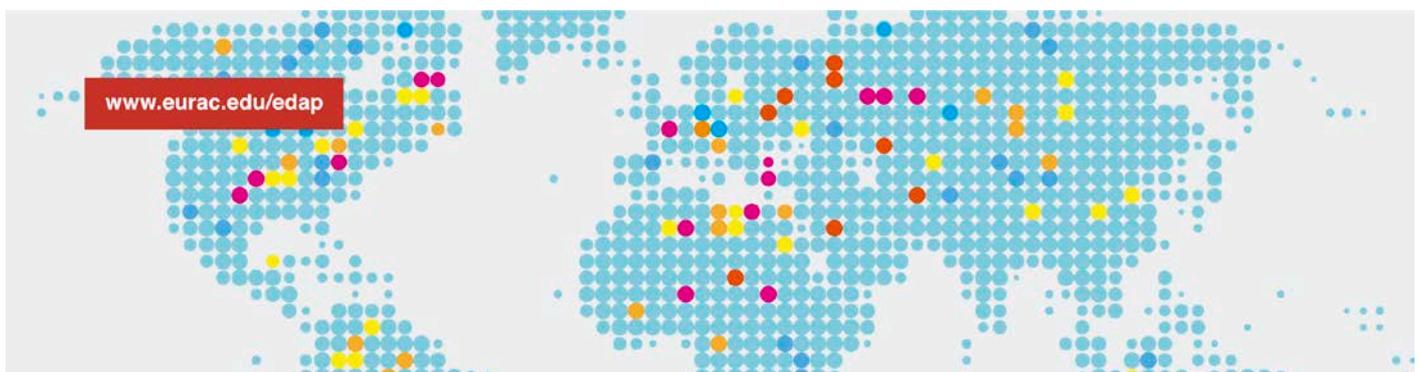


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The French Constitutional Council as the Rottweiler of the Republican Ideal in the Language Field: Does Jurisprudence Really Reflect Reality?

Stefan Graziadei



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Abstract

France is known for being a champion of individual rights as well as for its overt hostility to any form of group rights. Linguistic pluralism in the public sphere is rejected for fear of babelization and Balkanization of the country. Over recent decades the Conseil Constitutionnel (CC) has, together with the Conseil d'État, remained arguably the strongest defender of this Jacobin ideal in France.

In this article, I will discuss the role of France's restrictive language policy through the prism of the CC's jurisprudence. Overall, I will argue that the CC made reference to the (Jacobin) state-nation concept, a concept that is discussed in the first part of the paper, in order to fight the revival of regional languages in France over recent decades. The clause making French the official language in 1992 was functional to this policy.

The intriguing aspect is that in France the CC managed to standardise France's policy vis-à-vis regional and minority languages through its jurisprudence; an issue discussed in the second part of the paper. But in those regions with a stronger tradition of identity, particularly in the French overseas territories, the third part of the paper argues, normative reality has increasingly become under pressure. Therefore, a discrepancy between the 'law in courts' and the compliance with these decisions ('law in action') has been emerging over recent years. Amid some signs of opening of France to minorities, this contradiction delineates a trend that might well continue in future.

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Key words

France - Constitutional law - (Constitutional) adjudication - Conseil Constitutionnel - Linguistic rights (of minorities) - Regional and minority languages - Nation - Nationalism.

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The French Constitutional Council as the Rottweiler of the Republican Ideal in the Language Field: Does Jurisprudence Really Reflect Reality?

Stefan Graziadei

1. The State - Nation Concept

1.1 The French and German Concept of the Nation

It is centralization which permitted the making of France despite the French or in their indifference. It is not by chance if seven centuries of monarchy, of empire and of republics have been centralizing: it is that France is not a natural construction. (Alexandre Sanguinetti, 1968)¹

A nation is the totality of people who speak the same language. (Jacob Grimm, 1864)²

Eh quoi, tandis que les peuples étrangers apprennent sur tout le globe la langue française; tandis que le Journal universel et le Journal des Hommes Libres sont lus chez toutes les nations d'un pôle à l'autre, on dirait qu'il existe en France six cent mille Français qui ignorent absolument la langue de leur nation et qui ne connaissent ni les lois, ni la révolution qui se font au milieu d'eux. (Bertrand Barère de Vieuzac, 1794 - see footnote)³

¹ James E. Jacob and David C. Gordon, "Language Policy in France", in William R. Beer and James E. Jacob (eds.), *Language Policy and National Unity* (Rowman & Allanheld, New Jersey, 1985), 106-33, at 106.

² Jacob Grimm, quoted in in Fred E. Jandt, *An Introduction to Intercultural Communication: Identities in a Global Community* (Sage Publications, Thousand Oaks, 2010), at 128.

³ Jaques Ziller, "Le droit français de la langue, entre les mythes d'une tradition interventiste et la réalité de nouvelles angoisses" ["French Law on the Use of Language, Between the Myth of a Protectionist Tradition and the Reality of New Concerns"], 10 *EUI Working Paper - Law* 2006, 1-17, at 7. In his report on languages, presented in the Committee of Public Safety of the National Convention, Barère de Vieuzac laments the fact that, although French is spoken all over the world, many of France's citizens do not understand French. They therefore do not know of the Revolution and its laws. The report of Barère is, together with that of Abbé Grégoire, one of the most important documents of the French Revolution concerning the national unification of France through the medium of the French language. The full text of Barère's report can be found, in French, on the following website, "Rapport du Comité de salut public sur les idioms" ["Report of the Committee on Public Welfare on Languages"], at <http://www.tlfg.ulaval.ca/axl/francophonie/barere-rapport.htm>.

To even pose the problem [of ethnic equality] [is] ... to repudiate the French nation. (Michel Debré, 1984)⁴

These quotes illustrate well the importance of centralization in the creation of national identity in France. The French language was one of the main elements that were used as a vehicle of this centralization. The French Revolution, a watershed moment in the history of France and its language, by insisting on linguistic uniformity, further strengthened this process of centralisation. A core element of the political ideology that was put in place by the transatlantic revolutions was the so-called state-nation concept, of which France and the United States of America are ideal-typical representations. A nation is, in the words of the Frenchman Carré de Malberg, an indivisible community of citizens - "un corps intemporel qui survit à la succession des générations" (a timeless entity surviving the passage of generations).⁵

In the state-nation concept, the state precedes the nation and creates it. This more 'civic' concept is often compared and opposed to a more 'ethnic' concept. The latter is typically associated with the German model. In it, the nation is based on an 'objective' marker, which is, in the case of German nationalism, the German language. The nation is assumed to have always existed. Based on this primordial understanding of the nation, Germany developed an important historical school of law. Friedrich Carl von Savigny, its chief representative, wrote: "Law is no more made by lawyers than language by grammarians. Law is the natural moral product of a people ... the persistent customs of a nation, springing organically from its past and present."⁶ Therefore, as Menachim Mautner said, "just as Herder argued that every people (volk) has its own distinctive language that reflects its unique spirit (volksgeist), Savigny maintained that every people has its own distinctive law that reflects its spirit."⁷ The Volksgeist, which is peculiar to each nation, is therefore the critical variable shaping the law and legal developments in each nation - a claim of both normative and empirical nature. The common roots of the historical school of law and historicism lie with German idealism, the latter being a fertile ground for the development of nationalism. The political claim of nationalism, based on the ideas of German idealism, is to unite in a nation state all the speakers of the same language. "A nation is the totality of people who speak the same language."⁸

⁴ Michel Debré, quoted in James E. Jacob, "Language Policy and Political Development in France", in Brian Weinstein (ed.), *Language Policy and Political Development* (Ablex Publishing, Norwood, 1990), 43-66, at 57.

⁵ Carré de Malberg, quoted in Gérard Noiriel, *Population, immigration et identité nationale en France, 19^e-20^e siècle* [Population, Immigration and National Identity in France in the 19-20th Centuries] (Hachette, Collection Carre Histoire, Paris, 1992).

⁶ The Australian League of Rights, 11(30) On Target (1975), at <http://www.alor.org/Volume11/Vol11No30.htm>.

⁷ Menachim Mautner, "Three Approaches to Law and Culture", 96(4) Cornell Law Review (2011), 839-868, at 846, at <http://www.lawschool.cornell.edu/research/cornell-law-review/upload/Mautner-final.pdf>

⁸ Jandt, *An Introduction to Intercultural Communication ...*, 128.

For those Germans living outside Germany, the legal definition of who is to be considered German is, today, inextricably bound to language.⁹

Conceptually, integration into such an ethnic nation is not possible. Such a nation state excludes 'others' in different ways, from discouraging/prohibiting ethnic mixing of naturally existing and distinct ethnic groups, particularly of other groups with the majority group, up to ethnic cleansing and, in the worst-case scenario, genocide.¹⁰

Such fear of ethnic mixing is sometimes referred to as mixophobia. Mixophobia is defined as follows in the Dictionary of Race, Ethnicity and Culture:

*The term derives from the Greek *mìxis* (mixture, blend) and *phobos* (fear). First coined by Pierre-Andre Taguieff in 1987, the term 'mixophobia' refers to an unconditional fear of mixture and describes the dominant form of racism associated with nationalism. Mixophobia can be divided into three types: intra-national (regionalism, autonomism and independentism), national (nationalism in the strict sense of the word) and supra-national (Europeanism). The concept of mixophobia includes the tendency to demonize others and treat them as deviants from the norm, repulsion at any contact or mixing with anyone considered different (diversity-similarity), obsessive defence of purity, the resultant fear of cultural or biological hybridization and the*

⁹ The Federal Refugee Act (*Bundesvertriebenengesetz* - BFGV) was conceived for the reintegration of ethnic Germans, who had been expelled mostly from Eastern Europe, in the aftermath of the Second World War (more than 10 million people fled or were expelled from these territories). It states, inter alia, in paragraph 6(2) that: "The pledge to be a member of the German people or the official recognition of German nationality must be confirmed through the passing on of the German language within the family." (Author's translation. Original text: "*Das Bekenntnis zum deutschen Volkstum oder die rechtliche Zuordnung zur deutschen Nationalität muss bestätigt werden durch die familiäre Vermittlung der deutschen Sprache.*") Being German by descent is therefore, except in extraordinary circumstances, not sufficient to be regarded as belonging to the German people and or to become a German citizen. This distinction between *Volksdeutsche* (ethnic Germans with knowledge of the German language) and *Deutschstämmige* (individuals of German descent) is also related to the pragmatic aim of the German legislator to reduce the number of people of German descent coming to Germany. While there has always been a need to demonstrate that one belonged to the German ethnic group, through characteristics such as descent, language, education and culture, the specific requirement of being able to hold an easy conversation in the German language is due to the recent law of 2001, *Gesetzes zur Klarstellung des Spätaussiedlerstatus* [Law Clarifying the status of ethnic German immigrants], 6 September 2001, BGBl Part 1 No. 46, 2266. In the eyes of the German parliament, the number of ethnic German immigrants had to be limited as they were considered to be a financial burden on the social system. This indicates, together with the reform of citizenship from *Jus Sanguinis* (Latin: right of blood) to *Jus Soli* (Latin: right of the soil), a paradigm shift in German citizenship law. See German Bundestag, Erste Beschlussempfehlung und erster Bericht des Innenausschusses (4. Ausschuss) zu dem Gesetzentwurf der Fraktionen SPD und BÜNDNIS 90/DIE GRÜNEN - Entwurf eines Gesetzes zur Klarstellung des Spätaussiedlerstatus (Spätaussiedlerstatusgesetz - SpStatG) [First recommendation of decision and first report of the committee on internal affairs on the law proposed by the political groups SPD [German Social Democratic Party] and the Greens concerning a draft law on the clarification of the status of ethnic German immigrants] of 4 July 2001, at <http://dip21.bundestag.de/dip21/btd/14/065/1406573.pdf>.

¹⁰ Relating to the different possibilities of excluding others and the way this is tied to the nation state ideology, see Brendan O'Leary's interesting chapter "The Elements of Right-Sizing and Right-Peopling the State", in Brendan O'Leary, Ian Lustick and Thomas Callaghy (eds.), *Right-Sizing the State: The Politics of Moving Borders* (Oxford University Press, New York, 2004), 15-73.

*uncompromising defence of a pure racial lineage and thus a primordial identity which is assumed to have lasted from time immemorial.*¹¹

A very clear case of this 'mixophobia' (fear of ethnic mixing) can be found in the former provisions of the Code of Virginia (United States), repealed only in 1968 after the Supreme Court judgment in *Loving v. Virginia*. The Code stated in sections 20-59: "Punishment for marriage. If any white person intermarry with a colored person, or any colored person intermarry with a white person, he shall be guilty of a felony and shall be punished by confinement in the penitentiary for not less than one nor more than five years." The trial judge of the Circuit Court of Caroline County gave also proof of his mixophobia "Almighty God created the races white, black, yellow, malay and red, and he placed them on separate continents. And but for the interference with his arrangement there would be no cause for such marriages. The fact that he separated the races shows that he did not intend for the races to mix."¹² This case shows the perception of the judges sitting in the circuit court of Virginia that the United States was a nation state of the WASP, in which this ruling class should not mix with other races. This decision of the Circuit Court, which is an example of mixophobia inherent in the ideology of the nation state, was overturned by the 'Warren Court' in *Loving v. Virginia*.

1.2. The State-Nation concept

I will now look more closely at the state-nation concept. But first, I want to specify that when speaking about the state-nation concept I refer to the concept developed by Joseph Marko.¹³ Alfred Stepan has a completely different understanding of the term state-nation, which builds more on concepts from political science. This notwithstanding, Stepan and Marko make *mutatis mutandis* the same point, although by defining similar concepts with a different terminology, i.e., Stepan's state-nation concept is roughly equivalent to Marko's 'autonomy and integration'.¹⁴

¹¹ Guido Bolaffi. *Dictionary of Race, Ethnicity and Culture* (Sage, London, 2003), 182.

¹² Quoted in the Supreme Court decision *Loving v. Virginia*, 388 U.S. 1 (1967), at <http://law2.umkc.edu/faculty/projects/ftrials/conlaw/loving.html>

¹³ What follows is basically a summary of the different principles of the state - nation concept that Joseph Marko developed in his article: Joseph Marko, "'United in Diversity'? Problems of State and Nation-Building in Post-Conflict Situations: The Case of Bosnia-Herzegovina", 30(3) *Vermont Law Review* 2006, 503-550, at 504-506. For an even more complete consideration of these topics, see Joseph Marko, "The Law and Politics of Diversity Management: A Neo-Institutional Approach", 6 *European Yearbook of Minority Issues* 2006/07 (2008), 251-79.

¹⁴ What Stepan, famous in the political science field for his works on comparative politics and democratisation, calls state - nation is something fundamentally different from Marko's understanding. In my opinion, though, they actually want to make the same point overall - the difference lies only in the name that they give to their concepts. What Marko means by 'autonomy and integration' is actually close to what Stepan calls the state - nation. Stepan's ideal type of state - nation has the following characteristics. In the realm of cultural policies, this concept entails "[r]ecognition and support of more than one cultural identity, even more than one cultural nation. All within a frame of some common polity wide symbols. Unity in diversity". Concerning political institutions, the state - nation concept mandates a "[f]ederal system. Often *de jure*, or *de facto*, asymmetrical. [It c]an even be a unitary state if aggressive nation state policies are not pursued and

Three basic normative principles characterise the state-nation concept: the first principle is popular sovereignty; the second one is the insistence on individual rights as opposed to group rights; and the third one is the indivisibility of the nation. The state-nation concept is most closely linked with the model that the French state represents.

In France, 'popular sovereignty' meant transferring the legitimation of political power from God to the people - i.e., from 'divine grace' to the new concept of popular sovereignty. Similarly, Abraham Lincoln in his Gettysburg Address, defined government as the "rule of the people, by the people, for the people",¹⁵ a definition also found in Article 2 of the present French Constitution. But both in the American and French notion, 'people' is a purely abstract concept; it doesn't refer to any particular individuals or groups.

The second principle is that of individual rights. Although individual rights are an essential component of the modern state, the disregard for more collective rights can also be problematic. In fact, in the French notion, the citizen is seen as an abstract person - his language or ethnicity doesn't matter. This stance has often been reiterated, and the Constitutional Council made it a condition for France's acceptance of the Treaty establishing a Constitution for Europe:

*Paragraph 4 of Article II-112 of the Treaty provides that, insofar as the Charter recognizes fundamental rights as they result from the constitutional traditions common to the Member States, "these rights shall be interpreted in harmony with those traditions"; the rights defined in Articles 1 to 3 of the Constitution, which proscribe any recognition of collective rights of any group defined by origin, culture, language or beliefs are thus respected; ...*¹⁶

The French Constitutional Council makes this very clear also in other judgments.¹⁷ In fact, though, this position of ethnic neutrality of the state is

de facto state multilingual areas are accepted." Ethnic cleavages are "recognized and democratically managed". The citizen should have "multiple, but complementary identities". Instead of obedience to the state, the state-nation paradigm mandates identification with institutions. State and institutions are not to be based on a single national identity." According to Stepan, such a state-nation concept makes sense if a group of the population has an "[a]wareness of, and attachment to, more than one cultural civilizational tradition" and lives within the existing boundaries of the state. An identification with the state should be present. These characteristics of the state-nation concept stem from Alfred Stepan's article "Comparative Theory and Political Practice: Do We Need a 'State - nation' Model as well as a 'Nation State' Model?", 43(1) *Government and Opposition* 2008, 1-25 at <http://www.sipa.columbia.edu/cdtr/pdf/govtandopposition72407.pdf>. It is almost superfluous to underline that such a definition of the state - nation is fundamentally different to the one I make use of throughout this article.

¹⁵ Abraham Lincoln, "Gettysburg Address" (1863), at

<http://showcase.netins.net/web/creative/lincoln/speeches/gettysburg.htm>.

¹⁶ Council 2004a, Decision no. 2004-505 DC, The Treaty establishing a Constitution for Europe, judgment of 19 November 2004, para. 16. All the judgments of the Constitutional Council can be consulted on the Council's webpage at <http://www.conseil-constitutionnel.fr>. Key decisions are also translated into English and/or German.

¹⁷ The French Constitutional Council holds that "as Article 1 of the Constitution states: 'France shall be an indivisible, secular, democratic and social Republic. It shall ensure the equality of all citizens before the law, without distinction of origin, race or religion. It shall respect all beliefs'; the

largely a “myth”.¹⁸ As we will see below in relation to language, the *de facto* or *de iure* imposition of French as the only official language was not neutral for everyone.

The third principle is that of the indivisibility of the nation. It comes from the principle of territorial indivisibility, that is, that the kingdom is not to be divided among the heirs of the king. The indivisibility of the nation is a concept that connects to the two other principles mentioned above, overlays them and can be deconstructed into the concepts of “indivisibility of the national territory, indivisibility of sovereignty ... and also indivisibility of the French people”.¹⁹ The aim behind this principle of indivisibility is to create a culturally and politically integrated state. The nation can not, therefore, be divided by socio-economic or ethnic categories; prior to the constitutional revision of 1999, even affirmative action for women was forbidden as discrimination on the grounds of sex.²⁰ In this sense, this principle of indivisibility has an antipluralist and assimilationist character.²¹ Further, France pairs this principle with the principle of *laïcité*. This strict separation of church and state confines all manifestations of religion from the public to

principle that the French people is one, and that no section of it may claim to exercise national sovereignty, is also of constitutional status ... In the light of these fundamental principles, no collective rights can be recognised as inhering in any group defined by community of origin, culture, language or belief ...”. Council 1999b, case no. 99-412 DC, Charte européenne des langues régionales ou minoritaires [European Charter for Regional or Minority Languages], judgment from 15 June 1999, Recueil, at 71, paras 5-6.

¹⁸ See Will Kymlicka, *Contemporary Political Philosophy* (Oxford University Press, Oxford, 2nd ed. 2002), 343-347, and quoted in Marko, “The Law and Politics of Diversity Management ...”, 12.

¹⁹ This quote stems from an intervention of Hugues Moutouh, at the round table ‘Republican Principles and the Charter’ in a conference organised by the Council of Europe at the Robert Schuman University in Strasbourg, France. The proceedings of the conference have been published by the Council of Europe (ed.), *The European Charter for Regional or Minority Languages and the French Dilemma: Diversity vs. Unicity - which Language(s) for the Republic?* (Council of Europe Publishing, Strasbourg, 2004), 55-56.

²⁰ The Constitutional Council struck down a quota for women in politics (Alec Stone Sweet, *Governing with Judges* (Oxford University Press, New York, 2000), 105-106). The Constitution therefore had to be changed in order to specifically allow positive discrimination. This happened first in 1999 (in relation to elected offices - Article 3), and in then in 2008, when the modifications were enshrined directly in Article 1 of the French Constitution. It now reads: “Statutes shall promote equal access by women and men to elective offices and posts as well as to position of professional and social responsibility.” (For the English translation of the Constitution of France see, <http://www.assemblee-nationale.fr/english/8ab.asp>. Quotes from the constitution in this article always refer to this source.

²¹ Although the French model has been built on the indivisibility of the nation, the establishment of this ideal has been rather troublesome. France initially divided itself between good and bad revolutionaries, the Jacobins fighting against the bad ones. Rather than being one indivisible nation, Europe has for a long time witnessed two different conceptions of France. One model of France was the revolutionary and republican France established in 1789, the other one the contra-revolutionary and royalist France. The latter came to power again in 1815, during the period of the restoration of the old order. The Republican ideal only triumphed after the French defeat in the Franco-Prussian War, when the Third Republic was established. Further, Vichy France was another deviation from the French Jacobin ideal of Republic. *Travail, famille, patrie* (Work, family, fatherland) was the motto of the French state, replacing the revolutionary principles *liberté, égalité, fraternité*. Therefore, what is here defined as the French state-nation concept is to be associated with the model that France developed in 1789 and that only the Fourth and Fifth Republics fully implemented. (These thoughts have been articulated by Professor Isser Woloch of Columbia University in an intervention during a panel in a round-table discussion. The Philoctetes Center for the Multidisciplinary Study of the Imagination, “The Psychology of the Modern Nation State” (2006), at <http://www.youtube.com/watch?v=YV1zuLqPgrk>, minutes 48-56).

the private sphere. Joseph Marko concludes that: “[b]ased on this interplay of strict individual equality before the law and ‘national’ sovereignty, there simply cannot be any legally recognized ‘ethnic’ groups or minorities.” France therefore still declares, through a reservation, that Article 27 of the International Covenant on Civil and Political Rights (ICCPR),²² which deals with minority protection, does not apply to her.²³ This amounts to a denial of the existence of minorities.

For this indivisible character of the nation, state - nations often have, *de iure* or *de facto*, only one official language. This official language is the language of instruction at school, the language used in courtrooms, the language of communication in and of public administration throughout the country, and it is sometimes even the language private companies are mandated to use in their internal communications, etc.²⁴ By way of an amendment to its Constitution in 1992, France made French its official language, chiefly in order to protect the French language from the dominance of English at the time of the adoption of the Maastricht Treaty.²⁵ The clause has supported an aggressive language policy on the part of the government with the Toubon Law on the French language in 1994. Further, the French Constitutional Council has used the official language clause to limit policies in favour of regional languages promoted by the Jospin government.

But the imposition of French as the only language of instruction and government was not neutral for everyone. In fact, at the time of the French Revolution, a big part of the population was unable to speak French.²⁶ For

²² The wording of Article 27 is: “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.”

²³ Several cases relating to an alleged violation of Article 27 have been brought before the United Nations Human Rights Committee. The cases brought against France have been declared inadmissible by the Committee in view of a declaration that France had made when signing the ICCPR. The Human Rights Committee decided “that France’s declaration concerning Article 27 had to be interpreted as a reservation (T. K. vs. France, No. 220/1987, paras 8.5 and 8.6; H. K. vs. France, No. 222/1987, paras 7.5 and 7.6; c.f., separate opinion by one Committee member).” United Nations Human Rights Committee, *Selected Decisions of the Human Rights Committee under the Optional Protocol* (United Nations Publishing, New York and Geneva, 2004), 46, at <http://www.ohchr.org/Documents/Publications/SDecisionsVol4en.pdf>.

For a discussion of these cases, see Dinah Shelton, “The UN Human Rights Committee’s Decisions”, *Human Rights Dialogue: Cultural Rights* 2005, at http://www.carnegiecouncil.org/resources/publications/dialogue/2_12/section_3/5151.html.

²⁴ This is the case of, inter alia, Quebec. The main instrument for the protection of French is the Charter of the French Language. The relevant Articles protecting French as the language of business are the preamble of the Charter, Chapter II and Chapter VII. Further, the Office Québécois de la Langue Française acts as the ‘language police’ in Quebec. Article 161 mandates that “[t]he Office shall see to it that French is the normal and everyday language of work, communication, commerce and business in the civil administration and in enterprises ...”. *Charter of the French Language*, Éditeur officiel du Québec (online through the Canadian Legal Information Institute, updated to 1 March 2012), at http://www2.publicationsduquebec.gouv.qc.ca/dynamicSearch/telecharge.php?type=2&file=/C_11/C11_A.html.

²⁵ Ziller, “Le droit français de la langue ...” [“French Law on the Use of Language”], 10-12.

²⁶ In his report on eliminating the patois and universalising the French language (1794), presented to the National Convention (equivalent to an executive government in revolutionary France), Abbé Grégoire remarked:

them (and their descendants), the imposition of French meant starting from a disadvantaged position, as well as losing their cultural heritage. For this reason the designation of a language as the official language of the state, although seemingly neutral, cannot be considered a neutral operation.²⁷ In Turkey, for instance, freedom of expression means that one had the right to voice one's concerns only in Turkish, but not in Kurdish. France is in a similar position. The French Constitutional Council explicitly argued that freedom of speech has to be reconciled with the principle that makes French the official

*One can assure without exaggeration that at least six million Frenchmen [of a total French population of twenty-five million], especially in the provinces, are ignorant of the national language; that an equal number is nearly incapable of holding a sustained conversation; that in the last analysis, the number of those who speak it fluently does not exceed three million, and probably the number of those who write it correctly is still smaller. (Augustine Gazier (ed.), *Lettres à Grégoire sur les patois de France, 1790-1794* [Letters from Gregoire on the provincial dialect of France, 1790-1794], (Geneva, Slatkine Reprints, 1969), cited in Jacob and Gordon, "Language Policy in France ...", 113).*

Abbé Grégoire's work was "part of a nationalising program in which the nation represented a common unity against a particularism seen as rampant under the ancien régime, and that the Revolution sought to eliminate". (James R. Lehning, *Peasant and French: Cultural Contact in Rural France During the Nineteenth Century* (Cambridge University Press, New York, 1995), 13). Jaques Ziller ("Le droit français de la langue ..." [French Law on the Use of Language]) disputes that there was such a deliberate and active policy of pursuing the disappearance of regional languages and argues that if someone has been stigmatised it is the fault of incorrect pedagogy on the part of teachers rather than a planned action from the central government. Interestingly, Abbé Grégoire's idea was that the problem of difference ought to be solved through homogenization. "The abbé was a great believer in the universal language of the Declaration ... [t]he nation needed a unified character, and groups who were different would need to alter their customs and values ... Country dwellers who spoke patois would need to speak only French; Jews would eventually need to convert; people of colour would have to intermarry and adopt regenerated French values. Fully regenerated citizens would be French speaking, Christian, enlightened, and light-skinned." (Alyssa Goldstein Sepinwall, *The Abbé Gregoire and the French Revolution: The Making of Modern Universalism* (University of California Press, Berkeley and Los Angeles, 2005), 97). In 1989, the French government decided to put Gregorie in the Pantheon as a champion of universalism and human rights; a move heavily criticised by some, including the President of the Regional Council of Provence-Alpes-Côte d'Azur (Goldstein Sepinwall, *The Abbé Gregoire ...*, 230).

²⁷ Charles Taylor explains this point well in Charles Taylor, "Nationalism and Modernity", in Ronald Beiner (ed.), *Theorizing Nationalism* (State University of New York Press, Albany, 1999), 219-45, at 219:

If a modern society has an official language, in the fullest sense of the term - that is, a state-sponsored, -inculcated, and defined language and culture, in which both economy and state function - then it is obviously an immense advantage to people if this language and culture is theirs. Speakers of other languages have a distinct disadvantage. They must either go on functioning in what to them is a second language or get on equal footing with speakers of the official language by assimilating. Or else, faced with this second distasteful prospect, they demand to redraw the boundaries of the state and set up shop in a new polity/economy where their own language will become official.

A ministerial circular of the French Prime Minister, dated 12 April 1994, similarly underscores the importance of the French language for national cohesion. The prime minister gives the following instructions to the members of the civil service:

Dans la mise en oeuvre des instructions qui suivent, les agents publics doivent avoir la conviction que la langue française est un élément important de la souveraineté nationale et un facteur de la cohésion sociale. Aucune considération d'utilité, de commodité ou de coût ne saurait donc, sauf circonstances spéciales, empêcher ou restreindre l'usage de la langue française. (Author's translation: In carrying out the following instructions, the civil servants should be conscientious of the importance of the French language in terms of national sovereignty and social cohesion. No consideration of utility, practicality or cost should prevent or limit, except in special circumstances, the use of the French language.)

Quoted in Ziller, "Le droit français ..." [French Law on the Use of Language], 17.

language.²⁸ Classical liberal civil rights, such as freedom of expression, are therefore bound to the dominant language. The Bosnian Constitutional Court criticised this approach of the French Constitutional Council, by paradigmatically holding:

Do, for instance, language rights, i.e., legal guarantees for the members of minority groups to use their mother tongue in proceedings before courts or administrative bodies really constitute a 'privilege' that members of the 'majority' do not have insofar as they have to use the 'official language', which is their mother tongue by the way? Such an obviously absurd assertion takes the unsaid norm of the ethnically conceived nation-State for granted by 'identifying' the language of the 'majority' with the state. As opposed to the ideological underpinnings of the ethnically conceived nation-State stands the alleged necessity of 'exclusion' of all elements which disturb ethnic homogeneity - such 'special rights' are thus necessary in order to maintain the possibility of a pluralist society against all trends of assimilation and/or segregation which are explicitly prohibited by the respective provisions of the Convention on the Prevention of All Forms of Racial Discrimination which must be applied directly in Bosnia and Herzegovina in accordance with Annex 1 to the Constitution of BiH." ²⁹

Defenders of an approach that criticise collective rights argue that a unified language unites the people and is functional for a common public space and the creation of a common political community that also enhances the protection of fundamental rights.³⁰ In this sense, Armand and Fouquet-Armand write: "The diffusion of regional languages in the public sphere is not only at odds with the Republican principles of 'indivisibility, unicity [of the French people], equality, but also with another fundamental principle of the Republic: the need to have linguistic uniformity."³¹ Similarly, Robert Debbasch holds that: "the indivisibility of the Republic is the guarantee of the

²⁸ The French Constitutional Council in its abstract review of constitutionality of the European Charter of Regional and Minority Languages, stated as follows: "On the other hand, the freedom proclaimed by Article 11 of the Declaration of Human and Civic Rights of 1789, whereby 'The free communication of ideas and of opinions is one of the most precious rights of man. Any citizen may therefore speak, write and publish freely, except what is tantamount to the abuse of this liberty in the cases determined by Law' must be reconciled with the first paragraph of Article 2 of the Constitution, whereby 'The language of the Republic shall be French'." (Council 1999b, case no. 99-412 ..., 7).

²⁹ Bosnian Constitutional Court, U-5/98, Partial Decision Part 3, para. 114; see also footnote 27, Taylor, "Nationalism and Modernity" ...

³⁰ See Louis Favoreu and Michel Verpauw's arguments in Council of Europe (ed.), *The European Charter for Regional...*, 48-53 and 57-60.

³¹ Gilles Armand, Maud Fouquet-Armand, "L'uniformité territoriale dans la jouissance et l'exercice des droits et libertés fondamentaux en France" [The Concept of Territorial Unity and its Relation to the Exercise of Fundamental Rights in France], 2 *Cahiers de Recherche sur les Droits Fondamentaux* 2003, 11-33, at 28, at <http://www.unicaen.fr/puc/ecriture/revues/crdf/crdf2/crdf0201armand.pdf>. Author's translation.

maintenance of the unity as well as the projection of this unity in the future.”³²

The examples referred to above should suffice to show that a state - nation, although pretending to be neutral towards all ethnic groups, most often is not. But how can we explain the paradox that France seems to be one of the countries in Europe that has the fewest problems with ethnic minorities? Why could Jose Ortega y Gasset say that nationalism was a problem everywhere in Europe, except in France; and that France was immune from it because of its particular form of centralism?³³

Indeed, in France the “myth”³⁴ of an ethnically neutral state has been accepted by a majority of French citizens, including those in the regions. As a possible explanation, one might argue that the transformation of “peasants into Frenchmen”³⁵ happened at a time when the politicisation of ethnic groups was comparatively low. Conversely, in the presence of more established ethnic and cultural groups, the notion of a state - nation may yield troublesome consequences. The application of this concept to those regions with a stronger tradition of identity, for instance Corsica and French Polynesia, has been more problematic than in other French regions.³⁶ The French state-nation concept was also applied to different countries of South

³² Robert Debbasch and André Roux, “L’indivisibilité de la République” [“The indivisibility of the Republic”], in Bertrand Mathieu and Michel Verpeaux (eds.), *La république en droit français [The Republic in French Law]* (Economica, Paris, 1996), 59 et seq., cited in André Roux, *La Constitution de 1958: L’Unité [The Constitution of 1958: Unity]*, at http://www.iep.univ-cezanne.fr/media/Constitution_1958.pdf, and in Bertrand Mathieu (ed.), *Le cinquantenaire de la Constitution de la V^e République [50 Years of French Constitution under the 5th Republic]* (Daloz, Paris, 2008), 147-60, at 147. Author’s translation.

³³ Juan Carlos Sanchez Illán writes: “*En su discurso más doctrinal, Ortega afirma en sede parlamentaria el 13 de mayo que ‘el problema catalán, como todos los parejos a él, que han existido y existen en otras naciones, es un problema que no se puede resolver, que sólo se puede conllevar’, ya que es ‘un problema perpetuo’. Es, en suma, ‘un caso corriente de lo que se llama nacionalismo particularista’. Ortega apunta además que ‘las naciones aquejadas por este mal son en Europa hoy aproximadamente todas, todas menos Francia’, que es excepción por ‘su extraño centralismo’.*” (Author’s translation: In his most ideological speech, Ortega affirmed on 13 May [1932], in front of the parliament, that “the Catalan problem, like all those that are similar to it, exists and has always existed as well in another nations. These problems you cannot solve, you can only make it milder; it will be an eternal problem. The Catalan case is, in sum, a case of what is known as particularist nationalism”. Ortega notes that nearly all the European nations are afflicted by it, except for France. The French exception is based on its particular form of centralism.) Juan Carlos Sanchez Illán, “Ortega y Azaña frente a la España de las Autonomías” [Ortega y Azaña on the Regional Autonomies in Spain], 49 *Cuadernos republicanos* 2002, 73-95, at http://dialnet.unirioja.es/servlet/dfichero_articulo?codigo=1195876&orden=65809.

³⁴ Will Kymlicka, “The New Debate on Minority Rights”, in Ferran Requejo, *Democracy and National Pluralism* (Routledge, London, New York, 2001), 15-39, at 23.

³⁵ This is the title of Eugen Weber’s seminal book, *Peasants into Frenchmen: The Modernization of Rural France 1870-1914* (Stanford University Press, Stanford, 1976). In this book he shows that the idea of a homogenous French nation state is a fiction and, instead, that the French nation state has been constructed by Paris-based elites through the use of French in education, administration and the military.

³⁶ Debéne makes a similar point. He argues that the politics of eradicating regional languages encountered fewer obstacles in metropolitan France compared to overseas territories. Marc Debéne, “Les Langues de Polynésie Française et la Constitution: Liberté, Égalité, Identité” [The Languages of French Polynesia and the Constitution : Liberty, Equality, Identity], 16 *Yearbook of the New Zealand Association for Comparative Law* 2010, 135-162, at 136-7, at http://www.victoria.ac.nz/law/NZACL/PDFS/Vol_16_2010/09%20Deb%C3%A8ne.pdf.

Eastern Europe after the fall of communism, with uneasy results, for example, in the case of Macedonia.³⁷

But let us now return to France and look at how the Constitutional Council dealt with the issue of language rights. I will refer to both metropolitan France, which refers to the part of France located in Europe, and the overseas territories (DOM/TOM/COM), there with particular reference to French Polynesia. The term 'overseas territories', as I use it, refers to French overseas possessions in general, regardless of their administrative status as overseas territories (Territoires d'Outre mer - TOM), overseas departments (Départements d'Outre mer - DOM), overseas collectivities (Collectivités

³⁷ The countries of Central and South Eastern Europe blend together aspects from the American/French civic concept of the nation and the German ethnic concept of the nation. Theodor Schieder, Otto Dann, Hans-Ulrich Wehler (eds.), *Nationalismus und Nationalstaat; Studien zum nationalen Problem in Europa [Nationalism and Nation State: Studies about the National Question in Europe]* (Vandenhoeck and Ruprecht, Göttingen, 1991); as well as Ernest Gellner, *Nationalism* (New York University Press, New York, 1997), cited in Marko, "The Law and Politics ...". Pierré Caps catches this aspect and its problematic implications:

Those attracted to the nation state model, inherited from the Western part of Europe, must reckon with tenacious multinationalism, a legacy from an imperial past, which is in fact specifically central European. What is more, the impact of the nation state in this region stems from a remarkable collective perception of the concept of the nation. This social need for a State is not nurtured only by the subjective, purposeful and spiritualistic conception of the nation and its form of political organisation, that is to say of the French style political nation, RENAN's [sic] famous "desire to live together". It is built as much, if not more, on the German style Kulturnation, the organic and cultural nation of Herder, bound together by a language. In what the Germans call Mitteleuropa, the nation is much more a collective entity than a collection of individuals. Here, the elective [i.e. French] concept and the ethnic concept [i.e. German] of the nation are joined together in the same passionate desire to assert their identity ...

The notion of the Macedonian nation is an example. The preamble of the Macedonian constitution of 1991 reads as follows:

Taking as starting points the historical, cultural, spiritual and statehood heritage of the Macedonian people and their struggle over centuries for national and social freedom as well as the creation of their own state ... as well as the historical fact that Macedonia is established as a national state of the Macedonian people, in which full equality as citizens and permanent co existence with the Macedonian people is provided for Albanians, Turks, Vlachs, Romanics and other nationalities living in the Republic of Macedonia. (emphasis added)

The preamble of the Macedonian Constitution as amended in 2001 reads much differently, being more multinational:

The citizens of the Republic of Macedonia, the Macedonian people, as well as citizens living within its borders who are part of the Albanian people, the Turkish people, the Vlach people, the Serbian people, the Romany people, the Bosniac people and others taking responsibility for the present and future of their fatherland, aware of and grateful to their predecessors for their sacrifice and dedication in their endeavours and struggle to create an independent and sovereign state of Macedonia ... have decided to establish the Republic of Macedonia as an independent, sovereign state, with the intention of establishing and consolidating the rule of law, guaranteeing human rights and civil liberties, providing peace and coexistence, social justice, economic well-being and prosperity in the life of the individual and the community ... (emphasis added)

For further reading on the issue of homogenising tendencies in the constitutions of South Eastern Europe, see Stéphane Pierré Caps' interesting monograph, *La Multination* (Odile Jacob, Paris, 1995), or, more generally about Europe, his chapter "The Conditions for a Common State Heritage: The Multinational State of Europe", in Council of Europe (ed), *The Constitutional Heritage of Europe* (Council of Europe Publishing, Strasbourg, 1997) 104-128, at [http://www.venice.coe.int/docs/1996/CDL-STD\(1996\)018-e.asp#_Toc90369217](http://www.venice.coe.int/docs/1996/CDL-STD(1996)018-e.asp#_Toc90369217).

d'Outre mer - COM) or sui generis overseas collectivities (i.e., New Caledonia).

My argument is that the Council, being guided by the state-nation concept, uses the constitutional status of French as the official language in order to further strengthen the state - nation concept. Although the practical implications of the official language may be quite limited within the framework of metropolitan France,³⁸ its significance is stronger in relation to overseas territories. In French Polynesia, as an official language, it managed to set back the co-official status of the Tahitian languages and make French the only language to be used in public, a change opposed by many Tahitians. But let us start our analysis by beginning with metropolitan France.

2. The Constitutional Council and Regional Languages in Metropolitan France

[Grégoire's question 29]: What would be the religious and political importance of entirely destroying the patois?

[Respondent's answer]: The religious and political importance of destroying the patois is nil.

[Grégoire's question 30]: What would be the means of doing so?

[Respondent's answer]: To destroy it, it would be necessary to destroy the sun, the coolness of night, the whole category of food, the qualities of water - and man altogether.³⁹

Given the limited legislation on the issue of regional languages in France,⁴⁰ the French courts had the possibility to fill this gap by using abstract constitutional principles to solve these cases. The legislator more actively addressed language policy after 1992, when French became the official language of France.

In this section I will argue that the Constitutional Council showed a certain hostility towards regional languages in its key decisions dealing with this issue. The Council's opposition to regional languages is grounded on the Jacobin state-nation concept, one of the fundamental pillars of the French state.

The constitutional provision making French the official language would, on its own, not have been strong enough to justify the restrictive jurisprudence

³⁸ Ziller, "Le droit français de la langue ..." [French Law on the Use of Language], 13.

³⁹ Answers to the questionnaire that Abbé Grégoire sent out at the time of the French Revolution (Gazier, *Lettres à Grégoire* [Letters from Gregoire]..., quoted in Goldstein Sepinwall, *The Abbé Gregoire ...*, 106). His aim was to linguistically map the French territory and find out the best ways of how to extirpate the patois. The patois describes, in a pejorative way, dialects of both the French language as well as regional languages in France.

⁴⁰ Pierre Olivier Bonnot, "Du Bilinguisme à la co-officialité: Réflexion autour de l'article 53 alinéa 2 du statut de la collectivité territoriale de Corse" [From bilingualism to co-officiality: reflections on Article 53.2 of the Statute of the Territorial Collectivity of Corsica], 19 *Revista de Llengua i Dret* [Review on Language and Law] 1993, 67-79, at <http://libros-revistas-derecho.vlex.es/vid/officialite-collectivite-territoriale-194393625>.

of the French high courts adopted when dealing with language rights. Rather, the official language clause was used by these courts as a welcome complementary tool to strengthen the normative force of the state-nation concept. To be even clearer: from the point of view of legal reasoning, the promotion of regional languages and cultures was seen as problematic by the Council, mainly in light of a formal reading of the equality principle. (The equality principle is, by the way, one of the most invoked principles in the jurisprudence of the Council.⁴¹) In metropolitan France, therefore, the status of French as the official language gave more argumentative power to the Constitutional Council's restrictive jurisprudence vis-à-vis regional languages.

One of the most striking examples of the Council's jurisprudence in the field of language rights is the judgment on the compatibility of the European Charter for Regional or Minority Languages with the French Constitution.

To put matters in the right chronological order, one has to say that the French Council of State (Conseil d'État) was the first high court to deliver an opinion on this matter, namely the compatibility of the Framework Convention for the Protection of National Minorities with the French Constitution.⁴² Interrogated by the Prime Minister, the Council of State argued that the Charter for Regional or Minority Languages was not compatible with the French Constitution.⁴³ The government, backed by parliament and a favourable legal analysis by a university professor,⁴⁴ decided to push through and signed the Charter. The President of the Republic, in doubt about the constitutionality of the Charter, referred the matter to the Constitutional Council. In its abstract review of constitutionality, the Council had to assess the compatibility of the European Charter for Regional or Minority Languages with the French Constitution.⁴⁵ The Council found that the Charter was not compatible with the Constitution. In particular, the reference to "'groups' of speakers of minority languages within 'territories' in which these languages are used" was not acceptable to the Council. As it was argued before, in the state-nation concept there are no specific group rights; group rights are not allowed as they would violate the principle of equality before the law. There was similar Council jurisprudence relating to the rights

⁴¹ Council 2001d, *Exposé: Le principe d'égalité [Compendium on the equality principle]*, 2, at http://www.conseil-constitutionnel.fr/conseil-constitutionnel/root/bank_mm/pdf/Conseil/princeg2.pdf.

⁴² José Woehrling, "Les trois dimensions de la protection des minorités en droit constitutionnel comparé" [The Three Dimensions of Minority Protection in Comparative Constitutional Law]. 34 *Revue de droit de l'Université de Sherbrooke [Law Review of the University of Sherbrooke]* 2003–4, 93–155, at http://www.usherbrooke.ca/droit/fileadmin/sites/droit/documents/RDUS/volume_34/34-12-woehrling.pdf.

⁴³ Council of State 1995, case no. 357446, Assemblée générale (Section des finances) [General session (Council of Finances)], opinion 6 July 1995, at <http://www.conseil-etat.fr/media/document//avis/357466.pdf>.

⁴⁴ Guy Carcassonne, professor of constitutional law, published a study supporting the compatibility of the Charter with the French constitution. See Guy Carcassonne, *Etude sur la compatibilité entre la Charte européenne des langues régionales ou minoritaires et la Constitution: Rapport au Premier ministre [Study on the Compatibility of the European Charter on Regional or Minority Languages with the Constitution]* (La Documentation française, Paris, 1998), at <http://www.ladocumentationfrancaise.fr/rapports-publics/984001697/index.shtml>.

⁴⁵ Council 1999b, case no. 99-412 DC, Charte européenne [European Charter] ...

of women, in which it argued that measures of positive discrimination would divide the people between groups of men and women, and are therefore unconstitutional. Similarly, dividing the sovereign people into its parts by favouring speakers of regional languages would go against the principle of the unicity of the French people (“Unicité du Peuple Français”).⁴⁶ Further, speaking of different territories would undermine the indivisibility of the Republic. The Council found the Constitution also at odds with the preamble of the Charter, which enshrined “the right to use a regional or minority language in private and public life [as] an inalienable right”.⁴⁷ Critics disputed the legal value of the preamble, perhaps incorrectly.⁴⁸ Overall though, it is clear that the state-nation concept was the main impact on the judgment.

The judgment of the Council itself seems to underscore such a reading of the text:

10. Taken together, these provisions of the European Charter for Regional or Minority Languages, in that they confer specific rights on ‘groups’ of speakers of regional or minority languages within ‘territories’ in which these languages are used, undermine the constitutional principles of the indivisibility of the Republic, equality before the law and the unicity of the French people;

11. These provisions are also contrary to the first paragraph of Article 2
...⁴⁹

It is therefore safe to say that the Council would probably not have argued much differently if there was no Article of the Constitution dealing with the status of French as an official language. If there were no official language in France, the Council could have based its legal reasoning on the fact that there are no collective rights for linguistic minorities. This stance has often

⁴⁶ This principle was affirmed in the Constitutional Council’s decisions 91-290 DC of 9 May 1991, about the constitutionality of the “Act on the Statute of the Territorial Unit of Corsica”, and decision 99-412 of 15 June 1999, about the compatibility of the Charter of Regional and Minority Languages with the constitution. Further, the principle of the unicity of the French people is not applicable to the people of French overseas territories. They have, the Constitutional Council holds, a right to self-determination. Council 2000, Decision no. 2000-428 DC, Loi organisant une consultation de la population de Mayotte [Law about a Consultation of the Population of Mayotte], judgment of 4 May 2000; Roux, “La Constitution de 1958 [The Constitution of 1958]...”

⁴⁷ Council 1999b, case no. 99-412 DC, Charte européenne ..., para. 9.

⁴⁸ As it is stated in paragraph 19 of the Constituent Peoples’ decision of the Bosnian Constitutional Court (U-5/98 III, judgment of 1 July 2000), Article 31 of the Vienna Convention on the Interpretation of Treaties is unequivocal on this issue. Article 31(2) holds that: “The context for the purpose of the interpretation of a treaty shall comprise, in addition to the text, including its preamble and annexes ...” And the Bosnian constitution is contained in Annex 4 of the Dayton Agreement, an international treaty. As the Framework Convention is also an international treaty, courts could, in light of this principle, attribute legal value to the preamble. United Nations, Vienna Convention on the Law of Treaties, 1155 Treaty Series (1969), 331, at <http://www.unhcr.org/refworld/docid/3ae6b3a10.html>.

⁴⁹ Council 1999b, case no. 99-412 DC, Charte européenne [European Charter] ..., para. 10-11 (emphasis added).

been reiterated, and made a condition by the Conseil Constitutionnel for France's acceptance of the Treaty establishing a Constitution for Europe.⁵⁰

In order to further strengthen this claim, we can look at a related judgment, which deals with the statute of Corsica.⁵¹ The judgment was given in 1991, before France adopted French as its official language. The judgment best-known part strikes down the notion of a Corsican people. As we have seen from the analysis above, the Council argued that the French people cannot be subdivided into parts - therefore there can be no Corsican people. The Council also based its judgment on a narrow reading of the principle of equality; constitutional courts in other countries often interpret it much more widely,⁵² for example, the Polish Constitutional Court⁵³ and the Austrian Constitutional Court.⁵⁴ The Romanian Constitutional Court adopted a more extensive interpretation when it stated that:

⁵⁰ Council 2004a, Decision no. 2004-505 DC, The Treaty establishing a Constitution for Europe, judgment of 19 November 2004, para. 16.

⁵¹ Council 1991, Decision no. 91-290 DC, Act on the Statute of the Territorial Unit of Corsica, judgment of 9 May 1991.

⁵² Francesco Palermo, "Judicial Adjudication of Language Rights in Central, Eastern, and South-Eastern Europe: Principles and Criteria", 2 *European Diversity and Autonomy Papers - EDAP* 2011, 1-36.

⁵³ The reasoning of the Polish Constitutional Court on the compatibility of the exemption for minorities with the principle of equality states reads as follows:

the possibility provided by this provision for electoral committees of registered national minority organisations to take advantage of exemptions from electoral thresholds is an exception to the principle of equality of electoral rights in a material sense. In practice, the electoral committee that has submitted a given national minority list [of candidates] will participate [in the distribution of seats in Parliament] ... despite the fact that its list has not attained the corresponding threshold. This solution reflects a certain understanding of the equality principle that involves entities participating in elections being given equal opportunities ... This amounts to discrimination in favour of electoral committees of registered national minority organisations, in comparison with other electoral committees. Since they constitute an exception to the equality principle, provisions governing such discrimination cannot be interpreted extensively.

The decision of the Court related to a request of interpretation of the President of the Supreme Administrative Court (*Naczelnny Sąd Administracyjny*), which sought a universally binding interpretation of sections 5, 91(3), 79(3) and 87(4) of the 1993 Elections Act. The relevant parts of the judgment can be found at para. 43 of the ECtHR *Gorzelik* judgment (European Court of Human Rights, *Gorzelik and Others vs. Poland* (App no. 44158/98) ECtHR 17 February 2004). For a more comprehensive account of the equality principle in the judgments of different European constitutional courts, see Joseph Marko, "Minority Protection through Jurisprudence in Comparative Perspective: An Introduction", 25(3) *Journal of European Integration* 2003, 175-88; Palermo, "Judicial Adjudication of Language...", particularly at 18-27.

⁵⁴ Joseph Marko writes that for the Austrian Constitutional Court, in conceptualising the principle of equality before the law, the state has to take positive action in favour of minorities. In 1981, the Austrian Constitutional Court held that:

The significance attached to the protection of minorities by the constitutional legislator has to be weighed carefully when dealing with regulations concerning the position of minorities within other groups of society. A more or less strict equalisation of members of minorities to members of other groups in society will not always be sufficient in light of the constitutional value of minority protection. Depending on the relevant object of the regulations that are dealing with the protection of members of minorities vis-à-vis members of other groups of society, it may justify or even make it necessary in certain matters to give preferential treatment to the minority ...

Austrian Constitutional Court: Cf. VfSlg 9224/1981, quoted in Marko, "Minority Protection through ...", 176.

*[t]he possibility to organize higher education institutions in the national minorities' languages, as well as to set up multicultural higher education institutions does not discriminate against other Romanian citizens, but is, quite conversely, intended to ensure equality of citizens belonging to national minorities with members of the Romanian ethnicity, in what concerns the existence of an adequate institutional framework in the field of education.*⁵⁵

In France, a more narrow reading of the principle of equality prevailed. In a case involving, *inter alia*, the cultural rights contained in the Autonomy Statute for Corsica, the French Deputies and Senators sought clarification from the Council as to whether the teaching of Corsican language and culture - to be included in the curriculum of educational establishments in the territorial unit - was compatible with the Constitution. The Deputies and Senators argued that the teaching of a regional language, if not in the general interest of the people, violated the principle of equality and was therefore unconstitutional.

The Council did not follow this line of reasoning. It held that:

*Section 53 provides for teaching of the Corsican language and culture to be inserted in the school curriculum; this teaching is not contrary to the principle of equality since it is not compulsory; nor is its aim to release pupils educated in the establishments of the territorial unit of Corsica from the rights and obligations applicable to all users of establishments providing public education or associated with it ...*⁵⁶

The Constitutional Council has the "power to ensure constitutionality through a specific interpretation "(réserve d'interprétation)".⁵⁷ Concretely applied to the present case, this means that the teaching of a regional language is constitutional, provided that:

- students are not obliged to follow these language lessons;
- the law does not aim "to release pupils from rights and obligations applicable to all users of establishments providing public education or associated with it."⁵⁸

⁵⁵ Romanian Constitutional Court, Decision no. 114 of 20 July 1999 on the constitutionality of the Law on the Approval of the Government Urgency Ordinance No. 36/1997 for the modification and completion of the Education Law No. 84/1995, Monitorul Oficial al României, Part 1, No. 370 of 3 August 1999, quoted in Sergiu Constantin, "Linguistic Policy and National Minorities in Romania", *Noves SL, Revista de Sociolingüística* 2004, at <http://www6.gencat.net/llenqcat/noves/hm04tardor/docs/constantin.pdf> ...

⁵⁶ Council 1991, case no. 91-290 DC, Act on the statute of the territorial unit of Corsica, judgment of 9 May 1991 (emphasis added); the quoted English version of the judgment is available at: <http://www.conseil-constitutionnel.fr/conseil-constitutionnel/root/bank/download/91290DCa91290dc.pdf>.

⁵⁷ The translation of the term *réserve d'interprétation* is taken from the European Commission for Democracy Through Law (Venice Commission), "Preliminary Draft Study on Individual Access to Constitutional Justice", Study no. 538/2009, 34, at [http://www.venice.coe.int/docs/2010/CDL-JU\(2010\)004-e.pdf](http://www.venice.coe.int/docs/2010/CDL-JU(2010)004-e.pdf).

⁵⁸ Council 1991, case no. 91-290 DC, Act on the statute of the territorial unit of Corsica, judgment of 9 May 1991.

Although France had no official language at the time of that judgment, French had to be the language of instruction in public schools all over France. Languages other than French could be taught, but only in the form of language teaching.⁵⁹ This is a line of argument that the Council continued once the constitutional amendment making French the official language of the Republic was in place, extending the sphere of application of the two principles to teachers as well as students and not allowing immersion schooling in another language.⁶⁰ Hence, the Council adopted a more formal reading of the principle of equality. This is not surprising, argues Giovanni Poggeschi, as France is correctly considered as being the traditional “stronghold of general and abstract law”.⁶¹

The stance of the Constitutional Council therefore has not changed. What changed were the Articles of the Constitution that the Council invoked for their defence of the state-nation concept. In the Corsica decision, the argument was based on the principle of equality (Article 1) and popular sovereignty (Article 3); in the decision on the Charter, it was based on Articles 1 and 3 plus Article 2 (French as official language). Similarly, all the case law of the Council of State (Conseil d’État), even prior to the adoption of French as the official language, was unfavourable to regional and minority languages⁶² and therefore convergent with the Council’s jurisprudence on this issue.

⁵⁹ The school curriculums of public schools in Brittany based on such immersion method implied a parity of teaching subjects in French and regional languages. Such system was struck down by the Conseil d’État and the Constitutional Council. Council of State 2002, case nos 238653-238655-238681-238710-240435, Syndicat national des enseignants du second degré et autres (SNES), [National Union of Secondary Level Teaching and Others (SNES)], 29 November 2002, at <http://www.conseil-etat.fr/fr/selection-de-decisions-du-conseil-d-etat/ns-238653-238655-238681-238710-240435-.html>; Constitutional Council 2001b, case no. 2001-456 DC, Loi de finances pour 2002 [Finance Act for 2002], judgment of 27 December 2001, Recueil, at 180, para. 49.

⁶⁰ The Council made reference to the same principle of the non-obligatory nature of languages other than French for pupils, based on Article 2:
under Article 2 of the Constitution the use of a language other than French may not be imposed on pupils in establishments of public education either in the life of the establishment or in the teaching of subjects other than the relevant language.
Constitutional Council 2001b, case no. 2001-456, Loi de finances ..., para. 48.

The Council (2001a, 2001-454 DC, Loi relative à la Corse (Corsica Act), judgment of 17 January 2002, paras 22-5) came to a similar conclusion when dealing again with the issue of language teaching in Corsica, this time during the normal schooling hours.

⁶¹ Giovanni Poggeschi, “Language Rights and Duties in Domestic and European Courts”, 25(3) *Journal of European Integration* 2003, 207-24, at 218. The article discusses, *inter alia*, French language policy, particularly in relation to Corsica, and reports a certain opening vis-à-vis regional languages over recent decades. The article, written at a time when constitutional reform partly decentralised France, ascribes great importance to this process of granting a larger space to regional languages.

⁶² Professor Louis Favoreu (in Council of Europe (ed.), *The European Charter ...*, 49) noted that:
As long ago as 1985 ... [the Conseil d’État] held that applications to the courts could not be drafted in regional language (CE, Section 22 November 1985, Quillevère, No. 65105, Rec. 333) and that, as a general procedural rule, the language to be used was French (CE, Section 22, November 1985, Quillevère, No. 65105 - Crim, 4 March 1986, Turkson, No. 85-96523). Further rulings established, for example, that letters could not be addressed in regional languages, such as Breton or Basque (CE, 15 April 1992, Le Duigou, Rec. 704), and that notices and formal administrative documents, even at local level, could not be produced in regional languages (CE, 10 June 1991, Kerrain, Rec. 652). The Conseil d’État was thus already widely open to criticism from the regional languages lobby.

For completeness it can be added that, in the words of the Council, the use of French is considered to be obligatory in the public sphere. The Council held that: “subject to certain exceptions ... the use of the French language is compulsory in places open to the public, in business and employment relations, in teaching and in audio-visual communication”.⁶³ (For further references, consult the analytical tables of the Constitutional Council’s jurisprudence, which constitute a good reference on primary case law.⁶⁴)

Although the Constitutional Council has been vehemently criticized for its judgments,⁶⁵ it has to be noted that the legislator actually agrees with the jurisprudence of the Council in relation to languages. There was a bare legislative majority, but no supermajority, favouring more language rights, unlike in relation to positive action for women. The policies favouring women were struck down by the Council.⁶⁶ The legislator responded and changed the Constitution in order to explicitly allow positive action. In the case of language rights, the legislator took a much more cautious approach. The Constitution was changed in 2008 and the regional languages included as part of the heritage of France (Article 75-1). Though in order to effectively protect regional languages, it would have been necessary to include them in the first three Articles of the Constitution which deal with sovereignty and the essence of the nation as well as enshrining the state-nation concept. The legislator deliberately did not do this. Unsurprisingly, the Constitutional Council found in 2011 that Article 75-1 does not grant any subjective rights in relation to regional languages.⁶⁷ Further, it instructed the Conseil d’État not to forward any further requests for concrete review of constitutionality based on Article 75-1.⁶⁸ The Council is aware of the discrepancies between the

⁶³ Council 1994, case no. 94-345 DC, Loi relative à l’emploi de la langue française [Act Concerning the Use of French Language], judgment from 29 July 1994, Recueil, at 106, para. 1; for the English version of the judgment see <http://www.conseil-constitutionnel.fr/conseil-constitutionnel/root/bank/download/94345DCa94345dc.pdf>.

⁶⁴ Constitutional Council, Jurisprudence du Conseil Constitutionnel - Tables d’analyse, at http://www.conseil-constitutionnel.fr/conseil-constitutionnel/root/bank_mm/Tables/bon_dalloz.pdf.

⁶⁵ Roger Pinto, “Les excès du Conseil Constitutionnel” [The Excesses of the Constitutional Council], *Le Monde* (24 January 2001), at <http://occitanet.free.fr/pltc/pinto.htm>.

⁶⁶ The Council of State established in its case law a less strict reading of the equality principle. Discrimination between men and women is lawful if the following conditions are met (public interest clause): the particular conditions under which certain jobs have to be carried out, the need to protect woman, the promotion of equality of opportunity between men and women. Council of State 1989, case no. 89945, Fédération des Syndicats généraux de l’Education Nationale et de la Recherche SGEN-CFDT [Federation of Trade Unions of Education and Research], judgment of 26 June 1989, at http://basedaj.php.fr/daj/public/index/display/id_theme/113/id_fiche/4275. The Constitutional Council had earlier struck down (1992) quotas for women in politics (Stone Sweet, *Governing with Judges ...*, 105-6). The constitution therefore had to be changed and in 2008 Article 1 was amended to include: “Statutes shall promote equal access by women and men to elective offices and posts as well as to position (*sic*) of professional and social responsibility.”

⁶⁷ Council 2011, case no 2011-130 QPC, Mme Cécile L. et autres [Miss Cécile L. and others], 20 May 2011, at <http://www.conseil-constitutionnel.fr/conseil-constitutionnel/root/bank/download/cc2011130qpc.pdf>.

⁶⁸ *Ibid.* Concrete review is a very recent phenomenon in France, introduced only by a constitutional amendment in 2008. The power to call for a preliminary ruling of the Constitutional Council is reserved, according to Article 61-1 of the French Constitution, only to the Conseil d’État (Council of State) or the Cour de Cassation (Court of Cassation). A judge of a lower court has therefore to call

political will and its jurisprudence in the field of minority languages, but argues that only a modification of the Constitution would be capable of altering its jurisprudence.⁶⁹ This happened in the case of positive action for women, but not, or not yet, in the case of regional and minority languages.

3. The Constitutional Council and Regional Languages in Overseas Territories

Quand on loue les rois de France d'avoir assimilé les pays conquis, la vérité est surtout qu'ils les ont dans une large mesure déracinés. C'est un procédé d'assimilation facile, à la portée de chacun. Des gens à qui on enlève leur culture ou bien restent sans culture ou bien reçoivent des bribes de celle qu'on veut bien leur communiquer. Dans les deux cas, ils ne font pas des taches de couleur différente, ils semblent assimilés. La vraie merveille est d'assimiler des populations qui conservent leur culture vivante, bien que modifiée. C'est une merveille rarement réalisée.⁷⁰

Although the kings of France are praised for having assimilated the countries they conquered, the truth is that they to a large extent uprooted them. This is an easy method of assimilation, within the reach of anybody. People who have their culture taken away from them either carry on without any at all, or else accept the odds and ends of the culture one condescends to give them. In either event, they don't stand out individually, so they appear to be assimilated. The real marvel is to assimilate populations so that they preserve their culture, though necessarily modified, as a living thing. It is a marvel which very seldom takes place.⁷¹

In the main, this section is about the case of French Polynesia. French Polynesia, in the absence of any specific language policy prescribed by the French legislator, established a form of co-officiality of both local Tahitian languages and French.⁷² With French becoming the official language in 1992, this co-officiality came to an abrupt end. The Constitutional Council, with its interpretation of Article 2 of the Constitution, established a more or less uniform policy of the use of only French in all French territories, therefore

upon one of these higher courts. Once the competent higher court ascertained the seriousness of the matter, it decides whether or not to refer the case to the Constitutional Council. Federico Fabbrini, "Kelsen in Paris: France's Constitutional Reform and the Introduction of A Posteriori Constitutional Review of Legislation", 09 (10) *The German Law Journal* 2008, 1297-1312.

⁶⁹ Council 2001d, *Exposé: Le principe d'égalité [Compendium on the equality principle]* ...

⁷⁰ Simone Weil, *L'Enracinement [The Need for Roots]* (Gallimard, Paris, 1949), 77.

⁷¹ Simone Weil, *The Need for Roots*, translated by Arthur Wills (Taylor & Francis e-Library, 2005), 105.

⁷² Stéphane Argentin, "Les Langues Polynésiennes et la Décision Birk-Levy contre France: Un Malentendu Linguistique, entre non Dit et trop Dit" [The Polynesian Languages and the Decision Birk-Levy vs. France: A Linguistic Misunderstanding], 16 *Yearbook of the New Zealand Association for Comparative Law* 2010, 262-4, at http://www.victoria.ac.nz/law/NZACL/PDFS/Vol_16_2010/16%20Argentin.pdf.

supporting the state-nation concept. In the case of French Polynesia, though, there is an ongoing effort on the part of the local population not to implement the rulings of the Council; and that effort has met with some success. How these tensions will be solved remains to be seen in the future.

It should be mentioned that French overseas territories had, after unsuccessful efforts to wipe out local languages in name of the civilisation française,⁷³ a 'right to difference'⁷⁴ that was unheard of in the regions of metropolitan France. The Conseil Constitutionnel explicitly granted overseas territories the right to self-determination, based on the preamble of the 1958 Constitution,⁷⁵ which states that: "By virtue of these principles and that of the self-determination of peoples, the Republic offers to the overseas territories which have expressed the will to adhere to them new institutions founded on the common ideal of liberty, equality and fraternity and conceived for the purpose of their democratic development." The principles of the indivisibility of the French nation and unicity of the French people therefore do not apply to the overseas territories. The New Caledonians, for instance, are explicitly recognized as a separate people within the French

⁷³ An example of this is a 1862 decree of the Queen of the Islands and the High Commissioner of the French Empire (quoted in Argentin, "Les Langues Polynésiennes ..." [The Polynesian Languages], 261), in which it is stated that "of all the means used to speed up the development of the civilisation among the indigenous population, there is nothing more useful than the diffusion of the French language". (Author's translation. Original text: "*que de tous les moyens employés hâter le développement de la civilisation parmi les populations indigènes, il n'est en pas de plus efficace que la propagation de la langue française.*")

⁷⁴ The right to difference, or to be different, is, in the author's opinion, central if a society wants to maintain its ethnic pluralism. Legally, such right to be different is enshrined, or at least conceptually alluded to, in Article 5 of the Framework Convention for the Protection of National Minorities, Article 1 of the UN Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities, Article 1(2) of the 1978 UNESCO Declaration on Race and Racial Prejudice and the 2005 UNESCO Declaration on the Protection and Promotion of the Diversity of Cultural Expressions. Article 5(1) of the Framework Convention, for example, holds that: "The Parties undertake to promote the conditions necessary for persons belonging to national minorities to maintain and develop their culture, and to preserve the essential elements of their identity, namely their religion, language, traditions and cultural heritage." The first part of Article 1(2) of the 1978 UNESCO Declaration on Race and Racial Prejudice is even more explicit: "All individuals and groups have the right to be different, to consider themselves as different and to be regarded as such. ..." Council of Europe, *Framework Convention for the Protection of National Minorities*, 1 February 1995, ETS 157, at: <http://www.unhcr.org/refworld/docid/3ae6b36210.html>; UNESCO, *Declaration on Race and Racial Prejudice*, 27 November 1978, at http://portal.unesco.org/en/evs.php-URL_ID=13161&URL_DO=DO_TOPIC&URL_SECTION=201.html.

⁷⁵ The Council states that the preamble of the Constitution refers to the free determination of peoples. A referendum on independence would therefore be admissible (Council 2000, Decision no. 2000-428 DC, Loi organisant une consultation de la population de Mayotte [Law about a Consultation of the Population of Mayotte], judgment of 4 May 2000, para. 6). In paragraph 10, quoted below, the Council, by recalling the preamble, argues that the people of the overseas territories are different from the French people and that, therefore, the principles of indivisibility of the nation and unicity of the French people do not apply:

Considérant que la Constitution de 1958 a distingué le peuple français des peuples des territoires d'outre-mer, auxquels est reconnu le droit à la libre détermination et à la libre expression de leur volonté; qu'il suit de là que ces griefs doivent être rejetés comme inopérants. [Author's translation: The Council rejects the claim of the applicants, considering that the Constitution of 1958 distinguished between the French people and the people from the overseas territories, which have the right to self-determination and free expression of their will.]

people.⁷⁶ New Caledonia also has elements of a power-sharing system, which is a very uncommon phenomenon in the French context. Further, the legislator gives some form of recognition to regional cultures, such as the Kanak identity in New Caledonia, a decision not censured by the Constitutional Council.⁷⁷ The island of Mayotte had Islamic courts that had competence in civil law for the Muslim population (97 per cent of the population of Mayotte). Further, the overseas territories can manage, according to Article 74 of the Constitution, their own affairs relating to their interests (tax, culture) with some autonomy from the central government.

In light of the absence of a specific language policy prescribed by the French legislator, French Polynesia established a regime of co-officiality of languages. In 1980, Francis Sanford, Vice-President of French Polynesia and High Commissioner of the French Republic, signed a decision stating that the Tahitian languages were, together with the French language, the official language of French Polynesia; however, in cases of conflict, the French text would be the official one.⁷⁸

Co-officiality meant that both languages could be used for contact with the public administration, used in court and in the local assembly of French Polynesia, etc. This led to a strong revival of the Polynesian languages overall.⁷⁹

But this openness came to an end in 1992. With the constitutional amendment that made French the official language, the Council started to frequently invoke Article 2 in order to keep a uniformity of jurisprudence in all the French territories and assure the pre-eminence of the state-nation concept. The teaching of Polynesian languages ceased to be a mandatory subject in school.⁸⁰ The Autonomy Statute of 1996 tried to keep the door open for Polynesian languages by stating in section 115 that: "While French is the official language, the Tahitian and other Polynesian languages may also be used."⁸¹ The Council, though, overruled this possibility by stating that:

⁷⁷ Council 1999a, case no. 99-410 DC, Loi organique relative à la Nouvelle-Calédonie [Institutional Act Concerning New Caledonia], judgment of 15 March 1999, Recueil, at 51. Further, Article 1.3.3 of the Accords of Nouméa (relating to New Caledonia) states that Kanak languages are, together with French, the languages of teaching and culture ("*[l]es langues kanaks sont, avec le français, des langues d'enseignement et de culture*"), Debène, "Les Langues de Polynésie Française" ["The Languages of French Polynesia"]..., 160.

⁷⁸ Décision no. 2036 VP du 28 novembre 1980 donnant à la langue tahitienne qualité de langue officielle du territoire de la Polynésie française [Decision no. 2036 VP of 28 November 1980 concerning the official status of the Tahitian language in the territory of French Polynesia] (France) Journal officiel de la République française [JORF] 1270, art 1., quoted in Debène, "Les Langues de Polynésie Française..." ["The Languages of French Polynesia"], 137.

⁷⁹ Argentin, "Les Langues Polynésiennes ...[The Polynesian Languages]"

⁸⁰ *Ibid.*, 264.

⁸¹ Council 1996, case no. 96-373 DC, Loi organique portant statut d'autonomie de la Polynésie française [Institutional Act Laying Down Rules Governing the Autonomous Status of French Polynesia], judgment of 9 April 1996, Recueil, at 43, para. 89, available, in its English language version, at <http://www.conseil-constitutionnel.fr/conseil-constitutionnel/francais/les-decisions/depuis-1958/decisions-par-date/1996/96-373-dc/decision-n-96-373-dc-du-09-avril-1996.10806.html>.

“The reference made by the first paragraph of section 115 to French as the ‘official language’ must be interpreted as requiring bodies corporate under public law, persons subject to private law exercising a public-service function and users in their relations with public authorities, in French Polynesia, to use French; any other interpretation would be contrary to Article 2 of the Constitution.” In addition, teaching of the regional languages could no longer be mandatory as this would violate the principle of equality. Nor could the teaching of regional languages have as its purpose to “release pupils attending establishments in the territory from the rights and obligations applicable to all users of establishments providing public education or associated with it”.⁸² In 2004, the Council extended this principle to teachers.⁸³ The Council’s jurisprudence in relation to Corsica was similar, arguing that obligatory language teaching would be contrary to Article 2, as well as to the principle of equality.⁸⁴

French Polynesia did not go along completely with the jurisprudence of the Council and tried to undermine the strict interpretation of Article 2 in several ways. For instance, it made the knowledge of Polynesian languages an obligatory subject in the admission tests for school teachers.⁸⁵ This move, although clearly *contra legem*,⁸⁶ has not yet been challenged before French courts. Other moves have met with the resistance of French courts. French Polynesia tried to change the internal rules of its Assembly in order to allow both the Tahitian or the French languages to be used. This move was quashed by the Council of State.⁸⁷ Further, decisions based on parliamentary discussions in which the minister only answered in the Tahitian language were also quashed by the Council of State.⁸⁸ A member of the Assembly of Polynesia saw in this decision discrimination on the basis of language and

⁸² *Ibid.*, para. 92.

⁸³ Constitutional Council 2004b, 2004-490 DC, Loi organique portant statut d'autonomie de la Polynésie française [Institutional Act Laying Down Rules Governing the Autonomous Status of French Polynesia], judgment of 12 February 2004.

⁸⁴ Constitutional Council 2001a, 2001-454 DC, Loi relative à la Corse [Corsica Act], judgment of 17 January 2002.

⁸⁵ A similar wording can be found in relation to job advertisements for school teachers in France, with the significant difference that in France this aspect relates only to the recruitment of language professors in the regional language. The mentioned decision was further strengthened with an addendum to Article 5, according to which all marks equal or inferior to 5, either at the written or the oral exam in the local language, would exclude the candidate from the job competition. (Original text: “*Il est ajouté à l'article 5 un second alinéa ainsi rédigé: 'Toutefois, toute note égale ou inférieure à 5 à l'épreuve écrite d'admissibilité ou à l'épreuve orale d'admission de langues polynésiennes est éliminatoire.'*” Arrêté du 2 juin 2010 modifiant l'arrêté du 7 octobre 2005 fixant les modalités d'organisation du concours externe et du premier concours interne de recrutement de professeurs des écoles du corps de l'Etat créé pour la Polynésie française [Decree 2 June 2010 modifying the decree of 7 October 2005 regulating the external competition and the first internal competition for school teachers in public schools], at <http://www.legifrance.gouv.fr/affichTexte.do?cidTexte=JORFTEXT000022389159>.

⁸⁶ Debène, “Les Langues de Polynésie Française ...” [“The Languages of French Polynesia”], 159.

⁸⁷ Council of State 2006, case no. 282335, judgment of 29 March 2006.

⁸⁸ Council of State 2007a, case no. 299649, judgment of 22 February 2007; Council of State 2007b, case no. 300312, judgment of 22 February 2007.

appealed the decision of the Council of State to the European Court of Human Rights (ECtHR).

The ECtHR has unanimously declared this case, *Birk-Lévy v. France*, *ratione materiae* inadmissible.⁸⁹ The European Court of Human Rights therefore continues its traditionally restrictive approach regarding the interpretation of language rights in the European Convention on Human Rights and Fundamental Freedoms.⁹⁰ According to the Court, “linguistic freedom as such is not one of the rights and freedoms governed by the Convention”, therefore granting a wide margin of appreciation to the Contracting States.⁹¹

In relation to French Polynesia, it is noted that scholars report that in the Assembly of French Polynesia simultaneous translation from Tahitian into French is actually provided. This practice, though, is not formalised. Legalising the use of Polynesian languages “would attract the unwanted attention of the Conseil d’État, the rottweiler [sic] of the regional languages scene. In other words let sleeping dogs lie”.⁹²

There are similar language demands in other French overseas territories. It is noted that the city council of the island of Saint Martin demanded that the French government recognises the English language, either as the mother tongue of the island or as the regional language of communication.⁹³ The French government refused to do so. In New Caledonia, where the identity question has been very pronounced, leading to the Nouméa Accords and to an independence referendum that will take place between 2014 and 2019, the Kanak identity has been explicitly recognised. The teaching of the Kanak languages not only concerns language teaching, but the teaching of other subjects in Kanak languages.⁹⁴ Needless to say, this is at odds with the jurisprudence of the Constitutional Council, which so far has not been asked to pronounce itself on this issue.

Overall, therefore, we can conclude that the Constitutional Council used Article 2 to unequivocally state that French is the only official language. As

⁸⁹ *Birk-Lévy vs. France*, Admissibility Decision (App no. 39426/06) ECtHR, decision of 21 September 2010.

⁹⁰ Argentina, “Les Langues Polynésiennes ...[The Polynesian Languages]”, 271-2. For an overview of the Court’s jurisprudence in the field of language rights and the mechanisms open to individuals under the Convention in this field, see Fernand De Varennes, “Using the European Court of Human Rights to Protect the Rights of Minorities”, in Council of Europe (ed.), *Mechanisms for the Implementation of Minority Rights* (Council of Europe Publishing, Strasbourg, 2004), 83-104; and Julie Ringelheim “Le multiculturalisme aux miroirs de la jurisprudence de la Cour européenne des droits de l’homme” [Multiculturalism in the Jurisprudence of the European Court of Human Rights], 23(2) *L’Observateur des Nations Unies* 2007, 173-205.

⁹¹ European Court of Human Rights (Research Division), *Cultural Rights in the Case Law of the European Court of Human Rights* (2011), at http://www.echr.coe.int/NR/rdonlyres/F8123ACC-5A5A-4802-86BE-8CDA93FE58DF/0/RAPPORT_RECHERCHE_Droits_culturels_EN.pdf.

⁹² Anne Judge, “Different Approaches towards Regional Languages in France and the UK” (lecture, University of Edinburgh, Edinburgh, UK, 12 March, 2008), 9, at <http://www.arts.ed.ac.uk/celtic/poileasaigh/judgeEdinburgh%20final.pdf> (italics in original text).

⁹³ Jaques Leclerc, “La Francophonie dans le monde - Les DOM-TOMs français - Saint Martin” [“The Francophonie - The French overseas territories - the island of Saint Martin”], (2010), at http://www.tlfg.ulaval.ca/axl/amsudant/St-Martin_Fr.htm.

⁹⁴ Michel Wauthion, “Politique linguistique en Franconésie” [Linguistic policy in the French South Pacific], (2005), 3, at http://www.ac-noumea.nc/sitevr/IMG/pdf/moncton_2005_def.pdf.

the French constitutionalist Guy Carcassone argued, the official language clause is not a problem per se, the problem rather being what the Council makes out of it.⁹⁵ This was seen above in relation to the different reading of such principles by other constitutional courts.

In metropolitan France, Corsica is eager to introduce a regime of co-officiality without upsetting the Council - a difficult endeavour indeed.⁹⁶ Regimes of co-officiality, such as the one in place in French Polynesia, were in the past declared illegal and were abandoned. This notwithstanding, the diktat of the Council is not always respected and French overseas territories still explore ways to circumvent the restrictive jurisprudence of the French high courts on language issues. In relation to overseas territories, a tension has been emerging between the 'law in courts' and the 'law in action'.

This restrictiveness in the field of languages should not hide the fact that, overall, France has become less of a state - nation over the last two decades. Proof of this is the constitutional reform to allow positive discrimination for women (Article 1), the fact that regional languages are now declared part of the heritage of France (Article 75-1), and the Constitution itself now provides for a decentralised republic (Article 1). If France is to give a greater constitutional role to regional languages, a political will strong enough to change the Constitution will have to emerge. This seems more feasible in relation to overseas territories, where Article 74 could prove to be a welcome opening clause for giving more language rights to overseas territories. A change to the first three Articles of the French Constitution, which would turn the Jacobin Republican principles upside down, might well be a battle too difficult to win - looking for pragmatic solutions, for instance in the realm of decentralisation, which has already provided more space for regional languages over the last years,⁹⁷ could be a better option.⁹⁸

⁹⁵ Guy Carcassone, in Council of Europe (ed.), *The European Charter for Regional...*, 45-7

⁹⁶ Pierre Ghionga, Executive Councillor of the Corsican Assembly, presented a report on the Corsican language to the plenary session of the Corsican Assembly. The report was accepted by a majority of councillors (36-11) in the plenary session held on 28-30 July 2011. One of the report's aims is to charge a drafting committee with the elaboration of a statute of the Corsican language as well as using the legislative committee of the Corsican Assembly to work out concrete proposals relating to the use of Corsican as an official language. A change of the Constitution might be necessary in order to implement such measures. Pierre Ghionga regards the vote as initiating the process towards the recognition of Corsican as one of the official languages of the island. Collectivité Territoriale de Corse [Territorial Authority of Corsica], "Feuille de route Langue Corse 2011-2014 - L'Assemblée de Corse adopte la Feuille de route Langue Corse 2011-2014 présentée par Pierre Ghionga" [Roadmap of Corsican Language 2011-2014 - The Assembly of Corsica Adopts the Roadmap on the Corsican Language presented by Pierre Ghionga (28 July 2011), at http://www.corse.fr/Feuille-de-route-Langue-Corse-2011-2014_a3273.html; France 3, "Langue Corse: La fin d'un tabou politique?" [Corsican Language: The End of a Political Taboo?], 2 August, (2011), at <http://corse.france3.fr/info/langue-corse-la-fin-d-un-tabou-politique---69835361.html>

⁹⁷ In Corsica, bilingualism has grown stronger over recent years due to favourable policies in the region. The region has strongly used the possibilities that were legally open to it. Alain Di-Meglio, "La langue corse dans l'enseignement: Données objectives et sens sociétal" [The Corsican Language in School: Objective Data and Social Sense], 31 *Tréma* 2009, 85-94, at <http://trema.revues.org/975>; in the case of Occitan language, the situation is less rosy: Marie-Jeanne Verny, "Enseigner l'occitan au XXI siècle: Défis et enjeux" [Teaching the Occitan Language in the 21st century: Challenges and Stakes], 31 *Tréma* 2009, 69-83, at <http://trema.revues.org/962>.

4. Bibliography

Argentin, Stéphane, "Les Langues Polynésiennes et la Décision Birk-Levy contre France: Un Malentendu Linguistique, entre non Dit et trop Dit [The Polynesian Languages and the Decision Birk-Levy v. France: A Linguistic Misunderstanding], 16 *Yearbook of the New Zealand Association for Comparative Law* 2010, at http://www.victoria.ac.nz/law/NZACL/PDFS/Vol_16_2010/16%20Argentin.pdf.

Armand, Gilles; Fouquet-Armand, Maud, "L'uniformité territoriale dans la jouissance et l'exercice des droits et libertés fondamentaux en France" [The Concept of Territorial Unity and its Relation to the Exercise of Fundamental Rights in France], 2 *Cahiers de Recherche sur les Droits Fondamentaux* [Research Papers - Fundamental Rights] 2003, 11-33, at <http://www.unicaen.fr/puc/ecriture/revues/crdf/crdf2/crdf0201armand.pdf>.

Australian League of Rights, 11(30) *On Target* (1975), at <http://www.alor.org/Volume11/Vol11No30.htm>.

Barère de Vieuzac, Bertrand, "Rapport du Comité de salut public sur les idioms" [Report of the Committee on Public Welfare on Languages], at <http://www.tifq.ulaval.ca/axl/francophonie/barere-rapport.htm>.

Bonnot, Pierre Olivier, "Du Bilinguisme à la co-officialité: Réflexion autour de l'article 53 alinéa 2 du statut de la collectivité territoriale de Corse" [From Bilingualism to Co-Officiality: Reflections on Article 53.2 of the Statute of the Territorial Collectivity of Corsica], 19 *Revista de Llengua i Dret* [Review of Language and Law] 1993, 67-79, at <http://libros-revistas-derecho.vlex.es/vid/officialite-collectivite-territoriale-194393625>.

Carcassone, Guy, *Étude sur la compatibilité entre la Charte européenne des langues régionales ou minoritaires et la Constitution: rapport au Premier ministre* [Study on the Compatibility of the European Charter on Regional or Minority Languages with the Constitution] (La Documentation française, Paris, 1998).

Collectivité Territoriale de Corse [Territorial Authority of Corsica], "Feuille de route Langue Corse 2011-2014 - L'Assemblée de Corse adopte la Feuille de route Langue Corse 2011-2014, présentée par Pierre Ghionga" [Roadmap of Corsican language 2011-2014 - The Assembly of Corsica Adopts the Roadmap on the Corsican Language, Presented by Pierre Ghionga], 28 July 2011, at http://www.corse.fr/Feuille-de-route-Langue-Corse-2011-2014_a3273.html.

Constantin, Sergiu, "Linguistic Policy and National Minorities in Romania", at <http://www6.gencat.net/llengcat/noves/hm04tardor/docs/constantin.pdf>.

Council of Europe (ed.), *The European Charter for Regional or Minority Languages and the French Dilemma: Diversity v. Unicity - which Language(s) for the Republic?* (Council of Europe Publishing, Strasbourg, 2004).

De Varennes, Fernand, "Using the European Court of Human Rights to Protect the Rights of Minorities", in Council of Europe (ed.), *Mechanisms for the Implementation of Minority Rights* (Council of Europe Publishing, Strasbourg, 2004), 83-104.

Debène, Marc, "Les Langues de Polynésie Française et la Constitution: Liberté, Égalité, Identité" [The Languages of French Polynesia and the Constitution: Liberty, Equality, Identity], 16 *Yearbook of the New Zealand Association for Comparative Law* 2010, 135-162, at http://www.victoria.ac.nz/law/NZACL/PDFS/Vol_16_2010/09%20Deb%C3%A8ne.pdf.

Edition of 31 *Tréma* 2009 is dedicated in whole to the issue of the teaching of regional languages; at <http://trema.revues.org/898>.

⁹⁸ Debène, "Les Langues de Polynésie Française" ["The Languages of French Polynesia"]..., 160-1.

Debbasch, Robert; Roux, André, "L'indivisibilité de la République" [The Indivisibility of the Republic] in André Roux, "La Constitution de 1958: L'Unité" [The Constitution of 1958: Unity], at http://www.iep.univ-cezanne.fr/media/Constitution_1958.pdf.

Di-Meglio, Alain, "La langue corse dans l'enseignement: Données objectives et sens sociétal" [The Corsican Language in School: Objective Data and Social Sense], 31 *Tréma* 2009, 85-94, at <http://trema.revues.org/975>.

Éditeur officiel du Québec, Charter of the French Language, (online through the Canadian Legal Information Institute, updated to 1 March 2012), at http://www2.publicationsduquebec.gouv.qc.ca/dynamicSearch/telecharge.php?type=2&file=/C_11/C11_A.html.

European Commission for Democracy Through Law (Venice Commission), "Preliminary Draft Study on Individual Access to Constitutional Justice", Study no. 538/2009, 34, at [http://www.venice.coe.int/docs/2010/CDL-JU\(2010\)004-e.pdf](http://www.venice.coe.int/docs/2010/CDL-JU(2010)004-e.pdf).

Fabbrini, Federico, "Kelsen in Paris: France's Constitutional Reform and the Introduction of a Posteriori Constitutional Review of Legislation", 9(10) *German Law Journal* 2008, 1297-312, at http://www.germanlawjournal.com/pdfs/Vol09No10/PDF_Vol_09_No_10_1297-1312_Articles_Fabbrini.pdf.

Favoreu, Louis, "Le Conseil constitutionnel et l'alternance" [The Jurisprudence of the Constitutional Council in Times of Changes to the Political Leadership in France], in 34(4-5) *Revue française de science politique* [French Review of Political Science] 1984, 1002-1029.

France 3, "Langue Corse: La fin d'un tabou politique?" [Corsican Language: The End of a Political Taboo?], 2 August 2011, at <http://corse.france3.fr/info/langue-corse-la-fin-d-un-tabou-politique---69835361.html>.

Gazier, Augustine (ed.), *Lettres à Grégoire sur les patois de France, 1790-1794* [Letters from Gregoire on the Provincial Dialect of France, 1790-1994], (Geneva, Slatkine Reprints, 1969).

Gellner, Ernest, *Nationalism* (New York University Press, New York, 1997).

German Bundestag, Erste Beschlussempfehlung und erster Bericht des Innenausschusses (4. Ausschuss) zu dem Gesetzentwurf der Fraktionen SPD und BÜNDNIS 90/DIE GRÜNEN - Entwurf eines Gesetzes zur Klarstellung des Spätaussiedlerstatus (Spätaussiedlerstatusgesetz - SpStatG) [First Recommendation of Decision and First Report of the Committee on Internal Affairs on the Law Proposed by the Political Groups SPD (Social Democratic Party of Germany) and the Greens Concerning a Draft Law on the Clarification of the Status of Ethnic German Immigrants] of 4 July 2001, at <http://dip21.bundestag.de/dip21/btd/14/065/1406573.pdf>.

Goldstein Sepinwall, Alyssa, *The Abbé Gregoire and the French Revolution: The Making of Modern Universalism* (University of California Press, Berkeley and Los Angeles, 2005).

Jacob, James E., "Language Policy and Political Development in France", in Brian Weinstein (ed.), *Language Policy and Political Development* (Ablex Publishing, Norwood, 1990), 43-66.

Jacob, James E. and Gordon, David C., "Language Policy in France", in William R. Beer and James E. Jacob (eds.), *Language Policy and National Unity* (Rowman & Allanheld, New Jersey, 1985), 106-133.

Jandt, Fred E., *An Introduction to Intercultural Communication: Identities in a Global Community* (Sage Publications, Thousand Oaks, 2010).

Judge, Anne, *Linguistic Policies and the Survival of Regional Languages in France and Britain* (Palgrave Macmillan, New York, 2007).

Judge, Anne, "Different Approaches towards Regional Languages in France and the UK" lecture, University of Edinburgh, Edinburgh, UK, 12 March, 2008, at <http://www.arts.ed.ac.uk/celtic/poileasaidh/judgeEdinburgh%20final.pdf>.

Leclerc, Jaques, "La Francophonie dans le monde - Les DOM-TOMs français - Saint Martin" [The Francophonie - The French Overseas Territories - The Island of Saint Martin] (2010), at http://www.tlfq.ulaval.ca/axl/amsudant/St-Martin_Fr.htm.

Lehning, James R., *Peasant and French: Cultural Contact in Rural France During the Nineteenth Century* (Cambridge University Press, New York, 1995).

Lincoln, Abraham, "Gettysburg Address" (1863), at <http://showcase.netins.net/web/creative/lincoln/speeches/gettysburg.htm>.

Kymlicka, Will, *Contemporary Political Philosophy* (Oxford University Press, Oxford, 2nd ed. 2002), 327-376.

Kymlicka, Will, "The New Debate on Minority Rights", in Ferran Requejo (ed.), *Democracy and National Pluralism* (Routledge, London, New York, 2001), 15-39.

Marko, Joseph, "Minority Protection through Jurisprudence in Comparative Perspective: An Introduction", 25(3) *Journal of European Integration* 2003, 175-188.

Marko, Joseph, "'United in Diversity'? Problems of State and Nation-Building in Post-Conflict Situations: The Case of Bosnia-Herzegovina", 30(3) *Vermont Law Review* 2006, 503-550.

Marko, Joseph, "The Law and Politics of Diversity Management: A Neo-Institutional Approach", 6 *European Yearbook of Minority Issues* 2006/07 (2008), 251-279.

Mautner, Menachim, "Three Approaches to Law and Culture", 96(4) *Cornell Law Review* 2011, 839-868, at <http://www.lawschool.cornell.edu/research/cornell-law-review/upload/Mautner-final.pdf>.

Moutouh, Hugues, "La République face à ses communautés [The Republic and Her Communities]", in 2 *Cahiers de Recherche sur les Droits Fondamentaux* 2003, 87-92.

Noiriel, Gérard, *Population, immigration et identité nationale en France: xixe - xxie siècle* [Population, Immigration and National Identity in France in the 19-20th Centuries] (Hachette, Collection Carre Histoire, Paris, 1992).

O'Leary, Brendan, "The Elements of Right-Sizing and Right-Peopling the State", in Brendan O'Leary, Ian Lustick and Thomas Callaghy (eds.), *Right-Sizing the State: The Politics of Moving Borders* (Oxford University Press, New York, 2004), 15-73.

Palermo, Francesco, "Judicial Adjudication of Language Rights in Central, Eastern, and South-Eastern Europe: Principles and Criteria", 2 *European Diversity and Autonomy Papers - EDAP* 2011, 1-36.

Philoctetes Center for the Multidisciplinary Study of the Imagination, *The Psychology of the Modern Nation State* (2006), at <http://www.youtube.com/watch?v=YV1zuLqPgrk>, minutes 48-56.

Pierré Caps, Stéphane, *La Multination* (Odile Jacob, Paris, 1995).

Pierré Caps, Stéphane, "The Conditions for a Common State Heritage: The Multinational State and Europe", in Council of Europe, *The Constitutional Heritage of Europe* (Collection Science and Technique of Democracy, no. 18, Council of Europe Publishing, Strasbourg, 1997), 104-128.

Pinto, Roger, "Les excès du Conseil Constitutionnel" [The Excesses of the Constitutional Council], *Le Monde* 24 January 2001, at <http://occitanet.free.fr/pltc/pinto.htm>.

Poggeschi, Giovanni, "Language Rights and Duties in Domestic and European Courts", 25(3) *Journal of European Integration* 2003, 207-224.

Ringelheim, Julie, "Le multiculturalisme aux miroirs de la jurisprudence de la Cour européenne des droits de l'homme" [Multiculturalism in the Jurisprudence of the European Court of Human Rights], 23(2) *L'Observateur des Nations Unies* 2007, 173-205.

Roux, André, "La Constitution de 1958: L'Unité" [The Constitution of 1958: Unity], in Bertrand Mathieu (ed.), *Le cinquantenaire de la Constitution de la V^e République* [50 Years of French

Constitution Under the 5th Republic] (Daloz, Paris, 2008), 147-60, at http://www.iep.univ-cezanne.fr/media/Constitution_1958.pdf.

Sanchez Illán, Juan Carlos, "Ortega y Azaña frente a la España de las Autonomías" [Ortega y Azaña on the Regional Autonomies in Spain], 49 *Cuadernos republicanos* 2002, 73-95, at http://dialnet.unirioja.es/servlet/dfichero_articulo?codigo=1195876&orden=65809.

Schieder, Theodor, Dann, Otto and Wehler, Hans-Ulrich (eds.), *Nationalismus und Nationalstaat: Studien zum nationalen Problem in Europa* [Nationalism and Nation State: Studies about the National Question in Europe] (Vandenhoeck and Ruprecht, Göttingen, 1991).

Shelton, Dinah, "The UN Human Rights Committee's Decisions", *Human Rights Dialogue: Cultural Rights* (2005), at http://www.carnegiecouncil.org/resources/publications/dialogue/2_12/section_3/5151.html.

Stepan, Alfred, "Comparative Theory and Political Practice: Do We Need a 'State - nation' Model as well as a 'Nation State' Model?" 43(1) *Government and Opposition* 2008, 1-25, at <http://www.sipa.columbia.edu/ctr/pdf/govtandopposition72407.pdf>.

Stone Sweet, Alec, *Governing with Judges* (Oxford University Press, New York, 2000).

Taylor, Charles, "Nationalism and Modernity", in Ronald Beiner (ed.), *Theorizing Nationalism* (State University of New York Press, Albany, 1999), 219-245.

United Nations Human Rights Committee, *Selected Decisions of the Human Rights Committee under the Optional Protocol* (United Nations Publishing, New York and Geneva, 2004), at <http://www.ohchr.org/Documents/Publications/SDecisionsVol4en.pdf>.

Weil, Simone, *L'Enracinement* [The Need for Roots] (Gallimard, Paris, 1949).

Weil, Simone, *The Need for Roots* (Taylor & Francis e-Library, 2005).

Verny, Marie-Jeanne, "Enseigner l'occitan au XXI siècle: Défis et enjeux" ["Teaching the Occitan Language in the 21st Century: Challenges and Stakes"], 31 *Trema* 2009, 69-83, at <http://trema.revues.org/962>.

Wauthion, Michel, "Politique linguistique en Franconésie" [Linguistic Policy in the French South Pacific] (2005), at http://www.ac-noumea.nc/sitevr/IMG/pdf/moncton_2005_def.pdf.

Weber, Eugen, *Peasants into Frenchmen: The Modernization of Rural France 1870-1914* (Stanford University Press, Stanford, 1976).

Woehrling, José, "Les trois dimensions de la protection des minorités en droit constitutionnel compare" [The Three Dimensions of Minority Protection in Comparative Constitutional Law], 34 *Revue de droit de l'Université de Sherbrooke* 2003-4, 93-155, at http://www.usherbrooke.ca/droit/fileadmin/sites/droit/documents/RDUS/volume_34/34-12-woehrling.pdf.

Ziller, Jaques, "Le droit français de la langue, entre les mythes d'une tradition interventiste et la réalité de nouvelles angoisses" [French Law on the Use of Language, Between the Myth of a Protectionist Tradition and the Reality of New Concerns], 10 *EUI Working Paper - Law* 2006, 1-17.

Legal Judgments and Legal Reports

The French Constitutional Council

Constitutional Council, *Jurisprudence du Conseil Constitutionnel - Tables d'analyse* [Analytical tables of Jurisprudence of the French Constitutional Council], at http://www.conseil-constitutionnel.fr/conseil-constitutionnel/root/bank_mm/Tables/bon_dalloz.pdf.

Council 1975, case n° 75-59 DC, *Loi relative aux conséquences de l'autodétermination des îles des Comores* [Law on the Consequences of the Self-Determination of the Comoro Islands], 30 December 1975, *Recueil*, p. 26, at <http://www.conseil-constitutionnel.fr/conseil->

[constitutionnel/francais/les-decisions/acces-par-date/decisions-depuis-1959/1975/75-59-dc/decision-n-75-59-dc-du-30-decembre-1975.7429.html](http://www.conseil-constitutionnel.fr/conseil-constitutionnel/francais/les-decisions/acces-par-date/decisions-depuis-1959/1975/75-59-dc/decision-n-75-59-dc-du-30-decembre-1975.7429.html).

Council 1982, case n°82-146, Act amending the Electoral Code and the Code of Municipalities and Governing the Election of Municipal Councillors and the Conditions for Entry of French Nationals Residing outside France in Electoral Registers, 18 November 1982, Recueil 1982, p. 66, at http://www.conseil-constitutionnel.fr/conseil-constitutionnel/root/bank_mm/anglais/a82146dc.pdf.

Council 1991, case no. 91-290 DC, Loi portant statut de la collectivité territoriale de Corse ["Act on the Statute of the Territorial Unit of Corsica"], judgement of 9 May 1991, Recueil, at 50, at <http://www.conseil-constitutionnel.fr/conseil-constitutionnel/francais/les-decisions/acces-par-date/decisions-depuis-1959/1991/91-290-dc/decision-n-91-290-dc-du-09-mai-1991.8758.html> (the text is also available in German and English).

Council 1994, case no. 94-345 DC, Loi relative à l'emploi de la langue française [Act concerning the Use of French language], 29 July 1994, Recueil, at 106, at <http://www.conseil-constitutionnel.fr/conseil-constitutionnel/francais/les-decisions/acces-par-date/decisions-depuis-1959/1994/94-345-dc/decision-n-94-345-dc-du-29-juillet-1994.10568.html>.

Council 1996, case no. 96-373 DC, Loi organique portant statut d'autonomie de la Polynésie française [Institutional Act Laying Down Rules Governing the Autonomous Status of French Polynesia], judgment of 9 April 1996, Recueil, at 43, at <http://www.conseil-constitutionnel.fr/conseil-constitutionnel/francais/les-decisions/acces-par-date/decisions-depuis-1959/1996/96-373-dc/decision-n-96-373-dc-du-09-avril-1996.10806.html> (also available in English).

Council 1999a, case no. 99-410 DC, Loi organique relative à la Nouvelle-Calédonie [Institutional Act Concerning New Caledonia], judgment of 15 March 1999, Recueil, at 51, at <http://www.conseil-constitutionnel.fr/conseil-constitutionnel/francais/les-decisions/acces-par-date/decisions-depuis-1959/1999/99-410-dc/decision-n-99-410-dc-du-15-mars-1999.11833.html> (also available in English).

Council 1999b, case no. 99-412 DC, Charte européenne des langues régionales ou minoritaires [European Charter for Regional or Minority Languages], judgment of 15 June 1999, Recueil, at 71, at <http://www.conseil-constitutionnel.fr/conseil-constitutionnel/francais/les-decisions/acces-par-date/decisions-depuis-1959/1999/99-412-dc/decision-n-99-412-dc-du-15-juin-1999.11825.html> (also available in English).

Council 2000, case no. 2000-428 DC, Loi organisant une consultation de la population de Mayotte [Law about a Consultation of the Population of Mayotte], 4 May 2000, Recueil, at 70, at <http://www.conseil-constitutionnel.fr/conseil-constitutionnel/francais/les-decisions/acces-par-date/decisions-depuis-1959/2000/2000-428-dc/decision-n-2000-428-dc-du-04-mai-2000.448.html>.

Council 2001a, case no. 2001-454 DC, Loi relative à la Corse [Corsica Act], judgment of 17 January 2002, Recueil, at 70, at <http://www.conseil-constitutionnel.fr/conseil-constitutionnel/francais/les-decisions/acces-par-date/decisions-depuis-1959/2002/2001-454-dc/decision-n-2001-454-dc-du-17-janvier-2002.667.html> (also available in English).

Council 2001b, case no. 2001-456 DC, Loi de finances pour 2002 [Finance Act for 2002], 27 December 2001, Recueil, at 180, at <http://www.conseil-constitutionnel.fr/conseil-constitutionnel/francais/les-decisions/decisions-par-date/2001/2001-456-dc/decision-n-2001-456-dc-du-27-decembre-2001.513.html> (also available in English).

Council 2001c, Tables d'analyses - jurisprudence du Conseil Constitutionnel [Analytical tables of jurisprudence 1959-2012], at http://www.conseil-constitutionnel.fr/conseil-constitutionnel/root/bank_mm/Tables/tables_analytiques.pdf.

Council 2001d, Exposé: Le principe d'égalité, [Compendium on the Equality Principle], at http://www.conseil-constitutionnel.fr/conseil-constitutionnel/root/bank_mm/pdf/Conseil/princeq2.pdf.

Council 2004a, case no. 2004-505 DC, The Treaty establishing a Constitution for Europe, judgment of 19 November 2004.

Council 2004b, case 2004-490 DC, Loi organique portant statut d'autonomie de la Polynésie française [Institutional Act Laying Down Rules Governing the Autonomous Status of French Polynesia], judgment of 12 February 2004.

Council 2011, case no 2011-130 QPC, Mme Cécile L. et autres [Miss Cécile L. and others], 20 May 2011, at <http://www.conseil-constitutionnel.fr/conseil-constitutionnel/root/bank/download/cc2011130qpc.pdf>.

Council 2012, decision no 2012-647 DC, Loi visant à réprimer la contestation de l'existence des génocides reconnus par la loi [French Law on Disputing Recognised Genocides], judgment of 28 February 2012.

The French Council of State

Council of State 1989, case no. 89945, Fédération des Syndicats généraux de l'Education Nationale et de la Recherche SGEN-CFDT [Federation of Trade Unions of Education and Research], 26 June 1989, at <http://legimobile.fr/fr/jp/a/ce/ad/1989/6/26/89945/>.

Council of State 1995, opinion no. 357466, 6 July 1995, at <http://www.conseil-etat.fr/media/document//avis/357466.pdf>.

Council of State 2002, case nos 238653-238655-238681-238710-240435, Syndicat national des enseignants du second degré et autres (SNES), [National Union of Secondary Level Teaching and Others (SNES)], 29 November 2002, at <http://www.conseil-etat.fr/fr/selection-de-decisions-du-conseil-d-etat/ns-238653-238655-238681-238710-240435-.html>.

Council of State 2006, case no. 282335, 29 March 2006, at <http://arianeinternet.conseil-etat.fr/arianeinternet/ViewRoot.asp?View=Html&DMode=Html&PushDirectUrl=1&Item=6&fond=DCE&text=polyn%E9sie+francaise+langue&Page=2&querytype=simple&NbEltPerPages=4&Pluriels=True>.

Council of State 2007a, case no. 299649, 22 February 2007, at <http://arianeinternet.conseil-etat.fr/arianeinternet/ViewRoot.asp?View=Html&DMode=Html&PushDirectUrl=1&Item=3&fond=DCE,%20AJCE,%20DTC,%20DCA&text=polyn%E9sie+francaise+langue&Page=1&querytype=simple&NbEltPerPages=4&Pluriels=True>.

Council of State 2007b, case no. 300312, 22 February 2007, at <http://arianeinternet.conseil-etat.fr/arianeinternet/ViewRoot.asp?View=Html&DMode=Html&PushDirectUrl=1&Item=4&fond=DCE&text=polyn%E9sie+francaise+langue&Page=1&querytype=simple&NbEltPerPages=4&Pluriels=True>.

Other Legal Materials

Austrian Constitutional Court: Cf. VfSlg 9224/1981.

Bosnian Constitutional Court: U5/98, Partial Decision adopted on 1 July 2000.

Council of Europe, Framework Convention for the Protection of National Minorities, 1 February 1995, ETS 157, available at: <http://www.unhcr.org/refworld/docid/3ae6b36210.html>.

European Court of Human Rights: Gorzelik and Others v. Poland (App no. 44158/98) ECtHR 17 February 2004; Birk-Lévy v. France Admissibility Decision (App no. 39426/06) ECtHR 21 September 2010.

French Polynesia, Decree 2 June 2010 Modifying the Decree of 7 October 2005 Regulating the External Competition and the First Internal Competition for School Teachers in Public

Schools], at
<http://www.legifrance.gouv.fr/affichTexte.do?cidTexte=JORFTEXT000022389159>.

Romanian Constitutional Court, Decision no. 114 of 20 July 1999 on the Constitutionality of the Law on the Approval of the Government Urgency Ordinance No. 36/1997 for the Modification and Completion of the Education Law No. 84/1995, Monitorul Oficial al României, Part 1, No. 370 of 3 August 1999.

United Nations, Vienna Convention on the Law of Treaties, 1155 Treaty Series (1969).

United Nations Human Rights Committee, T. K. v. France, No. 220/1987; H. K. v. France, No. 222/1987.

US Supreme Court, Loving v. Virginia, 388 U.S. 1 (1967).

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