under the topic of 'cultural rights' is still considered a

> sensitive one. When one advocates the promotion of cultural rights, he may possibly be accused of having a hidden agenda.[217]

The next chapter will focus on how the rights regime in Turkey is assessed through under the international scheme both under the hard law in place and the soft law proposals.

[217] Akbulut, Olgun. The State of Political Participation of Minorities in Turkey – An Analysis under the ECHR and the ICCPR page 395, International Journal on Minority and Group Rights Vol. 12, No. 4 (2005), pp. 375-395. See also Akbulut, Olgun. A Critical Analysis of Current Legal Developments on the Political Participation of Minorities in Turkey, International Journal on Minority and Group Rights Vol. 17, No. 4 (2010), pp. 551-560

Chapter 6

An International Human Rights Law Analysis of the Kurdish Linguistic Minority Rights in Turkey

In this chapter the linguistic rights regime of Turkey will be assessed through the lens of international human rights law. This is not an easy matter, as Turkey's hard legal commitments to linguistic rights under international human rights law are limited. Turkey, although a member of the Council of Europe, has not signed the European Charter for Regional or Minority Languages and the Framework Convention for the Protection of National Minorities. The Turkish Republic also has a reservation for Article 27 under the ICCPR effectively halting the HRC from examining any communications regarding linguistic rights.[218] Turkey has made reservations to the CRC Article 17, 29, and 30 as well which also have provisions pertaining to minority rights.[219]

These limitations leave us with assessing the recommendations made by UN human rights treaties ratified and not reserved by Turkey, namely concluding observations from CERD, CRC, CEDAW, CESCR and CCPR Committees and the ECHR. This will allow for the determination of where the international human rights bodies stand on particular issues and how they analyze Turkey within the current rights regime parameters. References to relevant cases that have been brought up in the ECtHR will also be deployed in this examination in which Turkey does not have any reservations under and has been critically analyzed by the European Court. Where there are areas that the UN and European hard documents fall silent, HRC jurisprudence will be utilized to get a sense of how Turkey fares under the current international linguistic rights regime. For each area of linguistic rights, a determination will be made on how Turkey is faring along with actual responses by the international linguistic rights regime. The determination constructed through the hard law of the international linguistic rights regime will be supplemented with elements of the proposed rights regime formulated by the soft law developments coming out of the UDLR, ECRML and Special

[218] Turkey's reservation reads as follows: "The Republic of Turkey reserves the right to interpret and apply the provisions of Article 27 of the International Covenant on Civil and Political Rights in accordance with the related provisions and rules of the Constitution of the Republic of Turkey and the Treaty of Lausanne of 24 July 1923 and its Appendixes." See https://treaties.un.org/pages/ViewDetails.aspx?src=IND&mtdsg_no=IV-4&chapter=4&lang=en#EndDec

[219] Turkey's reservation reads as follows: "The Republic of Turkey reserves the right to interpret and apply the provisions of articles 17, 29 and 30 of the United Nations Convention on the Rights of the Child according to the letter and the spirit of the Constitution of the Republic of Turkey and those of the Treaty of Lausanne of 24 July 1923." See https://treaties.un.org/pages/ViewDetails.aspx?src=IND&mtdsg_no=IV-11&chapter=4&lang=en

Rapporteur on Minority Issue where appropriate. The template from the Special Rapporteur Implementation Guide will be used for the structure in which to tackle each relevant linguistic rights zone. By doing this, the discrepancies of the current international linguistic rights regime and the need for improvement will be highlighted not only for Turkey but on the part of the UN and their current linguistic rights regime.

I. Public Education

The current international linguistic rights regime has not expounded in detail on the issue of allowing minority language education in a State's public school system only that it would like to see it be available. Certain committees have noted that this is an important issue to address such as CEDAW, which has stated that the lack of access to Kurdish in public education has had a direct impact on the literacy and educational achievement of Kurdish women particularly in the South-East.[220] The CRC Committee recommended that Turkey "consider means of providing education in languages other than Turkish, particularly in primary schools in areas where other languages, in addition to Turkish, are widely spoken."[221] The CERD Committee applauded the adoption of the Law on Foreign Language Education and Teaching, and the Learning of Different Languages and Dialects by Turkish Citizens" and its "By-law on Education in Different Languages and Dialects traditionally used by Turkish Citizens" but however mentioned that Turkey should "consider further amendments to the legislation to allow teaching of languages traditionally used in Turkey in the general public education system and encourages it to establish a public school network offering teaching of these languages, and consider means of strengthening the involvement of the members of the local communities in decision-making in this field."[222]

The CRC Committee gives us a range in that it seeks primary school education in the minority language, while the CERD Committee is employing the proportionality principle similar to the Special Rapporteur's recommendations in that public school education in a minority language should be offered in areas where it's needed most and with consultation

[220] UN Committee on the Elimination of Discrimination Against Women: Concluding observations on the seventh periodic report of Turkey, para 45(d), CEDAW/C/TUR/CO/7, July 25, 2016.
[221] UN Committee on the Rights of the Child: Concluding Observations: Turkey, para 59, UN Committee on the Rights of the Child (CRC), CRC/C/TUR/CO/2-3, July 20, 2012.
[222] UN Committee on the Elimination of Racial Discrimination: Concluding Observations: Turkey, para 20, UN Committee on the Elimination of Racial Discrimination (CERD), CERD/C/TUR/CO/3, March 24, 2009.

with local authorities. To get a sense of local representation, it is best to look at the proposals being set forth by the People's Democratic Party (HDP), whose platform's main tenets rely on minority rights and in particular pro-Kurdish rights. The HDP is the current major pro-Kurdish political party and the only one to meet the strict election threshold requirements to gain representation in the Turkish Grand National Assembly. Their base is unsurprisingly centered in the southeastern Kurdish-majority provinces of Turkey and for purposes of this section can best represent the predominant interests of the Kurdish-speaking population. In their party program, the HDP proposes that public school education should offer mother-language instruction at all levels.[223]

II. Private Education

Legally, the allowance of minority languages to be taught in private education is sound with the Law on Foreign Language Education and Teaching, and the Learning of Different Languages and Dialects by Turkish Citizens and its By-law on Education in Different Languages and Dialects traditionally used by Turkish Citizens. Politically, the two largest political parties, the Justice and Development Party (AKP) and the Republican People's Party (CHP), are also supportive of this idea.[224] However, the CERD committee addressed concern "at the inadequate possibilities for children belonging to ethnic groups to learn their mother tongue, in particular having regard to the information given by the State party that schools offering private language courses have been "all been closed down by their founders and owners due to lack of interest and non-attendance".[225] Outside of this concern there have not been specific recommendations by the UN human rights systems to the Turkish Republic in what they need to do or how they should go about it.

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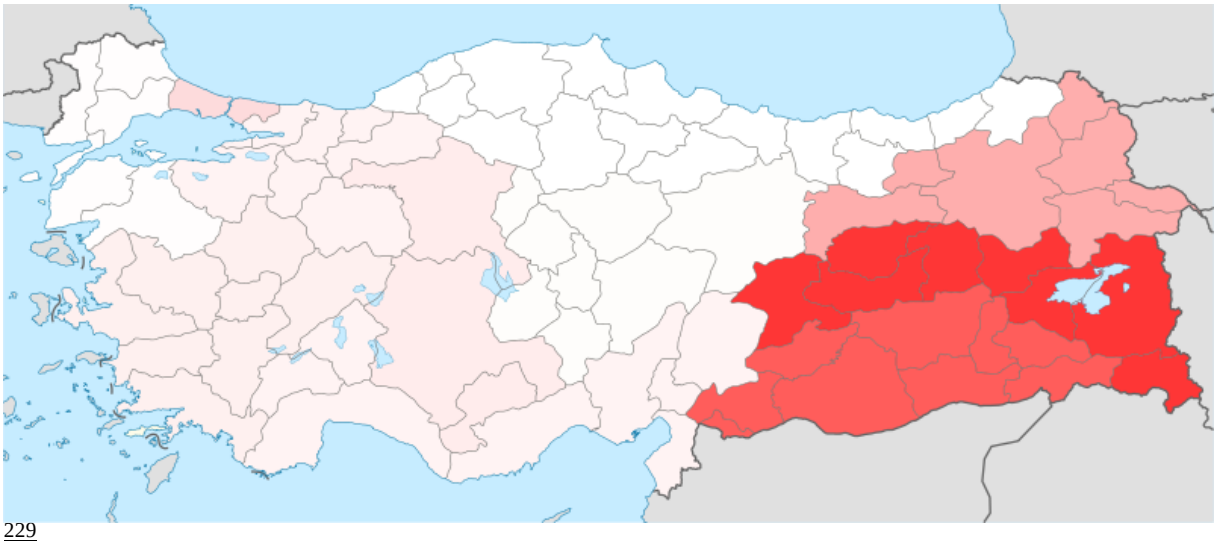
[223] HDP Party Programme, Halkların Demokratik Partisi, http://www.hdp.org.tr/tr/parti/parti-programi/8 (2017)

[224] See AKP Party Programme (English) art. 2.6 "The East and the Southeast" https://www.akparti.org.tr/english/akparti/parti-programme#bolum (2017) and CHP Party Programme (Original Turkish) p. 46, Cumhuriyet Halk Partisi, http://www.chp.org.tr/wp-content/uploads/chpprogram.pdf (2017)

[225] CERD Concluding Observations at para 20.

III. Administrative, Health and Other Public Services

None of the UN human rights instruments and the corresponding committees mentions inclusion of minority languages in a State's public services. Yet, when we look at the linguistic rights regime proposed by the Special Rapporteur there should be minority language use in public services such as health where it's needed and should be provided proportional to such need. That need for Kurdish to be used in public services can be found in the HDP party program[226] and also in comments made by the CRC Committee that state that children of Kurdish origin in particular do not have access to adequate health.[227] The CEDAW Committee had similar sentiments for Kurdish women in that they lacked appropriate access to sexual and reproductive health services.[228] The Special Rapporteur Implementation Guide used the American and Canadian methods, which required each census division with a minority-language population of 5% to provide public services in that particular minority language, as prime examples for other State parties to follow. By taking a look at the chart below, we can see the distribution of Kurds across the Republic of Turkey:



[229]

[226] HDP
[227] CRC Concluding Observations at para 28.
[228] CEDAW Concluding Observations at para 47(a).
[229] Doc. Dr. Murat Somer, KONDA Araştırma ve Danışmanlık, Kurt Meselesini Yeniden Düşünmek, p. 20, http://konda.com.tr/wp-content/uploads/2017/02/2010_12_KONDA_Kurt_Meselesini_Yeniden_Dusunmek.pdf (2011)

The areas in white are where the Kurds hold less than 5% of the provincial population. Notable areas are Istanbul, which has close to 15% of its population and Northeast Anatolia which has over 30% of its population being Kurdish. The traditional Kurdish areas of Southeastern and Central Eastern Anatolia in red and dark red hold are over 60% populated with Kurds thereby showing significant need to provide Kurdish in public health and administrative services.[230]

IV. Minority Languages and Identity

This section covers the use of the minority language in place and family names. The current linguistic rights regime does not have any clear requirements or guidelines for this matter but it has been an issue that the Special Rapporteur has touched on and has suggested that family names in be transliterated in as exact a manner as possible in the official language script. It is understood that the refusal of allowing the letters: "q", "w", and "x" for family names directly affects Kurds and their ability to name their children.[231] Place names in the southeastern and traditional lands of the Kurdish minority are still prohibited.

V. Minority Languages in the Area of Justice

Through the Breton cases, the HRC has at least clarified that State must provide interpreters and translations when necessary for individuals. Outside of that there is not a requirement for minority language use in court. Turkey eventually allowed for Kurdish to be used in court but stated that the individual must bear the financial burden of the translation and interpreters. The financial burden to individuals is not addressed in the current linguistic rights regime or with the Special Rapporteur. The European Charter and UDLR do however stipulate that a State party should provide language services at the request of any party.

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[230] Id.

[231] Aslan citing Yargıtay Ilami, T.C. Yargıtay 18. Hukuk Dairesi, Esas no:2004/3398, Karar no:2004/4808, February 25, 2004.

VI. Media and Minority Languages

All of the parties represented in the Turkish Parliament (AKP, CHP, HDP, and the Nationalist Movement Party – MHP) have acknowledged the cultural diversity of the nation, which is a major step and improvement from the early Republican years that actively denied the presence of such groups. Restrictions on media and broadcasting did see some limited lifting through the AKP's "Kurdish Initiative"[232] however the Kurds continue to face strict regulation and scrutiny especially under the 1991 Anti-Terror Law. The latest HRC Concluding Observations showcased their concern over this legislation as their only direct reference about the Kurdish minority in their report:

> The Committee is concerned that several provisions of the 1991 Anti-Terrorism Law (Law 3713) are incompatible with the Covenant rights. The Committee is particularly concerned at (a) the vagueness of the definition of a terrorist act; (b) the far-reaching restrictions imposed on the right to due process; (c) the high number of cases in which human rights defenders, lawyers, journalists and even children are charged under the Anti-Terrorism Law for the free expression of their opinions and ideas, in particular in the context of non-violent discussions of the Kurdish issue (arts. 2, 14 and 19).[233]

This would be contrary to the Special Rapporteur's preference for States to promote and facilitate minority language use in media yet the current linguistic rights regime does not have such a standard but does suggest a more positive obligation on the part of the State through its recommendation and concern.

VII. Linguistic Rights in Private Activities

Since the revision of Anti-Terror Law, there have not been any direct legal obstructions to language in the private life. However, both the CRC and the HRC have both expressed

[232] Sait Aksit and Özgehan Senyuva, The democratic initiative, the constitutional package and change of leadership in the opposing CHP, Middle East Technical University Center for European Studies, Issue No. 9 (2010)

[233] Concluding observations of the Human Rights Committee: Turkey para 16, UN Human Rights Committee (HRC), CCPR/C/TUR/CO/1, November 13, 2012.

concern of the continuing discrimination of Kurds along with their disapproval of Turkey's reservation to specific articles concerning minorities within each respective covenant.[234] An interesting point is that the Committees of CERD and CRC have both also specifically asked that these observations be made available in Turkish as well languages that are widely used in the State[235] which can signal that the current linguistic rights regime does promote the dissemination of public documents in minority languages. It's not clearly stated but could benefit causes such as allowing Kurdish to be used in political campaigning which is an aspect that the Special Rapporteur advocates in this particular section.

VIII. The Effective Participation of Minorities in Public Life and Language

One of the most visible issues that Kurds face is in regards to political and public participation. Due to the high threshold and law banning political parties that have a platform on minority rights, Kurdish political parties have been banned numerous times. The European Court of Human Rights has been the only body specifically addressing this issue yet still not through the lens of linguistic rights but rather the individual freedom of assembly and association. The current linguistic rights regime is currently silent on the issue but the Special Rapporteur's concern of linguistic requirements in the campaigning and political participation process of State parties is an issue that needs to be addressed. The banning of pro-Kurdish due to their stance on language rights and not allowing other languages than Turkish spoken in Parliament shows that the Republic of Turkey fits into this category.

IX. Conclusion

This analysis highlights the deficiency of the current UN system in addressing the primary concerns of the Kurdish minority in Turkey. This is no more evident than in the Concluding Observations of the CESCR where they indicated that there is a clear "absence of a broad legislative framework for the recognition of all minorities" within Turkey but provides no tangible steps for them to follow in order to achieve such goal.[236] It is clear that the proposed linguistic rights regime from the Special Rapporteur is effectively detailed enough to give us a

[234] Id. at para 9 and CRC Concluding Observations at paras 8-9
[235] CERD Concluding Observations at para 28 and CRC Concluding Observations at para 75
[236] Concluding observations of the Committee on Economic, Social, and Cultural Rights: Turkey para 10, UN Economic and Social Council, E/C.12/TUR/CO/1, May 20, 2011.

sense of where Turkey needs improvement. Although, the UN monitoring bodies may be somewhat restricted in examining minority rights in Turkey due to their reservations, the current jurisprudence does little to give us guidance and a sense of where the international system lies with certain areas concerning linguistic rights specifically in relations to a state's positive obligations for public use, recognition, and preservation of the Kurdish language. This is particularly important in the Turkish as they have recently amended their Constitution to acknowledge the supremacy of international human rights law over ordinary laws in Turkey[237]. To take advantage of this preeminence of international law over Turkish law, it is incumbent on international human rights law treaties to provide clear guidelines for state parties to abide by in protecting fundamental rights and liberties.

[237] Akbulut, Olgun. Interaction between International Human Rights Law and Turkish Domestic Law page 101, Humanities and Social Sciences Review CD-ROM. ISSN: 2165-6258 :: 2(3):97–103 (2013).

Chapter 7
Conclusion

The thesis has argued that international human rights law is deficient in responding to the needs and protections of linguistic minorities. In so doing it examines the history and development of linguistic human rights from the initial historical minority rights protection related developments in the pre-WWII era to the contemporary definition and content of such rights. The history of this protection regime begins with major treaties from the 19th and early 20th centuries, analyzing PCIJ jurisprudence, and then finally examining the major relevant human rights treaties: CRC, CERD, ICESCR, CEDAW and the ICCPR. The HRC's jurisprudence has had the most direct and extensive impact on linguistic minority rights on the international level.

The analysis identifies a number of deficiencies in the current regime. First that the definition of the scope of the rights it protects is lacking. Regional organizations, overwhelmingly from Europe, have filled in the deficiencies with influential documents coming from the Council of Europe and OSCE. The most prominent of these was the European Charter for Regional or Minority Languages, whose linguistic rights regime has served as a template for numerous regional and international organizations including the OSCE, the Special Rapporteur on Minority Issues, and the NGOs advocating for the push of the Universal Declaration on Linguistic Rights. It is within the Office of the Special Rapporteur and the UDLR that we see a push for an improvement and clarification of the international linguistic rights regime. The present state of the current international linguistic rights regime in hard law is insufficient in its theoretical aim to protect minority rights and promote linguistic diversity due to its lack positive state obligations. There is also a clear need for a more expansive hard linguistics rights regime in international law and the lack of such a regime is part of the reason for the under-protection of these rights in Turkey and elsewhere.

By examining the Kurdish issue in Turkey, we see that the current linguistic rights regime in hard law is far from developed and inadequate to provide coherent guidance for the needs of this persisting issue. Comparing the system proposed by the Special Rapporteur we see that there are more appropriate and detailed standards on the international level that can fully address linguistic minority rights within a country. In particular the minimum standards

required for States to fully address linguistic rights can be outlined in greater detail and scope within hard law. The concepts, ideas, and rights expounded by the UDLR, European Charter, and the Special Rapporteur need to be solidified within international human rights law as hard law in order for the relevant UN bodies to monitor such situations within its member states. This solidification is needed due to the lack of success soft law is having on expanding state obligations and the scrutiny provided by the UN human rights monitoring bodies. This unsuccessfulness is also due in part of hard law's lack of support and recognition of the soft law in place. The reluctance for the hard law to expand its scope and focus to positive rights has presented a disconnect between the soft law developments in international law. Although there is continuing development in this field of law, cohesion and acceptance between the soft law developments and hard law does not seem to be resolving at a reasonable pace.

It is clear from this study that not only does the rights regime need to be more clearly defined in its content and scope but there are already documents and examples that the UN system could rely on to create such a proper linguistic rights regime. A very fundamental and relatively easy step is to adopt the UDLR. Another route that could easily expand the international linguistic rights regime is the adoption of the positive obligations detailed in the soft law by the monitoring committees within subsequent communications and concluding observations. General Comments could also be authored by the committees to incorporate these minimum standards and could signal to state parties to consider these guidelines moving forward if they want to avoid being found in violation of their preexisting obligations under the relevant human rights treaties. The most obvious route is to codify these positive obligations into a separate treaty and solidify these positive State rights as hard law. This route is however not only difficult but frivolous since linguistic minority rights is already a settled issue in that international law recognizes it; the problem lies in how best to protect those rights. Those protections have focused primarily on negative rights and there is no hindrance for the current systems in place to add positive rights to the preexisting State obligations.

The implications of not developing this field can lead to ambiguity in situations such as the Turkish-Kurdish issue and in fact can do more harm by not having an appropriate system in place and exacerbate conflicts rather than resolving the pertinent issues. This study contributes to the continued development and pushes for reform within international linguistic minority rights while analyzing the Turkish-Kurdish issue, one of the most serious inter-ethnic conflicts of our time, from that perspective in order to highlight the urgency and need

for such changes. In an increasingly globalized and interconnected world, the right to a person's identity is becoming increasingly important in the study of international human rights law. An individual's language is key to this identity and therefore linguistic rights will continue to be an issue of paramount value and concern.

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