

Faculty of Political Science, MA in Policies and Governance in Europe
Major in Cultural Heritage Policies

Chair of Comparative and International Law of Heritage Protection

*Language diversity: a cultural richness to safeguard.
The linguistic minorities' protection systems and linguistic
heritage promotion approaches in Italy and France.*

Prof. Lorenzo Casini

SUPERVISOR

Prof.ssa Anna Pirri Valentini

CO- SUPERVISOR

Angelo Chiarlitti
ID No. 648572

CANDIDATE

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INTRODUCTION

“Linguistic diversity, like the permanence of different peoples on earth, are a value, the salt of our species. Cultural diversity implies the existence of a vast potential of possible answers to the problems that nature and society pose to humanity. Destroy diversity for the benefit of global massification carries the same risks involved in replacing a complex ecosystem with a monoculture. The moment the monoculture proves to be unsuitable -or no longer suitable- for that that given territory, the entire system suffers a collapse, an impoverishment.”¹

Language is the mean by which humankind has been able to name and define nature, the external and inner world. Each language represents a different set of values, perceptions, beliefs, and visions. Its importance has always been acknowledged and tightly linked to the concepts of culture and identity. Consequently, it is one of the main factors that defines the individual and collective identity and perception of belonging.

An agreed number of the total languages in the world does not exist, it varies from 5.000 to 10.000, depending on what is considered language and what is not. According to the UNESCO Atlas of the world's languages in danger, half of the languages spoken today in the world is endangered. Even if we take into consideration the lowest estimated number, it would mean in any case at least 2.500 languages risking extinction. In Europe, approximately more than 200 languages are spoken, and without considering the linguistic richness characterised by local dialects, 128 languages risk to disappear only in the European Union.

It can be affirmed that linguistic diversity represents a richness for humankind and an historical testimony of its story. Such aspect makes languages custodians of cultures and stories to be handed down to future generations. It could be possible to argue that such specificity of languages makes them cultural heritage goods deserving protection.

¹ Rubattu, A. (2006). L'insegnamento della lingua e della cultura sarda. *Revista Philologica Romanica*, 69-72.

Throughout the years several factors jeopardised such richness, tending towards a general uniformity and standardisation of the linguistic panorama. This entailed a loss of the less spoken languages and of those that are considered ‘weaker’ for political and economic reasons. Many languages are nowadays dead and many others risk to undergo the same destiny. In the last decades, globalisation has accelerated this process, jeopardising the possibility also of ‘stronger’ languages to survive.

Among the ‘weakest’, regional and minority languages are the most exposed to the risk of extinction, while they result being the languages of the local and collective tradition at the smallest sociological scale. Recently, the international community and in particular the European countries seem to have understood the relevance of linguistic diversity, and its cultural importance. Indeed, it is possible to assist to multiple attempts to revitalise and promote the declining regional languages.

The aim of this thesis is to make an historical reconstruction of the international and regional legislations on language diversity protection, and to establish a comparison on how such diversity is protected and promoted in Italy and France, two countries that can boast of a rich national linguistic heritage. In addition to this, the cases chosen for the comparison are particularly relevant for the subject of the thesis since they present several similarities in their system organisation, but also considerable differences in their approach towards language diversity protection. Their common aspects are represented by the unitarian character of the State, the tradition of a centralised system, and by the attempts to balance these unitarian national interests with autonomy and linguistic rights’ concessions.

Furthermore, the other objective of this work is to understand which could be the best way to protect regional and minority languages from a legal perspective, envisaging as a first step the cultural heritage law path, given their role of cultural custodians and the

legal international documents existing about the subject. In order to do so, the research has a multidisciplinary nature, having questioned different fields of scientific literature, from sociology, to history, linguistics and law. In particular, primary sources as international conventions, constitutional charters, primary legislations, and constitutional courts' judgements will be used in order to sustain and to confirm what stated.

This thesis is structured as follows. The first chapter starts with the analysis of the concept of language as identity factor and its possible connotation as cultural heritage good. Being the language characterised by intangibility, the analysis continues in researching its relation with the 2003 UNESCO Convention for the Safeguarding of the Intangible Cultural Heritage, and with the analysis of the Convention itself, including its limitations. Subsequently, it presents an overview of the main international documents and of the European approach, both at the level of Council of Europe and European Union, aiming at protecting languages *per se* and language diversity. In addition, it also offers a critical reflection about alternatives to cultural heritage law path for the linguistic safeguarding.

After the general legal analysis, the following chapters deal with two national cases, Italy and France, that present an interesting peculiar and rich linguistic heritage. The objective is to understand which approach the two countries adopt face to languages protection, in particular in the regards of regional ones. In order to do so, they offer a brief historical perspective on the evolution of the national and regional languages, and on the linguistic policies adopted. Furthermore, chapters II and III present the national legal overview about the protection of regional and minority languages, with a final paragraph focusing on one specific regional case. For the Italian context, the focus is on Sardinia, while for France it is on Corsica. These two cases represent two controversial examples, characterised by the strong identity of the regional peoples and by the difficulty of

normalising their regional languages. Finally, the last part is dedicated to conclusions, where there will be reported the main findings, and an answer to the thesis' research question will be provided.

CHAPTER I

The protection of languages within the International legal framework

1. Language as identity factor and its protection under cultural heritage law

*“The limits of my language are the limits of my world.”*² The philosopher Wittgenstein with these words asserted the concept that language is not only the mean but also the limit for ourselves to describe the world around us. It represents the lenses that an individual uses to conceive and to interpret life and reality. Through language men can name and describe what they see and what they feel. Through words, emotions and thoughts become alive and acquire a shape. Each word intrinsically carries a nuance, a perception of the ‘object’ that it designates. According to the linguistics scholar Hang Zou, *language is the privileged medium in which we ‘make sense’ of things, in which meaning is produced and exchanged.*³ Consequently, a language can be conceived as a mirror of the multiple perceptions of a group of people speaking a given language. Its words, its structure and its logic allow the understanding of the *forma mentis* and of several behaviours of its speakers. From this perspective, it can be affirmed that language is a tool that can be used to understand the culture of a people. However, relegating the role of language to a mere tool may be inaccurate. Language can be intended as a translation of human creativity and of the essence of a culture. Indeed, it is an integrated element constituting the culture of a community. Its importance as a fundamental identity factor is recalled also by the socio-linguistic scholars Dell’Aquila and Iannaccaro, as reported by Andrea Bernini, who state that *language embodies the essence of the nation.*⁴

² Wittgenstein, L. (1961). *Tractatus Logico-Philosophicus*. London : Routledge & Kegan Paul.

³ Zou, H. (2012, November). Language identity and cultural difference. *International Journal of Social Science and Humanity*, Vol. 2(No. 6) p.466

⁴ Bernini, A. (2014). Languages as Intangible Cultural Heritage: About an ‘Ecolinguistic Capital’. (G. University of Heidelberg, Red.) 164-186. (p.168)

This inseparable bond is also traceable in the words of Isidore of Seville affirming *ex linguis gentes, non ex gentibus linguae exortae sunt*.⁵

In other words, language can be considered as the tool but also the product of the expression of a given culture. To affirm this, it is important to try to find a definition of culture and of its constitutive factors in juridical but also sociological terms. An interesting definition of culture emerges in the preamble of the 1982 Mexico City Declaration on Cultural Policies. In this part, the UNESCO Declaration states “culture may now be said to be the whole complex of distinctive spiritual, material, intellectual and emotional features that characterize a society or social group. It includes not only the arts and letters, but also modes of life, the fundamental rights of the human being, value systems, traditions, and beliefs.”⁶ It is a broad definition of culture, that allows the inclusion of all those features of the human essence intended as identity factors, which simultaneously may vary from one culture to another.

Another interpretation of culture is reported by Zou citing the sociologist Hall. In one of his works, he referred to culture as the *actual grounded terrain of practices, representations, languages, and customs of any specific society*.⁷ In Hall’s opinion culture can be divided in what he names as ‘*high culture*’ and ‘*popular culture*’.⁸ From an anthropological perspective, one shape of culture has to do with a people’s ‘*way of life*’ or ‘*shared values*’.⁹ As reported by Zou, *Hall explains that a culture produces ‘shared meanings.’ This sharing of meanings generates and reinforces the notion of cultural*

⁵ “Nations arose from languages, and not languages from nations”; quote present in Bernini, A. (2014). Languages as Intangible Cultural Heritage: About an ‘Ecolinguistic Capital’. (G. University of Heidelberg, Red.) 164-186. (p.169)

⁶ UNESCO. (1982). Mexico City Declaration on Cultural Policies - World Conference on Cultural Policies. Mexico City

⁷ Zou, H. (2012). Language identity and cultural difference. International Journal of Social Science and Humanity, Vol. 2(No. 6) p.465

⁸ Hall, S. (1997). Cultural Identity and Diaspora. K. Woodward, Identity and Difference (51-59). London: Sage Publication.

⁹ Ibidem

*difference.*¹⁰ She affirms that language can embody the cultural difference and intends it as a *symbolic practice which gives meaning or expression to the idea of belonging to a national culture.*¹¹ In her opinion, language can present and construct identity: “meaning is what gives us a sense of our own identity, of who we are and with whom belong... and it maintains identity between a group of people.”¹² Following this idea, language is not just a communicative tool allowing the speakers to understand each other, but it is also an ensemble of shared meanings whose exclusiveness is the representation of shared perspectives, values and culture.

According to Rieks Smeets, *the culture of a people is composed by the totality of elements representing the very heart of its distinctive idiosyncrasy.*¹³ Once again culture is intended as the sum of multiple identity elements, where language can also be included. This strong link between culture and language can also be found in the definition of folklore in the 1989 UNESCO Recommendation on the Safeguarding of Traditional Culture and Folklore:

“Folklore (or traditional and popular culture) is the totality of tradition-based creations of a cultural community, expressed by a group or individuals and recognized as reflecting the expectations of a community in so far as they reflect its cultural and social identity; its standards and values are transmitted orally, by imitation or by other means. Its forms are, among others, language, literature, music, dance, games, mythology, rituals, customs, handicrafts, architecture, and other arts.”¹⁴

The Recommendation identifies language as a form of folklore, which is primarily defined as culture, putting it on the same level as other cultural expressions such as literature, music, and architecture. This definition indicates what could be assimilable to

¹⁰ Zou, H. (2012, November). Language identity and cultural difference. *International Journal of Social Science and Humanity*, Vol. 2(No. 6) p.465

¹¹ Ivi p.466

¹² Ibidem

¹³ Lenzerini, F. (2011). Intangible Cultural Heritage: The Living Culture of Peoples. *European Journal of International Law*, n. 22(1), 101-120. (p.102)

¹⁴ UNESCO. (1989). Recommendation on the Safeguarding of Traditional Culture and Folklore.

forms and expressions of culture. Like other forms of cultural expression, it could be deduced that language could be placed under protection in order to ensure its survival.

One of the objectives enshrined in multiple international conventions and bodies is guaranteeing and pursuing cultural diversity. Preservation of cultural diversity, as stated by Article 1 of the UNESCO Universal Declaration on Cultural Diversity, “is embodied in the uniqueness and plurality of the identities of the groups and societies making up humankind.”¹⁵ Diversity of cultures and languages reflect diversity of peoples. Lenzerini affirms that diversity is particularly linked to intangible cultural heritage, *because such a heritage represents the living expression of the idiosyncratic traits of the different communities.*¹⁶ He also warns:

“The rich cultural variety of humanity is progressively and dangerously tending towards uniformity. In cultural terms, uniformity means not only loss of cultural heritage – conceived as the totality of perceptible manifestations of the different human groups and communities that are exteriorized and put at the others’ disposal – but also standardization of the different peoples of the world and of their social and cultural identity into a few stereotyped ways of life, of thinking, and of perceiving the world.”¹⁷

In light of these definitions, it is possible to claim that linguistic diversity is nowadays threatened. The languages most at risk are obviously those spoken by minorities, which can be defined as ‘weak languages,’ given their small number of speakers.

Several phenomena are eligible as causes to the disappearance of languages. Bernini identifies *three major factors: linguistic imperialism and globalisation, the language policies traditionally adopted by nation-states, and language shift.*¹⁸ Firstly, the historical imperialism, based on colonisation such as that undertaken by the British and

¹⁵ UNESCO. (2001). Universal Declaration on Cultural Diversity. Paris.

¹⁶ Lenzerini, F. (2011). Intangible Cultural Heritage: The Living Culture of Peoples. European Journal of International Law, n. 22(1), 101-120. (p.103)

¹⁷ Ibidem

¹⁸ Bernini, A. (2014). Languages as Intangible Cultural Heritage: About an ‘Ecolinguistic Capital’. (G. University of Heidelberg, Red.) 164-186. (p.164)

French empires, is the driving factor in the imposition of the dominant language (French or English) in many territories of these former empires. This *modus operandi* followed the principle of the *lingua instrumentum regni*, which is still relevant today. More recently, on the international scenario the phenomenon of globalisation, with the omnipresent and leading use of the English language, relegates the role of national languages to the corner. This is one of the main critiques directed for example at the European Union framework, which is accused of having established a hierarchy of languages, privileging the so-called ‘strong languages’ for its functioning.¹⁹

Today, English is undoubtedly ‘the’ requirement in almost every sector of the labour market and of international relations. As far as language shift is concerned, Bernini reports four factors which *are playing a key role in fostering language shift: urbanisation, globalisation, social dislocation, and cultural dislocation.*²⁰ Economic, political, and cultural factors bring prestige to the dominant languages and entail a shift in terms of speakers at the expenses of many others. An interesting perspective, involving linguistic and human rights, is brought forward again by Bernini, reporting:

“Language shift can be ‘voluntary’ at an individual level, in the meaning that it can be due to economic benefits as well as ideological persuasion and hegemonic mind-mastering, but if people are forced to shift their languages in order to gain economic benefits of the kind which are in fact bare necessities for basic survival, this is a violation of not only their economic human rights but also their linguistic human rights.”²¹

The problematic situation of endangered languages is well known and acknowledged at the international level. As a matter of fact, UNESCO, with a bureaucratic top-down approach, drew up the UNESCO Atlas of the World’s Languages in Danger which evokes the idea of language as heritage and links it *to notions of*

¹⁹ Ivi p.167

²⁰ Ivi p.170

²¹ Bernini, A. (2014). Languages as Intangible Cultural Heritage: About an ‘Ecolinguistic Capital’. (G. University of Heidelberg, Red.) 164-186. (p.170)

*endangerment and ‘vanishing voices’, resulting in language being positioned as heritage-in-danger.*²² From the perspective of the objective of promoting and protecting cultural diversity, while also revitalizing the Intangible Cultural Heritage, De Witte believes that language would seem an appropriate object of protection.²³ Concerning the risk of losing certain languages, De Witte affirms that: “the extinction of a language results in the irrecoverable loss of unique cultural, historical, and ecological knowledge. It is a unique expression of the human experience of the world. Many experience this loss as a loss of their original ethnic and cultural identity.”²⁴ On a similar note, Smeets reports:

“Every culture represents an experiment in survival, of a unique and alternative way of life, of solving or evading problems. Loss of cultural diversity is therefore a loss of experience and knowledge that has proven its potential usefulness for mankind in general. Languages, besides being part of a nation’s cultural heritage, constitute a complete and complex reflection of it. The loss of a language thus entails the loss of Cultural Heritage.”²⁵

In addition, he underlines the pace at which languages and elements of the intangible cultural heritage are disappearing today, that appears to be unprecedented.²⁶ An additional factor that is causing the steady decrease in the use of ‘weak languages’ is the openness of society. Due to greater freedom, ease of movement and a more accessible choice of where to move to, societies are increasingly fluid, allowing contacts and exchanges between cultures as never before.

In the European context, it is important to underline one significant factor at the basis of the constant disuse of regional and minorities’ languages. As already mentioned above, the principle of the *linguam instrumentum regni* has been crucial in the evolution

²² Deumert, A. Storch, A. (2018). Language as world heritage? Critical perspectives on languages as archive. *Safeguarding Intangible Heritage - Practices and Politics* (102-117). London: Routledge (p.103)

²³ de Witte, B. (2020). Language as Cultural Heritage. F. Francioni; A. Vrodoljak, *The Oxford Handbook of International Cultural Heritage Law*. 371-378. (p.372)

²⁴ Ivi p.373

²⁵ Smeets, R. (2004). Language as a Vehicle of the Intangible Cultural Heritage. *Museum International*, 156-165. (p.160)

²⁶ Ibidem

of the linguistic policies and of the nation-building process of many European states. In their processes of nation-building it is possible to identify two kinds of nationalism used as ‘guiding ideals,’ reflected in two models.

The first one is the French model, defined by Bernini as *‘contractual nationalism’*.²⁷ After the French Revolution, the cornerstone of the new state became the monolingualism. The French language became the guarantee of the loyalty and commitment of the people to the nation. *Such a principle on the one hand, Bernini reports, is inclusive, since anyone can be part of the nation; on the other hand, it is coercive, leaving no space for diversity.*²⁸

The second model is the German one, *‘ethno-linguistic nationalism’*.²⁹ Based on the *ius sanguinis*, it established a natural link between ethnicity and language. As reported by Bernini, *according to the nation-state ideology, the concept of ‘linguistic minority’ results, deriving from the opposition to the idea of ‘majority’ in a way that is perceived as a sort of exception to the rule.*³⁰ Such ideology has been *widely perceived as the normal and obvious founding idea of a state, thus leading to the subordination of language policy to ethnic identity, to linguistic uniformity.*³¹ More generally, because of *the cultural identity aspect of language, restrictions on language have been used in the past as forms of social control, as well as to dictate participation in public administration and justice.*³²

Limitations could and can still be imposed on the place and on the way, a given language is spoken, for example recognising a dominant accent or dialect. Such restrictions could be put in place through forms of *social mores, but also through the form*

²⁷ Bernini, A. (2014). Languages as Intangible Cultural Heritage: About an ‘Ecolinguistic Capital’. (G. University of Heidelberg, Red.) 164-186. (p.168)

²⁸ Ibidem

²⁹ Ibidem

³⁰ Ivi p.169

³¹ Ivi p.169-170

³² Blake, J. (2020). Safeguarding Intangible Cultural Heritage. F. Francioni; A. Vrodoljak, The Oxford Handbook of International Cultural Heritage Law (347-370). (p.239)

of legislation.³³ The principle of the *linguam instrumentum regni* and its strength is essential to understand the dynamics of the linguistic policies of states and the outcome of international conventions' works.

Therefore, languages, more specifically regional and minority languages, are acknowledged today to be the most at risk and many of them are already endangered. In this regard, the UNESCO Universal Declaration on Cultural Diversity of 2001, at point 5 in the main lines of an action plan for the implementation of the Declaration, explicitly mentions the linguistic heritage, stating among the actions to take: "Safeguarding the linguistic heritage of humanity and giving support to expression, creation and dissemination in the greatest possible number of languages."³⁴

2. The relation between language and the UNESCO 2003 Convention

It is among the objectives of this thesis to understand whether cultural heritage law can be a way forward with regards to protection of such languages. Obviously, dealing with language means referring to that sphere of cultural heritage law that concerns intangible heritage. To do so, firstly it is essential to provide a definition of what is considered as intangible cultural heritage. The following definition is provided by Article 2.1 of the Convention for the Safeguarding of Intangible Cultural Heritage of 2003:

"The 'Intangible Cultural Heritage' means the practices, representations, expressions, knowledge, skills – as well as the instruments, objects, artefacts, and cultural spaces associated therewith – that communities, groups and, in some cases, individuals recognize as part of their cultural heritage. This intangible cultural heritage, transmitted from generation to generation, is constantly recreated by communities and groups in response to their environment, their interaction with nature and their history, and provides them with a sense of identity and continuity, thus promoting respect for cultural diversity and human creativity. For the purposes of this Convention, consideration will be given solely to such intangible

³³ Ibidem

³⁴ UNESCO. (2001). Universal Declaration on Cultural Diversity. Paris, point 5 Annex

cultural heritage as is compatible with existing international human rights instruments, as well as with the requirements of mutual respect among communities, groups and individuals, and of sustainable development.”³⁵

According to this definition, it is possible to identify several factors as requirements in order to define the ‘object’ of the recognition as intangible cultural heritage or not. As appropriately summed up by Federico Lenzerini, these factors are:

“a) the self-recognition, by the communities, groups, and individuals concerned, of ICH (Intangible Cultural Heritage) as part of their cultural heritage; b) the constant recreation of ICH as a response to the historical and social evolution of the communities and groups concerned; c) the deep connection of the heritage concerned with the idiosyncratic identity of its creators and bearers; d) the condition of ‘authenticity’ as an implicit requirement of ICH; and e) the profound interrelationship of ICH with human rights, under the twofold perspective of human rights standards as a parameter for the ‘legitimacy’ of the heritage concerned and of the latter as a tool for fostering the actual enjoyment of human rights... the factors in point are deeply interrelated to each other.”³⁶

As far as language is concerned, art. 2.2 of the 2003 Convention affirms that:

“The ‘Intangible Cultural Heritage,’ as defined in paragraph 1 above, is manifested inter alia in the following domains: (a) oral traditions and expressions, including language as a vehicle of the intangible cultural heritage; (b) performing arts; (c) social practices, rituals, and festive events; (d) knowledge and practices concerning nature and the universe; (e) traditional craftsmanship.”³⁷

In its wording the Convention mentions the language, but it binds it to its functional use of ‘vehicle of the intangible cultural heritage’. From a literal interpretation, following the UNESCO Convention’s approach, there could be no space for the recognition of language as intangible cultural heritage *per se*. However, taking into consideration art.1.1 of the Convention, Smeets points out that language possesses the necessary elements that could allow for recognition as intangible cultural heritage. As a

³⁵ Art. 2.1 UNESCO. (2003). Convention for the Safeguarding of Intangible Cultural Heritage

³⁶ Lenzerini, F. (2011). Intangible Cultural Heritage: The Living Culture of Peoples. *European Journal of International Law*, n. 22(1), 101-120. (p.108)

³⁷ Art. 2.2 UNESCO. (2003). Convention for the Safeguarding of Intangible Cultural Heritage

matter of fact, *languages are transmitted from generation to generation, they are constantly recreated, they presuppose knowledge and skills, and speech acts can be described in terms of linguistic practices and expressions. Finally, languages as a rule play important if not crucial roles in the identities of groups and individuals.*³⁸ Of the same opinion, Marie Cornu affirms that: *in theory, there are no obstacles to the inclusion of language in intangible cultural heritage.*³⁹ In the system framed by the Convention, it is possible to find the inscription to the ‘Representative List of the Intangible Cultural Heritage of Humanity’ of some linguistic practices, which could be considered as proper languages. Cornu detects

“a) the whistled language of the island of La Gomera (Canary Islands), the Silbo Gomero, inscribed by Spain in 2009 on the Representative List; b) the whistled language inscribed by Turkey in 2017 on the List of Intangible Cultural Heritage in Need of Urgent Safeguarding; c) the living culture of three writing systems of the Georgian alphabet inscribed by Georgia in 2016 on the Representative List; d) language, dance and music of the Garifuna, first proclaimed in 2001 under the Living Human Treasure programme.”⁴⁰

Other oral traditions or practices related to language can be found in the Representative List, concerning mainly poetry, music, storytelling.⁴¹ However, in order to be recognised as intangible cultural heritage, these languages carry with them cultural practices which require the language to manifest themselves. At the international level, at least for UNESCO space of action, it seems to be evident that language *per se*, no matter its importance for cultural purposes, cannot be elevated to intangible cultural heritage status and cannot benefit from the protection of the Convention. Nevertheless, the definition of intangible cultural heritage, as well as the approach towards it, varies from

³⁸ Smeets, R. (2004). Language as a Vehicle of the Intangible Cultural Heritage. *Museum International*, 156-165. (p.156-157)

³⁹ Cornu, M., Vaivade, A., Martinet, L.; Hance, C. (2020). *Intangible Cultural Heritage Under National and International Law, Going Beyond the 2003 UNESCO Convention.* (p.61)

⁴⁰ *Ibidem*

⁴¹ Practices inscribed in the Representative List related to orality and language:
<https://ich.unesco.org/en/lists?text=language&multinational=3#tabs>

state to state. Indeed, some countries went beyond the literal interpretation of the definition provided by the Convention, and labelled languages as intangible cultural heritage in their legislations. As reported by Cornu, in some cases language is fully considered as a component of intangible cultural heritage. Among the examples provided, it is possible to find Brazil that inscribed languages in the National Inventory of Linguistic Diversity, automatically declaring it as intangible cultural heritage.⁴²

Moreover, considering the language as a proper category of intangible cultural heritage is the approach not only of Kenya and Zimbabwe, but also of Morocco and Madagascar, which recognise respectively Amazigh and Malgache languages as such.⁴³ Cornu advances the suggestion that “the category of intangible cultural heritage pertaining to language is to be created by states, ... or can be more easily asserted at the level of national or subnational legislations.”⁴⁴

The theme of the inclusion of languages as intangible cultural heritage emerged during the preparatory works of the Convention, but it faced the opposition of states, since it is *tightly linked to issues of sovereignty, identity and territory*.⁴⁵ In addition, recognising language as intangible cultural heritage at the international level with the 2003 Convention, could entail a legitimisation and provide a legal basis for linguistic and consequently for human rights’ claims, also of minorities that are not recognised as such by states. Therefore, states approach and frame the linguistic issue differently.

⁴² Ivi p.63

⁴³ Ibidem

⁴⁴ Ivi p.61

⁴⁵ Ibidem

3. The 2003 UNESCO Convention for the Safeguarding of the Intangible Cultural Heritage and the limits for the protection of language at the international level

The UNESCO Convention for the Safeguarding of the Intangible Cultural Heritage of 2003 is not the first document dealing with intangibility in the UNESCO framework. Since its creation, UNESCO shaped its approach to cultural heritage, as many in the last decades criticised, in a 'Eurocentric and Westerner way'. This approach was translated in the recognition of a legitimised and authorised heritage, that mainly pertained to Western countries. The ultimate representation of this approach is embodied by the 1972 UNESCO's World Heritage Convention with the World Heritage List. The Convention and its protection exclusively concern tangible heritage, favouring Western countries hosting a massive number of these sites.

As a matter of fact, this approach excluded multiple countries from the protection of their heritage, that does not find expression in tangible terms. It is no coincidence that the discourse on intangibility was initiated by Southern countries, that contrary to their Western counterparts are mainly characterised by such heritage.

Intangibility appears for the first time in the documents of UNESCO after 1972. It is possible to cite the Mexico City Declaration on Cultural Policies of 1982, affirming at its art. 23: "The cultural heritage of a people includes... both tangible and intangible works through which the creativity of that people finds expression: languages, rites, beliefs, historic places and monuments, literature, works of art, archives and libraries." Years later, intangible cultural expressions became the centre of the Recommendation on the Safeguarding of Traditional Culture and Folklore of 1989, defining the concept of folklore. The discourse on intangible heritage evolved in these years thanks also to the advancement of the debate on cultural rights. From this perspective, Blake asserts that: "The 2003 Convention was developed within two main international law and policy contexts, namely the increasing importance of human-centred and sustainable

development and a growing acknowledgement of the importance of cultural rights within the human rights canon.”⁴⁶ This acknowledgement is one of the reasons of the UNESCO’s Universal Declaration on Cultural Diversity of 2001, affirming that “the understanding that ICH is essential for preserving cultural diversity.”⁴⁷

During the 1990s, UNESCO started the promotion of intangible heritage, even though there was no convention, or legally-binding document, that provided its recognition by States. In these terms, it launched two programmes. Firstly, the Intangible Cultural Heritage Section launched the Living Human Treasures program, and later it was the turn of the Proclamation of Masterpieces of Oral and Intangible Heritage of Humanity Program. The purpose of the latter was to “honour the most remarkable expressions of ICH, selected on the basis of the nominations presented by UNESCO member states.”⁴⁸ The first proclamation arrived in 2001, and was followed up in 2003 and 2005. Both programmes were maintained for a while after the adoption of the 2003 Convention. At the time of writing, they are no longer in place, but thanks to their influence, it is possible to see similar programs in several countries. “These expressions were automatically incorporated in the Representative List of the Intangible Cultural Heritage of Humanity set up by the CSICH at the moment of its entry into force, pursuant to the provision of its art. 31.”⁴⁹

Before the 2003 UNESCO’s Convention, the presence of intangible heritage was limited solely to non-legally binding documents, such as declarations and recommendations. This is why the enactment of the UNESCO 2003 Convention

⁴⁶ Blake, J. (2020). Safeguarding Intangible Cultural Heritage. F. Francioni; A. Vrodoljak, *The Oxford Handbook of International Cultural Heritage Law* (347-370), p.348

⁴⁷ *Ibidem*

⁴⁸ Lenzerini, F. (2011). Intangible Cultural Heritage: The Living Culture of Peoples. *European Journal of International Law*, n. 22(1), 101-120. (p.106)

⁴⁹ Vaivade, A. (2020). Linking new intangible cultural heritage law with a legal past. M. Cornu, A. Vaivade, L. Martinet; C. Hance, *Intangible Cultural Heritage Under National and International Law, Going Beyond the 2003 UNESCO Convention* (16-43). (p.22)

represents a turning point in the global approach to cultural heritage, since it opens its frontiers to the intangible, as strongly sustained by Southern countries. Indeed, the driving force for the safeguarding of ICH originated from countries of Africa, Latin America, and Asia, in particular Japan, that motivated by their own conception of culture, centred on living traditions, ultimately leading to the achievement of what an author has defined a *global heritage balance*.⁵⁰

While this separation between tangible and intangible has at times been the object of criticism, the new Convention has been well received by many, perceiving it as a complementary tool to conceive heritage in its entirety. For example, as Munjeri argues “tangible and intangible heritage cannot be separated from one another since it is the value people give to a material object that give it significance.”⁵¹ The heritage could indeed be conceptualised similarly to the yin and the yang. The tangibility and the intangibility could be seen as opposites, but both host elements of the other one. It could be assumed that the current conventions in force seem to cover all possible dimensions of cultural heritage, allowing a possible protection, or at least recognition, at 360 degrees.

As far as the 2003 Convention *per se* is concerned, the definition of intangible cultural heritage and its interpretation according to the convention have already been provided in the precedent paragraph. The detection of heritage to safeguard is entrusted to States parties, as stated by art. 11(b): “among the safeguarding measures referred to in article 2, paragraph 3, identify and define the various elements of the intangible cultural heritage present in its territory, with the participation of communities, groups and relevant non-governmental organizations.” A combined interpretation of art. 2(1) and art. 11(b),

⁵⁰ Lenzerini, F. (2011). Intangible Cultural Heritage: The Living Culture of Peoples. *European Journal of International Law*, n. 22(1), 101-120. (p.104)

⁵¹ Munjeri, D. (2004). Tangible and intangible heritage: from difference to convergence. *Museum International*, 15-20.

allows for a better understanding of the subsidiary role of sub-state entities.⁵² It is in fact the task of the State to formally submit the request for recognition. Hence, the Convention recognises a more prominent role of the “states as international actors, meanwhile promotes a dynamic focused on the communities in the implementation of the safeguarding policies at a national level.”⁵³

As far as safeguarding is concerned, it has to be intended as follows:

“Measures aimed at ensuring the viability of the intangible cultural heritage, including the identification, documentation, research, preservation, protection, promotion, enhancement, transmission, particularly through formal and non-formal education, as well as the revitalization of the various aspects of such heritage.”⁵⁴

Safeguarding is both on the international and national level. At the national level (sect. III; artt. 11-15) parties should “designate or establish one or more competent bodies for the safeguarding of the intangible cultural heritage present in its territory”. In addition, States are encouraged to promote educational programs, to foster research and documentation, to guarantee the enjoyment of intangible cultural heritage, and to adopt a sort of ‘stand-still’ approach. It means that States parties “have an obligation to abstain from taking measures that could jeopardise the preservation of intangible heritage, or that could otherwise make their preservation more difficult.”⁵⁵

A key task of States at the national level is the creation of inventories in order to trace and follow up the heritage detected (art. 12). Whereas, on the international level, the only obligation is stated in art. 29 par.1. States are requested to send a periodical report on all types of measures undertaken at the national level concerning the application of the

⁵² Zagato, L. (2008). *La Convenzione sulla protezione del patrimonio culturale intangibile*. L. Zagato, *Le identità culturali nei recenti strumenti UNESCO (27-70)*. Padova: Cedam. (p.35)

⁵³ Abele, L. (2020). *Translating the 2003 Convention into national laws*. *Intangible Cultural Heritage Under National and International Law (134-143)*.

⁵⁴ Art. 2(3) UNESCO. (2003). *Convention for the Safeguarding of Intangible Cultural Heritage*

⁵⁵ Zagato, L. (2008). *La Convenzione sulla protezione del patrimonio culturale intangibile*. L. Zagato, *Le identità culturali nei recenti strumenti UNESCO (27-70)*. Padova: Cedam. (p.42)

Convention in their territories. In other words, the correct accomplishment of the objectives set forth by the Convention rely on the interior legal systems of States parties. “The absence in the Section of self-executing norms does not preclude the obligation on all national bodies to ensure the fulfilment of the established obligations of result.”⁵⁶

In the Convention’s framework, a prominent role is played by inventories, an approach that inspired indeed many national approaches as argued in the previous paragraph. The treaty establishes the creation of two lists: the Representative List of the Intangible Cultural Heritage of Humanity (art.16) and the List of Intangible Cultural Heritage in Need of Urgent Safeguarding (art.17). It also sets forth a sort of collection of the best practices implemented, which best reflect the principles and objectives of this Convention (art.18). In terms of international protection, the Convention envisages the cooperation between States parties in terms of information-sharing (art.19(1)), and it foresees the possibility of international assistance (Sect. V; artt. 20-24). In addition, because this type of heritage *helps to affirm cultural identity, promote creativity and enhance diversity worldwide*; it is important to underline that one of the main goals that the Convention aims at achieving is strengthening cultural identities, as acknowledged during the drafting process.⁵⁷

However, the Convention currently ratified by 181 countries, has been introduced and adapted differently in the domestic law of States parties. Some of them already had a legislation dealing with a sort of intangible heritage, such as Japan. Others well received the new elements in their legal systems, even pushing forward some of the provisions of the Convention. E.g., “the Malagasy law specifies that not only ‘oral expression’ but also those ‘written and gestured (language, oral literature, dance)’ (article 2) are considered as

⁵⁶ Ivi p.48

⁵⁷ Vaivade, A. (2018). ICH as a source of identity: international law and deontology. C. Waelde, C. Cummings, M. Pavis; H. Enright, Research Handbook on Contemporary Intangible Cultural Heritage (165-193). (p.179)

intangible cultural heritage.”⁵⁸ Another point where the approach of countries has varied is the recognised role of communities and individuals, perceived as the cultural stakeholders. In some countries like Latvia, the legislator provided a clear notion of community and fostered the participation of it.

Nevertheless, even though the Convention has been widely welcomed as a new tool to deal with an important dimension of cultural heritage, it has also been criticised by many to be inadequate for the protection of it. Firstly, one of the criticisms made regards the museumification that such an approach entails. Similar criticisms were already made about the Recommendation of 1989, concerning its archivist and museum approach. According to Zagato, “behind the insistence on inventorying and recording would, in short, conceal the dogma of old anthropology, which sees traditional cultural heritage as something destined to disappear, rather than transform, from the living system that it is.”⁵⁹ The idea of a museum as a space exclusively devoted to conservation may crystallize a type of heritage that is on the contrary ‘living’. On the contrary, an inclusive, participatory, and innovative museum practice, as a place of celebration of communities’ traditions, may be much more in line with the objective of preserving the survival and the continuous reproduction of it. Secondly, another criticism that emerged is the hypothetical hierarchy between the traditions recognised and those that are not. In the spirit of the Convention, the recognition of intangible cultural heritage derives from a subjective approach, where the significance of a given tradition originates from the community, or bearers, of provenance. However, “it has been argued that inventorying creates a situation in each nominating country where one community or cultural practice appears to be favoured over others, and for those communities not selected, the

⁵⁸ Abele, L. (2020). Translating the 2003 Convention into national laws. *Intangible Cultural Heritage Under National and International Law* (134-143) (p.136)

⁵⁹ Zagato, L. (2008). *La Convenzione sulla protezione del patrimonio culturale intangibile*. L. Zagato, *Le identità culturali nei recenti strumenti UNESCO* (27-70). Padova: Cedam. (p.55)

implication is that they are second-rate.”⁶⁰ Furthermore, the inventorying approach with a public exposure of the existence and of the elements of such practices, may for some of them not be a suitable way to prevent their disappearance. This is the case for Māori in New Zealand, that is not a State party of the Convention. “Making Māori intangible cultural heritage globally available on an inventory entails a risk that instead of safeguarding, the inventory may lead to its exploitation or desecration.”⁶¹ The overexposure to the global public may entail a massive number of contacts, that could lead to an excessive exchange and contamination of the autochthonous traditions. Consequently, the inventorying system may achieve the complete opposite goal prefixed. This argument does not concern solely indigenous or closed human groups, but also communities’ traditions of other countries. The current mass tourism represents a real threat to the authenticity of intangible cultural heritage, since the massive demand can easily trigger a commodification of such heritage, and consequently a loss of value for the community itself with a following corruption of the cultural and legal value of the intangible heritage.

Continuing, another point concerns the competence in the detection of the intangible cultural heritage to safeguard. As previously affirmed, a combined interpretation of art. 2(1) and art. 11(b), facilitates the understanding of the subsidiary role of sub-state entities, or their marginal role. It has been acknowledged that the main player on the international level is the State, which at its discretion can include or exclude practices and cultural elements to safeguard. This faculty is decisive in enlarging the spectrum of practices safeguarded that may represent a priority for some national minorities, as well in silencing the requests for recognition.

⁶⁰ Cratih, N., Kockel, U.;Lloyd, K. (2018). The convention for the safeguarding of the intangible cultural heritage: absentees, objections and assertions. W N. Akagawa, L. Smith, *Safeguarding Intangible Heritage: Practices and Politics* (118-132).

⁶¹ *Ibidem*

At the national level, it might be affirmed that it is as well, because of the competences accorded to the State for the submission of the applications for the inscription in the Representative List. The objection raised is that “States Parties do not always engage in an appropriate process of consultation with tradition-bearers.”⁶² This condition could even lead to an exploitation for political or ideological purposes, opening two possible scenarios. In a nationalistic context, it may lead to the ignoring of the claims or the importance of a given minority in the best of cases, but in the worst of cases heritage could be used “to force the assimilation of minority groups into the dominant culture.”⁶³ In these terms, despite the subjective approach in the definition of intangible cultural heritage, minorities may in any case not be protected or recognised. The only glimmer of hope may be represented by the NGOs network that lobbies on the international level, that could overcome the inaction or censorship of some States.

Finally, the criticism of most interest for this thesis work is the linguistic one. As already mentioned, the Convention seems to leave no room for the protection of language *per se* and its conception as intangible cultural heritage, even though, as already discussed, the definition provided by the Convention itself easily allow language to be included. However, it firmly excludes language from its protection, except when it is a ‘vehicle of intangible cultural heritage’. This approach, as Zagato also stresses, “confirms the traditional reluctance of states to take on international obligations that concretely restrict their freedom of conduct in language policy.”⁶⁴ Evidently, States Parties did not desire to make the Convention a tool to protect the global linguistic richness, probably because it could collide with some States’ attitude towards their domestic minorities. However, even if language was included in the protection system framed by the

⁶² Ivi p.124

⁶³ Ibidem

⁶⁴ Zagato, L. (2008). La Convenzione sulla protezione del patrimonio culturale intangibile. L. Zagato, Le identità culturali nei recenti strumenti UNESCO (27-70). Padova: Cedam. (p.52)

Convention, there would be several doubts about its efficiency in this regard. The critiques given regarding the inventorying system and the risk of crystallisation, would also concern language. Linguistic archives exist, but, as Deumert affirms, they do not reflect the ways-of-speaking, but rather the cultural heritage of the discipline of linguistics. “With regards to the notion of intangible cultural heritage, the current practice of safeguarding and archiving languages is problematic.”⁶⁵ This position does not preclude the idea of revitalising and preserving languages differently. Similarly, to the museumification of intangible cultural heritage, language may simply need another approach.

4. The 2005 UNESCO Convention on Cultural Diversity

At the international level, other documents dealing with the protection of languages are the 2005 UNESCO Convention on Cultural Diversity and the International Covenant on Civil and Political Rights. Firstly, the Convention seems to provide an indirect protection of language, through the “promotion of cultural activities, goods and services that very often have a particular linguistic form.”⁶⁶ The consequent Fund for Cultural Diversity, occasionally supports language-related projects, such as the National Translation Centre in Tunisia. Secondly, article 27 of the International Covenant on Civil and Political Rights states:

“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.”

⁶⁵ Deumert, A., Storch, A. (2018). Language as world heritage? Critical perspectives on languages as archive. *Safeguarding Intangible Heritage - Practices and Politics* (102-117). London: Routledge. (p.113)

⁶⁶ de Witte, B. (2020). Language as Cultural Heritage. F. Francioni, A. Vrodojak, *The Oxford Handbook of International Cultural Heritage Law* (371-378) (p.376)

The wording of this provision seems to imply that States merely have a negative duty to not interfere with the private choice of persons to speak a minority language.⁶⁷ In practical terms, it does not bind States parties to elaborate linguistic policies of any kind. On the other hand, the Human Rights Committee foresees an ambitious interpretation of the provision, advancing the idea of positive duties for States. As De Witte reports, the Committee affirmed that:

“Although the rights protected under article 27 are individual rights, they depend in turn on the ability of the minority group to maintain its culture, language or religion, consequently, positive measures by States may... be necessary to protect the identity of a minority and the rights of its members to enjoy and develop their culture and language.”⁶⁸

However, article 27 does not represent an effective source for the protection of language heritage. Consequently, it is possible to affirm that at the international level there is no legal instrument aiming at protecting languages at risk. This competence is fully embodied by Nation-States. As previously mentioned, some States, representing a minority in implementing such approach, decided to broaden the interpretation of the definition of ICH provided by the 2003 UNESCO Convention, including language *per se* among the possible expressions of intangible cultural heritage. In this case, it is possible to affirm that cultural heritage law can represent a way forward in terms of protection of languages at risk, although bearing in mind that single States will be the actors in providing different instruments of protection on a national level.

Despite this case, since most States parties are aligned to the UNESCO interpretation concerning the inclusion of language in the dimensions of intangible cultural heritage, the international cultural heritage laws do not represent a tool to safeguard endangered languages.

⁶⁷ Ibidem

⁶⁸ Ibidem

5. Possible alternatives of protection beyond the cultural heritage law path

Alternatively to international cultural heritage law, a path for a possible protection of endangered languages and minority ones could be represented by cultural rights. The UNESCO 2003 Convention may represent a supportive factor in cultural rights' claims, particularly in linguistic rights' ones. It would not represent a decisive source of legitimisation for a cultural claim, but it could still play a subsidiary role as source of appeal. At the international level cultural rights have their foundations in article 27 of the Universal Declaration of Human Rights, article 15 of the International Covenant on Economic, Social and Cultural Rights (ICESCR) and article 27 of the International Covenant on Civil and Political Rights (ICCPR).⁶⁹

One of the key elements in terms of cultural rights, is the enjoyment of and the participation in cultural life. In order to achieve the fulfilment of cultural rights, others need to be recognised and taken into consideration. Indeed, to protect a person's culture, it is essential to consider his capacity to access other fundamental rights.⁷⁰ Among these human rights it is possible to find the right to self-determination, the right to education, the right to access cultural resources and the right to one's language. In these terms, the linguistic component covers an important role in shaping the dimension for the fulfilment of cultural rights. Indeed, linguistic rights are included at the international level in the discourse about cultural rights, whereas at other levels they are dealt with in the civil rights' context. According to Hance,

“Cultural rights are a way by which cultural communities have been able to bring forward “material claims” and also represent a more fruitful way to win over international consent than other tactics such as the right to self-determination claims.”⁷¹

⁶⁹ Hance, C. (2020). The interactions between intangible cultural heirtage and human rights. (p.92)

⁷⁰ Ivi (p.93)

⁷¹ Ivi p. (94)

From this perspective, since the linguistic component represents a key factor in the objective of fulfilment of cultural rights, linguistic claims contextualised in cultural rights' terms may be a path towards the protection of such languages on the international plan. However, it is relevant to mention the General Assembly resolution 47/135 consisting in the Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities, whose article 1 states:

“States shall protect the existence and the national or ethnic, cultural, religious and linguistic identity of minorities within their respective territories and shall encourage conditions for the promotion of that identity.”⁷²

Aiming also at encouraging States in promoting the linguistic identity, the Declaration does not represent a source of obligation for States. The Barcelona Declaration of 1996 after the World Conference on Linguistic Rights, promoted by the association PEN International and followed actively by UNESCO, continue along the same lines. Two documents that show an interest at the international level about the linguistic issue, but that could not provide any kind of commitment to pursue the values enshrined in their texts.

Conversely, on the local level, linguistic rights and claims are more widely contextualised in the field of civil rights, and Nation-States deal with them in different ways. In this direction, De Witte defines the concept of language law. He defines it as:

“The collection of legal norms regulating the use, the learning, or the protection of particular languages. The key component of language law is the set of rules regulating the use of languages in the activity of public authorities and in public education.”⁷³

He also underlines the fact that in plurilingual countries, linguistic diversity may be constitutionally recognised, or not. Consequently, *judicially enforceable language*

⁷² Art. 1 Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities
⁷³ de Witte, B. (2020). Language as Cultural Heritage. W F. Francioni i A. Vrodojak, The Oxford Handbook of International Cultural Heritage Law (371-378). (p.373)

*rights may be given to the speakers of minority languages, or not.*⁷⁴ He adds that the norms may be focused on the country's dominant national language, or may try to preserve the diversity of the country's linguistic heritage. He names This element of language law as 'linguistic heritage law.' De Witte affirms that linguistic heritage law is typically composed of:

“a set of general normative statements, a series of public bodies undertaking corpus planning tasks, and public funding mechanisms for specific linguistic activities such as book translations, dedicated to language teaching, and film and theatre productions.”⁷⁵

He also highlights that *the best ways to safeguard the linguistic heritage of a community is to adopt legal rules guaranteeing the right, for members of that community, to use their language in public domain and the right for the children to be taught through that language.*⁷⁶ Thanks to this type of legislation, granting legal right to use those languages while imposing on authorities their use, it is possible to ensure their transmission through education and media. *Viceversa*, the lack of official recognition is the main reason for their threatened extinction.⁷⁷ As already mentioned, most countries followed the UNESCO approach towards the linguistic issue. Therefore, in all these countries *linguistic heritage law is treated as a separate legal and policy domain from cultural heritage law.*⁷⁸

In practical terms, despite the lack of official recognition, the most widespread instrument for the protection of regional and minority languages is the financial support for linguistic cultural activities. As De Witte reports, in Italy *a large number of regions have adopted legislation specifying the ways in which they intend to protect their local*

⁷⁴ Ibidem

⁷⁵ Ivi p.375

⁷⁶ de Witte, B. (2020). Language as Cultural Heritage. F. Francioni; A. Vrodojak, The Oxford Handbook of International Cultural Heritage Law (371-378). (p.373)

⁷⁷ Ibidem

⁷⁸ Ibidem

linguistic heritage.⁷⁹ Rather than regulate the use of languages in the fields and contexts of possible use, such instruments follow the approach of sustaining cultural activities in the local languages.

As far as linguistic legislation is concerned, *State legislation on the protection of linguistic minorities*, according to Paul Videsott, *is influenced by three typologies of measures*:

“the implementation of the obligations deriving from the ratification of Framework Convention for the Protection of National Minorities and/or the European Charter for Regional and Minority Languages; the respect of minority related provisions of bilateral treaties or agreements entered into; and the granting of comprehensive legal frameworks that can be referred to by the collective term ‘Statute of Autonomy’.”⁸⁰

These three types of measures present considerable differences both in scope and in terms of success of the implementation. Such approaches also show different perspectives laying beyond. It is interesting to present what Videsott identified as best practice in terms of protection of linguistic minority. In his study, he presented a case study on South Tyrol and the Ladin minority in Italy. The South Tyrolean system presents a trilingual administrative but also political framework. Political representation and civil life are framed in the logic of linguistic groups. However, the key aspect in the guarantee of the linguistic rights of the communities is the educational one. Indeed, depending on the linguistic group, pupils attend schools in their mother tongue and learn the other language or languages as secondary (but also third, and for English fourth). This political, administrative, and educational approach is oriented towards the equal treatment and absolute equality between Italian, German, and Ladin. To ensure access in one’s language to the Public Administration, civil servants are required to master two of three languages.

⁷⁹ Ivi p.275

⁸⁰ Videsott, P. (2023). Linguistic and cultural diversity - Minority and minoritised languages as part of European linguistic and cultural diversity. European Parliament. (p.4)

This requirement is then also rewarded with an allowance for the ‘Patentino for bilingualism’ or trilingualism of 11% of the salary. This trilingual system seems having brought benefits for the entire community on several fronts, such as linguistic rights and economic aspects. This case obviously pertains to a system where the minorities are recognised and it is framed in the autonomy system of Italian regions with special status.

In conclusion, the protection of endangered languages, which many a time are represented by regional and minority languages, often consists in a revitalisation processes. Contrary to an approach tending towards a museumification of languages, such as the inventory one, most approaches aim at boosting the use of such languages while increasing the number of speakers, in order to be as further as possible to the threshold of 300 000 speakers enshrining its risk of disappearance. In these terms, a key domain of the linguistic policies is represented by education. It is through education that language can be revitalised and flourish. For instance, in the EU scenario both Catalan and Maltese were endangered languages, *among other measures, thanks to linguistic policy of bilingual education known as ‘content and language integrated learning’ (CLIL), where both the dominant and the regional or minority language are used in classrooms to teach non-language subject matter, both languages survived.*⁸¹

6. A European regional perspective

Contrary to the international scenario, the European continent presents a different situation in terms of linguistic rights. Firstly, it is essential to highlight the role played by the Council of Europe, which does not belong to the European Union architecture. The Council has been the first promoter on the European chessboard in fostering the protection of national minorities and of linguistic rights. Its first action was the adoption of

⁸¹ Pasikowska-Schnass, M. (2016). Regional and minority languages in the European Union. European Parliament. EPRS. (p.8)

Recommendation 928 on the Educational and Cultural Problems of Minority Languages and Dialects in Europe in 1981. The Recommendation offered a new approach towards Regional and Minority Languages, going beyond the principle of non-discrimination set forth by the Universal Declaration of Human Rights. Considered as a preliminary step to the adoption of the European Charter for Regional or Minority Languages of 1992, it supported the use of dialects and minority mother tongues in all levels of education, in local media and by the local authorities. The text *highlighted linguistic identities as an element of the development of Europe and European ideas, and put forward measures to be implemented.*⁸²

In this direction, thanks also to the European Parliament influences such as the European Parliament Resolution A1-965-780, A1-1254/82 and A2-0150/87, the first international legally binding document produced by the Council of Europe is the 1992 European Charter for Regional or Minority Languages.⁸³ According to the official positions of the Council:

“The Charter is designed to protect and promote regional and minority languages and to enable speakers to use them both in private and public life. It therefore obliges the States Parties to actively promote the use of these languages in education, courts, administration, media, culture, economic and social life, and cross-border co-operation.”⁸⁴

The Charter in its preamble mentions the protections of languages as heritage and the protection of linguistic rights. It identifies minority and regional languages as part of Europe’s cultural heritage. This needs to be read in synchronisation with the subsequent 2005 Faro Convention on European Cultural Heritage, establishing the *link between*

⁸² Pasikowska-Schnass, M. (2016). Regional and minority languages in the European Union. European Parliament. EPRS. (p.4)

⁸³ Maatta, S. K. (2004). The European Charter for regional or minority languages, French language laws, and national identity. 167-186. (p.168)

⁸⁴ The objectives of the European Charter for Regional or Minority Languages – Council of Europe official website (<https://www.coe.int/en/web/european-charter-regional-or-minority-languages/the-objectives-of-the-charter->) (consulted on 29/11/2023)

*cultural heritage and the development of a stable and pacific society, founded on the respect for human rights, rule of law and democracy.*⁸⁵ This approach, which is focused on the cultural value of languages, rather than on the protection of groups of speakers, has the objective of eluding the issue of autonomy. Consequently, the Charter *stresses the individual right of each person to use his or her own language.*⁸⁶ In its provisions, it pledges States parties to:

“guarantee the right to use a regional or minority language in private and public life, agreeing that such linguistic freedom is an inalienable right conforming to the principles embodied in the United Nations International Covenant on Civil and Political Rights.”⁸⁷

The burdens of the Charter are set forth by article 5, which explicitly states that:

“Nothing in this Charter may be interpreted as implying any right to engage in any activity or perform any action in contravention of the purposes of the Charter of the United Nations or other obligations under international law, including the principle of the sovereignty and territorial integrity of States.”⁸⁸

Affirming the supremacy of the principle of national sovereignty and of territorial integrity of States parties, the Charter also sets another limit in the promotion of Regional and Minority Languages, that is the impossibility of threatening the status of official languages. Furthermore, the domains of action of the Charter are multiple: judicial, administrative, cultural, economic, social, educational, cross-border trade, and media. The principles and objectives that guide the action of the Charter are set out in art. 7.

In practical terms, the Charter has been largely criticised. Because of its *à la carte approach* and its flexible provisions, its efficacy is questioned. Indeed, the Charter leaves the choice of which languages to include completely at States parties’ discretion,

⁸⁵ Pasikowska-Schnass, M. (2018). Cultural heritage in EU policies. European Parliament. EPRS. (p.3)

⁸⁶ Maatta, S. K. (2004). The European Charter for regional or minority languages, French language laws, and national identity. 167-186. (p.169)

⁸⁷ Cravens, T. D. (2014). Italia linguistica and the European Charter for Regional or Minority Languages. Forum italicum, vol. 48, 202-218. (p.209)

⁸⁸ Art.5 European Charter for Regional or Minority Languages, STE no.148 (Council of Europe November 5, 1992).

considering psychological and political aspects. It excludes dialects from the Charter protection, and focuses on territorial-languages, impeding the inclusion of stateless languages such as Roma and Yiddish languages. This approach is reflected in its functioning regarding the obligations that States parties undertake. States must apply all measures included in Part II and *they may choose a minimum of 35 paragraphs or subparagraphs from among the provisions of Part III.*⁸⁹ Among these 35 paragraphs, at least 3 of them must *be among each of the articles 8 and 12, and at least one from each of the articles 9,10,11, and 13.*⁹⁰ After choosing the languages to protect and the measures to implement, States are then called to report their activities and update the competent authority on their progress. Since Part III provides 98 subparagraphs, it is possible to affirm that States can easily reach a minimum level of commitment. It is important to say that those which are considered as rules, in most of the cases are not compulsory, so *the Charter as a whole is actually composed of principle rather than rules.*⁹¹ In addition, the Charter has been ratified by almost the totality of EU countries, but both Italy and France signed but never ratified it.

In terms of minorities protection, the Council of Europe took a step forward through the adoption of the Framework Convention for the Protection of National Minorities in 1995. The Convention has been ratified by Italy, but it was neither signed nor ratified by France. Following this, in 1998 and in reaction to the situation in the former Yugoslavia, the OSCE published the Oslo Recommendations on linguistic rights of national minorities. The organisation stressed “the need to achieve appropriate balance

⁸⁹ Maatta, S. K. (2004). The European Charter for regional or minority languages, French language laws, and national identity. 167-186. (p.172)

⁹⁰ Ibidem

⁹¹ Ivi p.173

between dominant and minority languages to avoid ethnic tensions... It also defined minority linguistic rights in public administration, judicial and penal institutions.”⁹²

Finally, as far as the Council of Europe is concerned, in 2014 it adopted Resolution 1985. The Parliamentary Assembly of the CoE: “called on its member states to sign and ratify the ECRML (European Charter of Regional and Minority Languages), introduce education in minority languages and allow media to operate and provide services in minority languages.”⁹³ The Recommendation also reminded that the promotion of minority languages should always be put in place without threatening the status of the official language; and in case of elementary education provided in a minority language, it recommended that the official language should be taught according to the methodology of a foreign language.

6.1. The European Union approach to language diversity

In terms of linguistic rights, another important role is covered by the European Union, whose slogan is ‘United in Diversity’. The slogan already suggests that a core objective of the EU is fostering and protecting cultural diversity in its borders. Part of this cultural diversity is obviously represented by the considerable linguistic diversity within its society. However, firstly it is important to recall the burdens in and the basis on which the EU acts in terms of linguistic policy. Art. 3 TEU states: “(EU) It shall respect its rich cultural and linguistic diversity, and shall ensure that Europe's cultural heritage is safeguarded and enhanced.” While art. 4 TEU “bestows on the Union the obligation to respect the national identities of its Member States, including regional and local self-government, while ensuring their territorial integrity.”⁹⁴ A combined reading of

⁹² Pasikowska-Schnass, M. (2018). Cultural heritage in EU policies. European Parliament. EPRS. (p.4)

⁹³ Pasikowska-Schnass, M. (2016). Regional and minority languages in the European Union. European Parliament. EPRS. (p.4)

⁹⁴ Ivi p.5

paragraphs 1-2 of art. 165 TFEU underlines that EU action *shall be aimed at... developing the European dimension in education, particularly through the teaching and dissemination of the languages of the Member States while fully respecting the responsibility of the Member States for the content of teaching and the organisation of education systems and their cultural and linguistic diversity.* Indeed, in the educational and linguistic domains, the EU has a subsidiary and considerably marginal role, since it is a Member States' competence. Furthermore, thanks to the Lisbon Treaty, European Union is also bound to The Charter of Fundamental Rights of the European Union. Its article 21 prohibits any kind of discrimination based on language, and obliges the Union to respect the linguistic diversity at its art. 22. Based on the principle of non-discrimination, the EU, as set forth by art. 24 TFEU, allows every citizen to address the institutions in one of the 24 official languages. It also cooperates with States to protect minorities, based on the European Charter for Regional or Minority Languages.⁹⁵

Because of its rich diversity, one of the pillars of the EU is represented by multilingualism. Consequently, as affirmed by Henri Malosse: “Languages are the core of our cultural heritage. Failing to preserve multilingualism goes against the values on which the EU was founded.”⁹⁶ As a core value, the Union fosters a multilinguistic society. Multilingualism is intended as *the ability of societies, institutions, groups and individuals to engage, on a regular basis, with more than one language in their day-to-day lives.*⁹⁷ Indeed, during the past years the Commission has been encouraging the adoption of reforms and programs in terms of education, with the objective of helping European citizens to master two languages in addition to their mother tongue. It strongly promotes

⁹⁵ Legal basis provided by Renard, O. A. i Milt, K. (2023). Language policy. European Parliament. EPRS

⁹⁶ Malosse, H. (2018, September 26). Languages are the core of our cultural heritage. The Parliament. <https://www.theparliamentmagazine.eu/news/article/languages-are-the-core-of-our-cultural-heritage>

⁹⁷ Katsarova, I. (2018). Remaining 'united in diversity' thanks to multilingualism. European Parliament. EPRS. (p.2)

language learning although its recommendations have limited influence, since education and language policies are responsibility of Member States. However, multilingualism is granted and bound to the value of transparency of institutions. In order to fully access and understand the action of EU, legislation is translated in all the 24 official languages of the Union. In addition, all the members of the European Parliament are entitled to speak, to read and to work in one of the official languages of the Union.

As far as regional and minority languages are concerned, the great linguistic diversity in the EU includes 21 stateless minority languages and 158 minorities. The sum of these 158 minority groups represents 7% of the Union's population, but corresponds to *89% of the cultural and linguistic diversity within the EU*.⁹⁸ Among the regional languages, there exists Catalan, Basque, and Galician, which all enjoy the status of semi-official (co-official) languages. In practical terms, that means that *based on an agreement governing their use in EU documents, translations are provided by the Spanish government, as and when needed and at its own expenses*.⁹⁹ Interpretation 'from' is provided in some contexts with the regional representatives and in the plenaries of the Committee of the Regions and of the European Economic and Social Committee. Not all the regional languages enjoy the same status. For instance, from a French perspective, Corsican, Breton and the same Catalan and Basque, which are also spoken in France, do not benefit from the same status as in the Spanish case.

In the field of Regional and Minority languages (RMLs), despite the subsidiary role of the EU, it supports and helps to preserve Europe's intangible heritage in the form of linguistic diversity. "Funding can be allocated to research, networks and platforms, or

⁹⁸ Videsott, P. (2023). Linguistic and cultural diversity - Minority and minoritised languages as part of European linguistic and cultural diversity. European Parliament. (p.7)

⁹⁹ Katsarova, I. (2018). Remaining 'united in diversity' thanks to multilingualism. European Parliament. EPRS. (p.4)

for educational or multilingualism projects and programmes.”¹⁰⁰ The research on RMLs translated itself in the publication of the Euromosaic studies on various minority languages in the EU.

As far as the different institutions are concerned, the European Council adopted a resolution in 2002, which followed the European Year of Languages in 2001. The resolution called on Member States *to provide for as diversified a language offer in language policy as possible, including regional languages*.¹⁰¹ On the Commission’s side, language policy started in the 1980s with specific funding for RMLs. The first funding came in 1983 as an Action Line for the Promotion and Safeguard of Minority and Regional Languages and Culture, following an EP Resolution of 1981. “Up to 1998, the over 3 million euros allocated to RMLs helped create a series of networks and facilitated the sharing of expertise and good practices.”¹⁰² The funding was stopped after the judgment C-106/96 of the European Court of Justice, ruling that there was no legal basis for it. After this period, RMLs were included in broader initiatives and programmes supporting linguistic diversity and multilingualism. In 2004, in response to the EP’s initiative to launch “a European agency for language learning and linguistic diversity”, the Commission created Mercator, which is *a European network of language diversity centres and financed through the Lifelong Learning Programme*.¹⁰³ The centre’s work is mainly dedicated to RMLs in Europe, and it works *towards the acquisition, inventory, research, study, dissemination and application of knowledge in the area of language learning in schools at home and through cultural participation*.¹⁰⁴

¹⁰⁰ Pasikowska-Schnass, M. (2016). Regional and minority languages in the European Union. European Parliament. EPRS (p.9)

¹⁰¹ Ibidem

¹⁰² Ibidem

¹⁰³ Ibidem

¹⁰⁴ Renard, O. A., Milt, K. (2023). Language policy. European Parliament. EPRS. (p.3)

In this direction, COM (2008)566 of the Commission, stated that “multilingualism can include the capacity to speak a regional or minority language as well as a national language and one or more foreign languages, which fosters intercultural dialogue and social cohesion.”¹⁰⁵ Furthermore, the Committee of the Regions delivered an opinion in 2011, calling for a *specific policy on linguistic minorities that is adequately funded and underpinned by a firmer legal basis.*¹⁰⁶

Finally, there exists several networks and platforms which promote language learning, which through their actions also deal with RMLs. In favour of the promotion and integration of RMLs one can also point to the European Parliament, which promotes the inclusion of RMLs in language learning programmes. Its interest in this domain is also represented by the existence of the Parliament Intergroup for Tradition Minorities and National Communities and Languages, whose work is centred on RMLs. In addition, the EP is committed to the protection of RMLs as demonstrated by the Resolutions of 2013, 2018 and 2020. In the first one, it encouraged Member States to pay more attention to the endangered languages and to commit to the protection and promotion of the diversity of the linguistic and cultural heritage. In the following ones, EP encouraged Member States to guarantee *the right to use a minority language, and to protect the linguistic diversity within the EU.*¹⁰⁷ It further recommended the respect for the linguistic rights in plurilingual communities, and invited the Commission to *reinforce the promotion of RMLs teaching and use.*¹⁰⁸ In conclusion, in 2022 the Conference on the Future of Europe adopted the report on the result of the Conference. In the document, proposal 48 foresees multilingualism as a bridge towards other cultures that should be promoted since the very young age. Then, it acknowledged the need of RMLs for a major

¹⁰⁵ Ivi p.10

¹⁰⁶ Ibidem

¹⁰⁷ Renard, O. A., Milt, K. (2023). Language policy. European Parliament. EPRS. (p.5)

¹⁰⁸ Ibidem

protection, taking into account the European Charter for Regional and Minority Languages of the Council of Europe.

In light of the above, it is possible to affirm that, even if the EU only has a subsidiary competence in linguistic policy, it is considerably committed to promoting and fostering the use of regional and minority languages. Its action is limited by the sovereignty of Member States over linguistic matters, and by their domestic reluctance towards the recognition of specific linguistic minorities, which in some cases reflects the resistance of the centralised-State model against autonomy claims.

CHAPTER II

The Italian case

1. The evolution of the Italian and regional languages, and the national linguistic policies

“Quando un popolo ha perduto patria e libertà e va disperso pel mondo, la lingua gli tiene luogo di patria e di tutto; e che quando gli ritorna il pensiero e il sentimento della sua passata grandezza, la lingua ritorna appunto all’antico. Sapete che così avvenne in Italia, e che la prima cosa che volemmo quando ci risentimmo italiani dopo tre secoli di servitù, fa la nostra lingua comune, che Dante creava, il Machiavelli scriveva, il Ferruccio parlava.”¹⁰⁹

As discussed in the first chapter, it is possible to affirm that exists a strong link between ‘language’ and the ‘identity’ of a community. In these terms, the Italian case represents a paradigmatic case and thus a valuable example.

The Italian State was established in 1861 after several wars of independence. Before this date, the Italian reality was characterised by a millennial fragmentation of its territory. Divided in smaller and larger autonomous local entities, the peninsula lived the alternation of foreigners occupying parts of its territory. In linguistic terms, the Italian peninsula had been the cradle of Latin language since the foundation of the Roman kingdom in 753 B.C. After the fall of the Western Roman Empire in 476 A.D., the spoken Latin language was contaminated by the influence of barbarian peoples invading the peninsula and by the occupations that followed. During this long period, every separate regional reality developed a local variety of the spoken Latin in its territory, evolving in the different so-called dialects. In these terms, among the different *volgari* spoken during the Middle Age, the XIV century *volgare* of Florence emerged as the prevalent one, becoming the Italian language. The discussion on the *volgare* was first presented by Dante

¹⁰⁹ Luigi Settembrini, *Ricordanze della mia vita*, Milano, Feltrinelli, 1961, pp.63-67

in his *De vulgari eloquentia*. He then used it to write his masterpiece *la Commedia*, giving the reason why Italian is often qualified as ‘*La lingua di Dante*’. Consecrated then by the three literate crowns (Dante, Boccaccio and Petrarca), it became the most noble to serve the expression of the Italian nation, intended as Italians as a whole. Therefore, even though Italians were divided in multiple smaller local entities, the unity of the Italian people was represented by the common element of the Italian language, thanks also to the interposition in its codification of important figures such as Pietro Bembo.¹¹⁰

Throughout the centuries, Italian language was used by most of the intellectuals and authors of the Italian literature, from Machiavelli, Ariosto, Parini, Leopardi to Manzoni. However, this continuity in the use of the Italian language was mainly among intellectuals and *élites*’ members, since within all the other social classes regional dialects had an exclusive use.

Given this situation, many linguists indeed argue the non-existence of a spoken Italian and consequently how in 1861 the Italian language was actually perceived as ‘*una lingua straniera in patria*’. It was considered as a ‘dead-language’, strictly linked to Latin and without a daily vocabulary. In practical terms it was seen as a *language that nobody knows and nobody speaks, that could be learnt just at school*.¹¹¹ The spoken Italian was almost inexistent out of Tuscany and Rome, while, thanks also to the social consensus, the rest of the pre-unitarian States used their own dialects, relegating the use of Italian to official occasions. Even Vittorio Emanuele II himself used the *piemontese* dialect and not Italian in his private meetings with his ministries. Nevertheless, the Italian literature and culture in its entirety succeeded in creating a sentiment of Italianity and of belonging to

¹¹⁰ Pietro Bembo was an Italian cardinal during XV-XVI centuries. He influenced the development of the Tuscan dialect, encouraging its codification into a standard language that could be used not only by literature and poetry, but also as a common language for the territories of the Italian peninsula.

¹¹¹ Gnes, M. (2016). *La lingua come fattore di integrazione civile e politica. Unità e pluralismo culturale*, 195-229. (p.198)

a common heritage. As reported by Gianmauro Demuro, “*In Italia, la nazione culturale, nacque prima della nazione politica e dello stato nazionale.*”¹¹²

From this perspective, Alessandro Manzoni was one of the main promoters of the standardised Italian, based on the variation spoken in Florence. He advocated for the spread of the Italian at the expenses of the use of dialects, conceiving it as a unifying factor in its vision of a single Italian State, which would have found its unity not only in a common territory, but also in that common language of the tradition.

The Italian history as a single Nation-State started in 1861, after two wars of independence and the consequent annexation through plebiscite of the pre-unitarian States. The initiative of unification originated in the previous Kingdom of Sardinia governed by the Savoia family. The Kingdom of Sardinia, until 1860 with the Treaty of Turin, had a territorial extension also in the South-East of France, with the region of Savoie and the city of Nice. Because of its territorial characteristics and historical ties with France, the Albertine Statute (the constitutional charter of 1848) was firstly redacted in French and then translated to Italian. It stated at its art. 62 that the official language of the parliament’s chambers was Italian, even though it was possible to use French, if needed. The bilingual tradition came to an end in 1860 after the cession of the Savoie and of Nice to France. However, the officiality of the Italian language and its exclusive valuable use for administrative acts and public life only arrived in the 1920s.¹¹³

In 1861 with the Unification of the Italian territory, the legislation, and the administrative model of the Savoia was enlarged to the entirety of the national territory. As far as Italian is concerned, at that time the only italophone urban centre out of Tuscany was Rome. Indeed, thanks to the massive immigration to the city, the common language

¹¹² Demuro, G. (2022). Identità linguistica e forme di stato. XXXVII Convegno annuale dell'Associazione Italiana dei Costituzionalisti "Lingua Linguaggi Diritti". (p.4)

¹¹³ Poggeschi, G. (2016). Unità nazionale e pluralismo culturale: l'evoluzione dello status giuridico delle minoranze linguistiche dall'Unità d'Italia ad oggi. Unità e pluralismo culturale, 231-249.

found to communicate was Italian. For the rest of the territory, the first census of 1861 (at that time Rome was still not part of the Italian kingdom) showed that 78% of the population was illiterate, and just 2,5% of a 25 million population was able to speak Italian. Because of the secular division of the territory, the opposition of some parts of the society to the use of the Italian, the linguistic survival of pre-Latin era, and the survival of administrative roman separations, the dialect was still the vehicular language.¹¹⁴ As far as dialects are concerned, it is relevant to mention also the work of the linguist Graziadio Isaia Ascoli, who elaborated one of the first classifications of Italian dialects. Contrary to Manzoni, he sustained the richness of the Italian linguistic heritage that consisted in that difference embodied by dialects. In these terms, he believed that dialects could exist in parallel to the standard Italian and that a more flexible approach towards such richness was needed.

1.1. An historical reconstruction of the Italian linguistic policy

Faced with this situation, the new Italian State had to foster the use of the common language and its teaching. As attributed to Massimo D’Azeglio: “*Fatta l’Italia, bisogna fare gli Italiani.*” How to do that? The Italian linguistic policy was fragmentary and did not present a clearly articulated long-term project. From this perspective, given the ‘élite’ status of the standard Italian, Antonio Gramsci believed in the role of the language as a social balancer. The use of Italian by the whole society, would have entailed an integration of the lower classes, excluded for a long time from education and culture, hindering their possibility of a full integration and participation to the society.

The only exception of a defined approach in linguistic policy has been the fascist one. Fascist linguistic policy was authoritarian, nationalist and aggressive, characterised

¹¹⁴ Gnes, M. (2016). La lingua come fattore di integrazione civile e politica. *Unità e pluralismo culturale*, 195-229.

by punitive interventions in regard to minoritarian ethnicities and by the fight against foreign vocabularies. It fostered the purism of Italian language, even going so far as to convert family names which were not Italian. In addition to anti-dialectal campaigns, the regime in 1940 banned the use of foreign words in advertisements, in companies' names and on panels in public spaces. It created the *Commissione per l'espulsione dei barbarismi della lingua italiana* which later became the *Commissione per l'italianità della lingua*.

However, three key areas played a role in spreading the common language: school, public administration, and communication tools. Even though what redefined the linguistic situation have been industrialisation, urbanisation, the strong emigration from the South to the North, the extension of the access to public education, and in particular media communication with the TV, that allowed a daily contact with the Italian language, unhinging the relation between schooling and knowledge/use of language.¹¹⁵

Firstly, the school system was based on the r.d.l. n. 3725 of 1859, the so-called *legge Casati*. It established the obligation for children to attend three years of school, subsequently five with the 1876 *legge Coppino*. School was free, mandatory and for both sexes. Unfortunately, since the weight of its sustainment was on municipalities and because of the lack of personnel able to speak the official Italian with a background of dialectal and historical-linguistic notions, the school system failed in literalising its population.¹¹⁶ Originally, the dialect was used as a tool in order to show the references to Italian, and to research a common nomenclature. The aim of the school system was transmitting a common language for everybody, so in the following period an anti-dialectal approach emerged, reaching its peak in the school programs of 1905 with Minister Orlando. Subsequently, the 1923 Gentile Reform foresaw a brief change in the

¹¹⁵ Ivi p. 212

¹¹⁶ Ibidem

teaching method, introducing some booklets named *Dal dialetto alla lingua*. It did not last very long, since in the perspective of the totalitarian regime, dialect was perceived as an obstacle to the unity of all Italians. So, it was abolished quite soon and replaced by a single text book for the entire system, characterised by the uniformity of its content and its language. The approach in schools towards dialects did not change after the fall of fascism and the end of WWII. With the programmes approved in 1945 (through the d.lgt. *Decreto Luogotenenziale del 24 maggio 1945, n. 459 - Programmi per le scuole elementari materne*) and in 1955 (through the *Decreto del Presidente Della Repubblica del 14 giugno 1955, n. 503 - Programmi didattici per la scuola primaria*), “teachers were asked to substitute all the dialectal terms and it was stated that a person masters the language just if ‘he writes as he speaks, and he speaks as he would write’.¹¹⁷

Important steps forward were taken in 1962, when the obligation of school attendance reached the age of 14. Later in the 1980s the attitude towards dialects changed through programmes showing respect towards them. Thanks also to other social and communication factors, Italian was finally spread and spoken by most of the citizens.

Acknowledging obviously that Italian is the language of the legislator, a second key domain of intervention for the linguistic policy is the public administration, which represented an important vehicle for the diffusion of the Italian language. First, a new unified State needed a unitarian and single bureaucratic system. Then, in order to guarantee the principle of uniformity of the administrative action, meaning a unified system of communicating between administrations, and citizens, the use of the common Italian language represented a necessity. Because of this, paradoxically bureaucracy in its technical language, characterised by a high-level standards in linguistic terms, created its

¹¹⁷ Ivi p.214

own bureaucratic language, widely defined, as reported by Professor Matteo Gnes, *'burocratese'*.

The exclusive use of Italian within and with the public administration is a principle that originated and has been made explicit through the approval of several norms in terms of administrative acts during the first half of XX century (notarial acts and marriage certificates). This principle has been affirmed by the Constitutional Court, affirming that the Italian Constitution implicitly sets forth that the Italian system recognises Italian as the only official language, binding its exclusive use in public administration, with the only derogations provided to linguistic minorities.¹¹⁸ Even in terms of public contracts the only language accepted is Italian, always except for the linguistic minorities cases that will be more broadly analysed in the next paragraph. In terms of the spread of the Italian language, the important role played by the public administration is evident. Additionally to the need between Italians working in the administration to converge on a common language for mutual understanding when not legally bound in the use of Italian, another key element in these terms is represented by the army. This domain, as many others at that time, presented some difficulties and linguistic barriers between Italians. Umberto Eco, ironized about it, saying that during WWI Sicilians and Lombards who were put together to fight, were almost shooting one another since both, thought that the other was speaking German. In any case despite the difficulties, the unified army had an important role in advancing the common language.

A last important domain which played a key role in linguistic policy is mass-media and communication. Newspapers, radio, cinema and television had an extraordinary influence on the spread of Italian language within the population.

¹¹⁸ Ivi p. 216

In legislative terms, two main lines of actions have been undertaken. On one hand public service concessionaires, such as *RAI- Radio Audizioni Italiane* had to comply with certain obligations in terms of cultural promotion. On the other hand, the legislator financed the dubbing of foreigner films in Italian (*Legge del 26 luglio 1949, n. 448 - Costituzione di un fondo speciale per il credito cinematografico e disciplina della circolazione dei film esteri parlati in lingua italiana*), and the projection of original Italian films and works (*Legge del 24 dicembre 2007, n. 244 - Disposizioni per la formazione del bilancio annuale e pluriennale dello Stato*). Two examples of national linguistic policy action undertaken by RAI can be mentioned. The telecast '*Telescuola*', on air between 1958-1966, was transmitted to allow those citizens who lived in isolated areas to receive the last part of the educational cycle that they could not complete because of the absence of second-degree institutions in their areas. The second one was the telecast '*Non è mai troppo tardi*'. Created through the cooperation with the Ministry of public education and thanks to the time of its broadcast (dinner time from Monday to Friday), it represented a tool to literate adults, including workers who could watch it once come back from work.

1.2. The current Italian linguistic state-of-the-art

Italian is today the real common language of Italians and of the Italian State, even though this is not written in the Constitution. In these terms, the legislator never constitutionalised the officiality of the language, probably because in the past it was not considered as needed. It has been stated and recalled in some acts of primary law, but a constitutional law affirming such has never been approved, even if some propositions emerged. However, it seems that the perception of this need is recently emerging, due to the challenges posed by the globalisation processes. They concern the contamination of Italian from English, or even the fear of its use becoming diminished, faced by the rise of

the Anglo-Saxon work language. From this perspective, the Constitutional Court had the possibility to express itself on this issue. In 2014 the *Politecnico di Milano*'s approach towards the internationalisation of universities, through offering study cycles entirely in English, has been object of a judgement of the tribunal. With the *Sentenza n. 42/2017, in tema di università e istituzioni di alta cultura, norme in materia di organizzazione delle Università, di personale accademico e reclutamento*, the Constitutional Court recognised the primacy of the Italian language and labelled it as cultural heritage *per se*. Furthermore, it anchored the centrality of the Italian language to the paradigm of art. 9 of Italian Constitution, affirming that the development of culture and of scientific research occur through the transmission vector of the Italian language.¹¹⁹ The Court, through the recognition of the Italian language as cultural heritage, seems to be going one step further than the UNESCO interpretation of language as a mere vehicle, and is considering it as a real good to safeguard. However, as the Administrative Law Professor Gloria Mancini Palamoni underlines that this discipline is still in evolution in the Italian system. Nevertheless, she affirms that this recognition should inspire the national legislator

*“che, per troppo tempo, non si è occupato dell'immanenza culturale intrinseca alla lingua italiana... inequivocabilmente testimonianza di civiltà, correndo il rischio di renderla da lingua della cultura ad arcaico dialetto.”*¹²⁰

She warns that the survival of the Italian language depends on its valorisation and promotion not only in Italy, and linking it to the judgment of the court she argues that this promotion needs to be fostered through its use in all the fields of knowledge.

In conclusion, as far as dialects are concerned, they have always covered an important role in Italians' lives. At the time of the Unification, they were the only

¹¹⁹ Carta, R. (2018). Nota a margine della sentenza 42 del 2017 della Corte Costituzionale: La lingua come elemento identitario e vettore di trasmissione di cultura tra esigenze di internazionalizzazione e autonomia universitaria.

¹²⁰ Palamoni, G. (2018). La lingua italiana come bene culturale in sé. 1-17 (p.17)

languages known to communicate orally and to name the reality. With the gradual spread and learning of Italian, the use of dialects saw a reduction throughout the years, but never disappeared. Contrary to urban areas, they were used with more frequency in the countryside, also because public education faced some difficulties in reaching the most remote areas. As it has been argued, dialects have been stigmatised for a long period in the school system, and such approach was later also reflected in its use within society. Perceived as the ignorant manner of expressing oneself, dialects have often been relegated in informal contexts. Such perception was even exacerbated during the fascist era that tried to impose a purism of the Italian language. In that period, as the European institutions' analyst Anna Grochowska reports: "*il dialetto venne accostato alla povertà e all'arretratezza, di cui bisogna vergognarsi. Parlare dialetto divenne un peccato, o addirittura un reato, una sorta di umiliazione per la famiglia intera.*"¹²¹

That mindset did not disappear even after the end of Fascist period. In schools, dialects were perceived as *non varietà linguistiche, ma corruzioni di lingue originariamente perfette*.¹²² Despite the hostile approach towards dialects, they continued to be used in Italian families throughout the years. According to research published in 2006, it emerged that still almost 40% in the middle-upper classes and 70% middle-lower classes use the dialect in their families. Dialectophones manage to switch from their dialect of origin to Italian and *vice versa*. As always reported by Grochowska:

*"Il dialetto è la lingua delle madri e, anche da adulti, serve ad esprimere concetti che stanno dentro di noi fin dall'infanzia... L'italiano, si dice, è la lingua di servizio, quella che si è costretti a parlare tutti i giorni; il dialetto invece è la lingua del cuore, perché è stato il primo suono che ha collegato un oggetto o una realtà quotidiana, alla parola."*¹²³

¹²¹ Grochowska, A. (2013). Il dialetto nell'Italia postunitaria. *Studia Romanica Posnaniensia*, vol. XL/3, 17-31. (p.21)

¹²² Ibidem

¹²³ Ivi p.20

Recently, the attitude towards the regional languages and dialects changed. There has been a rediscovery of this ancient way of expressing oneself, perceiving them as part of the Italian linguistic, and cultural, heritage. They appeared again in the new neorealistic cinematography, and in films' dubbing. For some years, there have been actions aimed at revitalizing and promoting them.

In 2013, a literature national price was born, entitled *Salva la tua lingua locale*, collecting different verse and prose compositions in the different regional and local languages. A cultural shift occurred, from a stigmatisation towards a conception that wants to safeguard, protect, and spread dialects. The new millennium opened the gates to this revaluation of dialects in many sectors, such as: advertisements, music, trade, poetry, and culture in general. After all this time, the same dialects have changed, they are not the same to the ones used by the past century's generations. De Renzo highlights how today Italians use a hybrid language, mixing Italian with one's own dialect, in a code-mixing phenomenon. Dialect mainly emerges in trusted circles or informal circumstances and is used when the speaker wants to put the other person at ease, delivering a sense of familiarity. This overall trend towards the interest in local and regional origins, traditions, and expressions, can be fully represented by a statement of Berruto:

*"Un motto di parlanti nell'Italia alle soglie del terzo millennio sembra essere 'ora che sappiamo parlare italiano, possiamo anche (ri)parlare dialetto'."*¹²⁴

2. Linguistic minorities in Italy

As already stressed in the previous paragraph, the Italian territory presents an extremely rich linguistic heritage. First, the countless varieties of Italian dialects represent one of the most typical features of the Italian sociolinguistic reality. Products of autonomous developments from the spoken Latin in the different territories, in terms of

¹²⁴ Ivi p.28

definitions, the label of dialect is still widely debated in the scientific environment, since some of them are argued to be language, due to their complexity and distance from the roofing language that is Italian. Therefore, the limit between dialect and language is still unstable and mutable, allowing different considerations and conclusions depending on one's interpretation.

However, dialects, or 'regional languages,' are not the only pieces of the Italian linguistic mosaic. Indeed, Italy also counts multiple linguistic minorities, whose historical origins lead to heterogeneous paths. Indeed, some of them are the result of ancient migrations, others of political divisions of national borders and others of the discrepancy of linguistic borders between States.

In this context, it is relevant to underline a difference within the category of minorities. It is possible to identify national minorities and *minoranze alloglotte*.¹²⁵ Whereas, according to the linguist Fiorenzo Toso, national minorities are:

*“Concetto che indica, in particolare, quei gruppi di popolazioni presso i quali la diffusione di una varietà di alloglotta si associa all'affermazione di un differente senso di appartenenza rispetto alla restante popolazione del Paese, col prevalere di 'caratteri nazionali' rivendicati come altrettanti segnalazioni di adesione a una diversa identità collettiva, tutelata in seguito ad accordi internazionali.”*¹²⁶

The distinction between these two categories can be found in the Germanophone population of South Tyrol, that for historical-cultural reasons in addition to the linguistic ones, it perceives itself as bearer of an Austrian national identity; and the Catalanophone one, which does not identify itself differently from its Italian background. Another difference emerges in the perpetration of traditions and in the presence of a standardised culture that is not the Italian one, in continuity with a homeland State of reference.¹²⁷ On

¹²⁵ In linguistics, the term *alloglossia* refers to the presence or use of a different language within a defined linguistic territory or country.

¹²⁶ Toso, F. (2019). ALLOGLOSSIE E MINORANZE LINGUISTICHE IN ITALIA. Problemi terminologici e forme della tutela. *Estudis Romànics*, 401-422. (p.403)

¹²⁷ Ivi p. 404

the contrary, this continuity with a foreign country is absent when it comes to minorities in the minorities, meaning those minorities whose language is a dialect of a minority language (e.g. the Germanophone groups of *Cimbri* and *Mocheni*). Those realities are not covered by the roofing language of reference, that often results in being very far from the dialect that it should pertain to. In any case, such minorities often do not feel the hypothetical reference language as part of their linguistic identity.

Geographically speaking, in the North of Italy the presence of linguistic minorities is distributed along the Alpine arc, it is possible to find mainly minorities of languages originating from the German language, French and Franco-Provençal ones. Towards the opposite border, in the North-East, there are Ladin, Friulan and Slovenian minorities. Whereas in the South they are more scattered and it is possible to find Albanian, Croatian, Catalan, Franco-Provençal, and Greek minorities. This dispersion on the territory depends on the historical migrations occurred during different historical eras.¹²⁸ In the case of the Greek minorities, their language is a continuum of the Greek spoken in the *Magna Graecia* during the Classic era. Whereas, the Catalan spoken in Alghero in Sardinia, origins from the Catalan migration of the XIV century, or still the Albanian and Croatian ones that occurred between XV and XVIII centuries. The most consistent minorities are the Sardinian one with approximately 1 million speakers, the Friulan with at least 400.000 locutors and the Sout Tyrolean with 250.000 speakers.

2.1. Historical perspective of the treatment of linguistic minorities in Italy

After the Turin Treaty of 1860, the recognised presence of a different language from the Italian came to an end. Indeed, in that period the already existing linguistic

¹²⁸https://static.treccani.it/export/sites/default/magazine/lingua_italiana/pdf/EncItCartaMinoranze.pdf For a visual and detailed map of the distribution of linguistic minorities in the Italian territory and Borsi, L. (2017). *Minoranze linguistiche*. Roma: Servizio studi del Senato, for a detailed sum up of the origins of such minorities.

minorities in the new unified Italian State did not present any kind of attitude towards possible claims for the respect of their linguistic and cultural specificities. At the same time, the legislator did not perceive the reality of linguistic minorities as an issue, therefore the State adopted a general liberal attitude towards it, included after the annexation of South Tyrol after WWI. Contrary to such approach, Fascism boosted a forced assimilation of such minorities. In the name of nationalism, the regime imposed the use of the Italian language and translated toponymy, and linguistic minorities' surnames (in some cases also the personal names). It then abolished all the forms of autonomy and linguistic protection in place in the territories where such minorities were settled down. The next steps consisted in the requisition of the cultural, sport and political associations' goods, in the removal of teachers and ministers of religion who had been active in minority settlements, in the transfer of Slovenian and Croatian properties to Italian families, and in the massive immigration of Italian manpower in South Tyrol.¹²⁹ Such measure had the objective of Italianising the territories and forcing those ones who did not want to be assimilated to emigrate to Germanophone countries.

After WWII, the topic of the linguistic minorities' protection emerged, and some kind of measures in these terms were immediately put in place towards the minorities of the Alpine arc, outlining a change in the State's attitude, compared to the Fascist era.

In the new democratic Italy, the first important step towards the protection of linguistic rights arrived with the constitutionalisation of the protection of linguistic minorities in principle. This principle found application several years later, in a national law of 1999 (that will be better analysed in the next paragraph), enumerating the minorities entitled to receive legal protection and to be the object of promotion.

¹²⁹ Piergigli, V. (2017). La Costituzione italiana delle minoranze linguistiche tra principi consolidati, riforme mancate e prossime sfide. *Revista d'estudis autonòmics i federals*, n. 26, 165-206. (p.169)

2.2. The national legal framework of the protection on linguistic minorities

In legal terms, the protection of linguistic minorities is inscribed in the Italian Constitution, which outlines a pluralistic framework following a centralised-State model, with its article 5 and the *Titolo V*, which is devolved to regions, provinces, and municipalities.¹³⁰ Proposed by Tristano Codignola, the provision of such protection is set forth by article 6 of the republican Constitution, that states: “*La Repubblica tutela con apposite norme le minoranze linguistiche*”. The precept needs to be read in harmony with articles 2 and 3. Article 2 affirms:

“La Repubblica riconosce e garantisce i diritti inviolabili dell'uomo, sia come singolo sia nelle formazioni sociali ove si svolge la sua personalità, e richiede l'adempimento dei doveri inderogabili di solidarietà politica, economica e sociale.”

Meanwhile, article 3 deals with the principle of equality from both a formal and a substantial point of view. Stressing on the principle of non-discrimination, it provides positive obligations for the State, stating that:

“Tutti i cittadini hanno pari dignità sociale e sono eguali davanti alla legge, senza distinzione di sesso, di razza, di lingua, di religione, di opinioni politiche, di condizioni personali e sociali. È compito della Repubblica rimuovere gli ostacoli di ordine economico e sociale, che, limitando di fatto la libertà e l'eguaglianza dei cittadini, impediscono il pieno sviluppo della persona umana e l'effettiva partecipazione di tutti i lavoratori all'organizzazione politica, economica e sociale del Paese.”

It is important to recall also art. 9, affirming that “*La Repubblica promuove lo sviluppo della cultura e la ricerca scientifica e tecnica.*”

In light of the above, we can affirm that the Constitution recognises linguistic rights both from an individual and a collective perspective. The inscription of linguistic minorities' protection in the first part of the constitutional charter, implies the idea that

¹³⁰ Art. 5: “La Repubblica, una e indivisibile, riconosce e promuove le autonomie locali; attua nei servizi che dipendono dallo Stato il più ampio decentramento amministrativo; adegua i principi ed i metodi della sua legislazione alle esigenze dell'autonomia e del decentramento.”

such protection is a principle that needs to inspire the entirety of the State legislation, as well as its actions.

The Italian Constitutional Court throughout the years affirmed with its jurisprudence that the protection of linguistic minorities is a fundamental principle of the constitutional system.¹³¹ In its judgment n. 170 of 2010, the Court states that such protection is intended as *“la consapevole custodia e valorizzazione di patrimoni di sensibilità collettiva vivi e vitali nell’esperienza dei parlanti, per quanto riuniti solo in comunità diffuse e numericamente ‘minori’.*”¹³² Consequently, such approach is reflected also in the legislation of the different domestic sources. It is also strengthened by the actual interpretation of the term ‘La Repubblica’ at article 6, as the totality of all the elements composing the Republic. That means regions, municipalities, provinces, more broadly *tutti i pubblici poteri sono chiamati, ognuno con le proprie competenze, a darvi attuazione* (to the fundamental principle of protection of linguistic minorities).¹³³

However, the implementation of pluralism and minorities’ protection took many years. The regions with ordinary statute were created just in 1970s, and the law on linguistic minorities’ protection, guided by the actions undertaken at the European level with the European Charter of regional and minority languages and the Framework Convention for the protection of national minorities, was approved in 1999. Such protection evolution can be divided, according to Elisabetta Palici di Suni, in five phases:

*“quella delle minoranze superprotette, quella della tutela minoranze nelle minoranze, quella della tutela delle minoranze storiche in tutto il territorio nazionale, quella della protezione dei dialetti, e l’ultima, relativa alla lingua degli immigrati.”*¹³⁴

¹³¹ Borsi, L. (2017). Minoranze linguistiche. Roma: Servizio studi del Senato. (p.8)

¹³² Ibidem

¹³³ Piergigli, V. (2017). La Costituzione italiana delle minoranze linguistiche tra principi consolidati, riforme mancate e prossime sfide. *Revista d'estudis autonòmics i federals*, n. 26, 165-206. (p.171)

¹³⁴ Palici di Suni, E. (2019). La tutela delle minoranze linguistiche in Italia: il quadro costituzionale e la sua attuazione. (E. dell’Orso, Red.) *Le lingue minoritarie nell’Europa latina mediterranea. Diritto alla lingua e pratiche linguistiche*, 79-92. (p.80)

It is important to underline that the Italian State ratified the Framework Convention for the protection of national minorities. However, even though it adopted a law for the protection of linguistic minorities, it still has not ratified the European Charter of regional and minority languages. Along the process of implementation of article 6, it is essential to differentiate between recognised minorities and not, as also affirmed by the Constitutional Court with the judgements 28/1982 and 62/1992.

In analysing this legal matter, it is essential to bear in mind that the linguistic minorities' protection is based and anchored to the principles of territoriality and the one of recognition. In the Italian juridical system, the administrative borders often correspond to arbitrary linguistic ones, so a minority can be protected only if recognised and in the delimited territory where it is present. In addition, as will be better illustrated in the next section, the Italian juridical system presented for many years an asymmetric condition of protection of minorities, since some of them enjoyed more linguistic rights than others. Furthermore, it is also characterised by 'variable-geometry framework' in terms of distribution of competences, between the State and the regional legislators. Initially, with the judgment Sent. Corte cost. n° 46/1961 of 3rd July 1961, the Constitutional Court stated the exclusive power of the State in dealing with linguistic minorities, given the need of unity and equality.¹³⁵ At a later time, it also recognised a limited power to the regional legislator with the judgement Sent. Corte cost. n° 159/2009 of 18th May. The residual competence of regions, is due to the fact that a State law (Law n. 482 of 1999) already exists and it is not a framework law, since it indicates the measures to undertake. All this brings to the conclusion that regions and local entities have a residual legislative competence in this matter.

¹³⁵ Borsi, L. (2017). *Minoranze linguistiche*. Roma: Servizio studi del Senato. (p.9)

As the case of the Piemonte regional law 11/2009, regions should act following the principle of protecting linguistic minorities, but implementing article 9, which affirms: *“La Repubblica promuove lo sviluppo della cultura e la ricerca scientifica e tecnica. Tutela il paesaggio e il patrimonio storico e artistico della Nazione.”* Their action calls upon spreading and valorising the cultural and linguistic heritage of their territories, in terms of cultural measures and economic support. Regions are not entitled to recognise a linguistic minority deserving protection, or not. It is indeed an exclusive competence of the national legislator, as also recalled by the Constitutional Court judgement 170/2010 and 88/2011. The Court reaffirmed the inclusion of the local entities in implementing the measures of protection of the recognised minorities, and their competence in fostering their cultural heritage, but it also affirmed: *“esso certamente non vale ad attribuire a quest’ultimo (the regional legislator) il potere autonomo e indiscriminato di identificare e tutelare una propria ‘lingua’ regionale o altre proprie ‘lingue’ minoritarie.”*¹³⁶ For the regions with special statutes, some derogations in such principle can be envisaged, in the cases foreseen by law.

3. The ‘super-protected’ minorities in special statute regions

The first minorities becoming objects of protection were the national ones, also called ‘super-protected’. This category includes the Francophone minority of Valle d’Aosta, the Germanophone one of South Tyrol, and the Slovenian one of Friuli-Venezia Giulia. They are considered as super-protected, since their linguistic minorities are protected and recognised by provisions of international treaties or by provisions of their statutes, which given the special status of the regions, such provisions are elevated to constitutional law.

¹³⁶ Ibidem

In the regions of Valle d'Aosta and Trentino Alto Adige, respectively French and German are equalised to Italian, having a co-official status, meaning that they can be used in official relations with the public authorities. The bilingual regime has been reconfirmed in the reform of art. 116 (l. cost. 3/2001), which now provides the denomination of such regions also in French and German. The two statutes provide two different types of bilingualism. The Valle d'Aosta statute presents a total bilingualism, providing only few exceptions such as the case in the redaction of judiciary authorities' provisions. In schools, French and Italian receive the same hours of learning and both are used as vehicular languages for teaching.

In the case of South Tyrol, the guarantee for the protection of the Germanophone minority dates to the Agreement De Gasperi-Gruber of 1946 (an international treaty between Italy and Austria). The South Tyrolean case, contrary to the Francophone one, does not present a total bilingualism but a linguistic separatism. It allows a disjointed use of the two languages, except for in bilingual texts or translations in the cases explicitly foreseen by law. Schools indeed are divided between Italophones, Germanophones, and 'Ladinophones.' Here, Italian or German, depending on the language of the school, will be taught as well, but it will not be used as vehicular language. In the Province of Bolzano, one of the most interesting measures in terms of protection is represented by the criteria of ethnic proportion. Inside the state administration and judiciary offices of the province, the staff must represent the demographic distribution in terms of linguistic belonging, as results from the declarations of affiliation delivered in the official census of the population.¹³⁷ In addition, as set forth by article 56 of the statute, to guarantee the equality between the citizens of the three linguistic groups:

¹³⁷ Piergigli, V. (2017). La Costituzione italiana delle minoranze linguistiche tra principi consolidati, riforme mancate e prossime sfide. *Revista d'estudis autonòmics i federals*, n. 26, 165-206. (p.178)

“è altresì preordinata la previsione che riconosce alla maggioranza dei membri di un gruppo in seno al consiglio regionale o provinciale di Bolzano la richiesta di votazione per gruppi separati su una proposta di legge ritenuta lesiva del suddetto principio, con possibile impugnazione del provvedimento davanti alla Corte Costituzionale da parte della maggioranza del gruppo stesso.”¹³⁸

As above-mentioned, the Ladin community, that for its numbers is considered as a linguistic minority, lives in a territory already characterised by the presence of a bigger one, that is the German South Tyroleans. Given the sensitivity on the subject, the South Tyrolean legislator enlarged, since the first modification of the Statute in 1972, the spectrum of measures of protection in the municipalities of Ladin settlement. In such municipalities, it is possible to observe for example a trilingual teaching scenario, where the vehicular language is the minority one. Furthermore, as articles 62 and 36 state, their representation is guaranteed within the organs of the local and regional entities. The protection of the Ladin community reached its peak with the constitutional law n.1 of 2007, that equalised the protection of Ladins to the one of the Germanophones in the region.

Compared to the other two regions with special statute, Friuli-Venezia Giulia is the one that least guarantees linguistic rights to its Slovenian minority. The regional statute was approved only in 1963, due to the *questione di Trieste*. The borders with the ex-Yugoslavia were finally set with a memorandum of understanding in 1954. The Slovenians of Trieste were considered not only by the Statute, but also in some international documents, and a final official recognition came with the Constitutional Court judgement 28/1982.

However, the Friulan statute does not equalise the Slovenian to the Italian language, as in the previous cases, but it just recognises, with its article 3, *la parità di trattamento dei cittadini a prescindere dal gruppo linguistico di appartenenza e a*

¹³⁸ Ibidem

*salvaguardare le rispettive caratteristiche etniche e culturali.*¹³⁹ The Friulan territory presents a heterogeneous linguistic landscape, since it welcomes also Friulian, Germanophone, Ladin, Venetian and other ‘Slovenianophone’ minorities. However, throughout the years the regional legislator, in synergy with the national parliament, adopted new measures towards the protection of the Slovenian minorities, of Friulan and other minorities of the region.

Some notable measures adopted by the regional legislator are the regional law n.15 of 1996 - *Norme per la tutela e la promozione della lingua e della cultura friulana e istituzione del servizio per le lingue regionali e minoritarie*; and the regional law n.16 of 2014 - *Norme regionali in materia di attività culturali*, that recognises minority languages as essential components of the cultural richness of the regional community. In this direction, the region also fosters the valorisation of Venetian dialects and allows the teaching of Slovenian language in the territories of settlement of such minorities. Indeed, in 2007 it also adopted a regional law (l.r. n.26) in terms of protection of the Slovenian linguistic minority.

Throughout the years, these regions, as already seen with the Ladin case, also started to recognise minorities within their minorities. It is possible to name the *walser* minority in Valle d’Aosta, or the *cimbri* and *mocheni* in Trentino Alto-Adige. The respective statutes host provisions aiming at granting linguistic rights also to such minorities, in a smaller scale given the small number of members of the communities and territories. That means giving the possibility of using the minority language as a vehicular language in schools, or expressing oneself in such language in the political organ of the municipality.

¹³⁹ Ivi p. 179

An example of protection of a minority's minority is the *patois*, that is a Franco-Provençal dialect, object of concessions to a few municipalities' statutes in Valle d'Aosta. This dialect has also been object of measures of revitalisation through the creation of cultural institutes like the *Ecole Populaire de patois*, that gave the chance to hundreds of locutors to learn the basis of such language and to improve their knowledge and the mastery.¹⁴⁰

3.1. Law n. 482 of 1999 and the protection of historical linguistic minorities

Once the ordinary regional regime was implemented in the 1970s, linguistic minorities recognised within these regions became the subject of protective measures. This occurred thanks to local legislators who were more attuned to the preservation of linguistic heritage and linguistic rights. Some initial steps in regional legislation appeared before 1999. A particular example is represented by Piedmont region. The region statute of 1970 already affirmed in its article 7 the protection of the cultural and linguistic heritage, and the regional legislator already intervened in 1979 financing municipalities in order to valorise their ethnographic and cultural heritage, and linguistic expressions of the region. Consequently, in 1990 (l.r. n.26) the region enlarged its financial action to protect specifically *il piemontese, l'occitano, il francoprovenzale* and *il walser*.¹⁴¹

The turning point in terms of linguistic minorities protection is represented by the adoption of the law n. 482 of 1999 - *Norme in materia di tutela delle minoranze linguistiche storiche*. The law implements after 50 years of its promulgation article 6 of the Constitution, in harmony with the general principles set by international and European

¹⁴⁰ Poggeschi, G. (2016). Unità nazionale e pluralismo culturale: l'evoluzione dello status giuridico delle minoranze linguistiche dall'Unità d'Italia ad oggi. *Unità e pluralismo culturale*, 231-249. (p.240)

¹⁴¹ Palici di Suni, E. (2019). La tutela delle minoranze linguistiche in Italia: il quadro costituzionale e la sua attuazione. (E. dell'Orso, Red.) *Le lingue minoritarie nell'Europa latina mediterranea. Diritto alla lingua e pratiche linguistiche*, 79-92. (p.86)

organisations.¹⁴² It aims at protecting the minority languages and cultures historically present within the Italian territory. Implementing the inventorying approach, it follows the international *modus operandi* of listing the objects deserving protection. With the inventorying approach, the law sets a limit to its protection, meaning that only the languages inscribed in such list can be protected, leaving all those ones which remain outside without any sort of safeguarding measure. Consequently, the linguistic minorities protected by the Italian legislator, as listed by article 2 of law n. 482 are: *“la lingua e la cultura delle popolazioni albanesi, catalane, germaniche, greche, slovene e croate e di quelle parlanti il francese, il franco-provenzale, il friulano, il ladino, l'occitano e il sardo.”*¹⁴³

In its article 1, the law states the officiality of the Italian language for the Italian State, and it affirms that: *“La Repubblica, che valorizza il patrimonio linguistico e culturale della lingua italiana, promuove altresì la valorizzazione delle lingue e delle culture tutelate dalla presente legge.”* As previously affirmed, such type of protection is bound to the principle of territoriality, that finds expression at article 3. The legislator in this case created a framework norm that can be used by local minorities to claim their linguistic minority status. Indeed, article 3.1. sets forth that:

“La delimitazione dell'ambito territoriale e subcomunale... è adottata dal consiglio provinciale, sentiti i comuni interessati, su richiesta di almeno il quindici per cento dei cittadini iscritti nelle liste elettorali e residenti nei comuni stessi, ovvero di un terzo dei consiglieri comunali dei medesimi comuni.”

At its third paragraph, in case of minorities distributed on two different regions, or more local entities, *esse possono costituire organismi di coordinamento e di proposta, che gli enti locali interessati hanno facoltà di riconoscere.*¹⁴⁴

¹⁴² Art. 2 Legge n. 482 del 1999 “Norme in materia di tutela delle minoranze linguistiche storiche.”

¹⁴³ Ibidem

¹⁴⁴ Art. 3.3. Legge n. 482 del 1999 “Norme in materia di tutela delle minoranze linguistiche storiche.”

Law n. 482 also touches on education, promoting the learning of minority languages. In schools, the minority language can be used as vehicular language alongside Italian. In its article 4, under request of the parents, the law permits to schools to organise and determine the educational offer concerning the teaching of the language and of the cultural traditions of the minority. In the educational field, universities are also taken into account regarding the promotion and study of such languages. Article 6, indeed, affirms:

“Le università delle regioni interessate, nell'ambito della loro autonomia e degli ordinari stanziamenti di bilancio, assumono ogni iniziativa, ivi compresa l'istituzione di corsi di lingua e cultura delle lingue di cui all'articolo 2, finalizzata ad agevolare la ricerca scientifica e le attività culturali e formative a sostegno delle finalità della presente legge.”

The law also addresses the use of minority languages in public administration. According to article 7, members of municipal councils and other collegial bodies are granted the right to express themselves in their minority language, with the condition of providing immediate translation in case other members do not understand the language. It gives the possibility of redacting acts for public use also in the minority language, even though only the acts redacted in Italian have juridical value. The principle of the validity of the Italian language is reaffirmed also in article 8:

“il consiglio comunale può provvedere, con oneri a carico del bilancio del comune stesso, in mancanza di altre risorse disponibili a questo fine, alla pubblicazione nella lingua ammessa a tutela di atti ufficiali dello Stato, delle regioni e degli enti locali nonché di enti pubblici non territoriali, fermo restando il valore legale esclusivo degli atti nel testo redatto in lingua italiana.”

The oral and written use of minority languages is also allowed in the offices of public administration and in proceedings before the *Giudice di pace* (art. 9), except for the army and the police. The legislator decided to intervene also in the restoration of original names, through the toponymy (art.10) and family names (art.11), which had been italianised.

Furthermore, minority languages are promoted and disseminated through media, including public radio and television services. Article 12 gives the regions the opportunity to cooperate with RAI service and other local broadcasters to produce television broadcasts for linguistic minorities within the framework of regional radio and television programming. In terms of communication, local authorities are also authorised to finance press organs, television broadcasters, or associations that use minority languages or have the objective of safeguarding them (art.14). Always in the cultural domain, regions and provinces can institute, at their own expenses, organs, or bodies for the protection of linguistic and cultural traditions of minorities (art.16).

As far as implementation is concerned, the law binds the regions with ordinary statute to conform their legislation to the principle expressed by the law in all their areas of legal competence (art.13), keeping those provisions that grant a more favoured situation for minorities. In the same direction, the legislation of special-statute regions has to adapt through the *norme di attuazione dei propri Statuti*.¹⁴⁵

It is important to mention also article 23 of law n.38 of 2001 - *Norme a tutela della minoranza linguistica slovena della regione Friuli-Venezia Giulia*, that introduced art. 18-bis in the law n.482. Such article:

*“estende ai fenomeni di intolleranza e di violenza nei confronti degli appartenenti alle minoranze linguistiche le misure penali e processuali che l’art. 3 della L. 654/1975 ed il D.L. 122/1993 recano al fine di prevenire e contrastare gli atti di discriminazione razziale, etnica o religiosa.”*¹⁴⁶

It is important to signal that after the adoption of law n. 482, given the still actual difficulty in the linguistic community to mark the difference between dialect and language, some regions started adopting regional laws promoting their regional dialects. They tried to use the law n. 482 framework as a model to the promotion of regional

¹⁴⁵ Borsi, L. (2017). *Minoranze linguistiche*. Roma: Servizio studi del Senato. (p.13)

¹⁴⁶ Ivi p. 14

dialects, as in the case of the regional law of Friuli-Venezia Giulia n. 5 of 2010 on the valorisation of the Venetian dialects spoken in the region. The Constitutional Court with its judgment 88/2011, rejected the question of constitutional legality and stated that the matter was not linguistic minorities' protection in virtue of art. 6 of the Constitution, but the protection of the linguistic and cultural pluralism in accordance with arts. 2,3, and 9 of the Constitution.¹⁴⁷

3.2. Limits and criticisms of Law 482/1999

The role of the law 482/1999 has been crucial in fostering and recognising the linguistic rights of multiple minorities on the Italian territory, and in implementing the fundamental principle of protection of such minorities as foreseen by art. 6 of the Constitution. However, the linguist Fiorenzo Toso is very critical about the efficiency of such piece of legislation. Indeed, he remarks that one of the Constitutional guiding principles is of non-discrimination, but in his opinion, the inventorying model of law 482 is perpetrating discrimination within the linguistic minorities' context. He argues that:

“Lo Stato ha il dovere di tutelare i diritti di tutti i cittadini che si trovino in situazione di minorità linguistica, intendendo con tale definizione la difficoltà oggettiva di partecipare alla vita sociale, civile e culturale del Paese in seguito a discriminazioni di ordine linguistico.”¹⁴⁸

He denounces the exclusion of multiple minorities from the list of those deserving protection, and he also questions the criteria laying beyond this choice, given, as previously affirmed, the still actual difficulty in the linguistic community to mark the difference between dialect and language. He warns also about a criticism and a danger

¹⁴⁷ Palici di Suni, E. (2019). La tutela delle minoranze linguistiche in Italia: il quadro costituzionale e la sua attuazione. (E. dell'Orso, Red.) *Le lingue minoritarie nell'Europa latina mediterranea. Diritto alla lingua e pratiche linguistiche*, 79-92. (p.87)

¹⁴⁸Toso, F. (2019). ALLOGLOSSIE E MINORANZE LINGUISTICHE IN ITALIA. *Problemi terminologici e forme della tutela. Estudis Romànics*, 401-422. (p.414)

behind such approach, denouncing a lack of a sociolinguistic analysis of minority languages. Some of these languages do not present a standardised structure that allows a use in the contexts foreseen by law, and such approach risks pushing towards the creation of a standardised minority language at the expenses of its dialects, risking a real sacrifice from their part, as can be seen for example in the Sardinian case.¹⁴⁹

Lastly, he also raises a point regarding the object to protect, from a linguistical and juridical perspective. He argues that it should be reformulated in distinguishing between the protection of linguistic rights and the need of a protection of languages as goods and components of the cultural, linguistic, and identitarian heritage.¹⁵⁰

Undoubtedly, the Italian legislator protects linguistic minorities and their languages following the path of the recognition of linguistic rights relating also to civil and cultural rights, such as the access to education and the transparency of public administration, but not pursuing the protection of cultural and linguistic heritage. Indeed, a different approach is not possible, since the recognition of language as cultural heritage *per se*, has been provided only, as previously mentioned, by the Constitutional Court judgement 42/2017, that shows how this legal domain is still evolving.

4. The case of Sardinia and of the Sardinian ‘language’

In the framework of the protection of linguistic minorities in Italy, Sardinia and the Sardinian ‘language’ represent a peculiar case, embodied by the pluralist and mosaic pattern, and the difficulty of tracing boundaries between dialects and languages within the Italian society.

¹⁴⁹ Toso, F. (2004). La legge 482 e gli scenari recenti della 'politica linguistica' in Italia. *Rivista italiana di linguistica e di dialettologia*, VI, 41-64.

¹⁵⁰ *Ibidem*

The genesis of the Sardinian ‘language’ dates to the Middle Age, as the other romance languages from Latin. Contrary to such languages, Sardinian appears documented only in the last decades of XI century. However, since its first appearance, it presented original characteristics compared to all the other *volgari*, in fact the Sardinian ‘language’ was already used in the official documentation. According to Professor Maurizio Viridis, it is due to the political ties of the island, that was not connected to the Latin West, but with the Byzantine East. The Eastern tradition did not count on the compulsoriness of Latin, on the contrary it permitted the use of local languages. At that time, the island was divided in four different kingdoms and never experienced influences of any Germanic or Arab populations.¹⁵¹ When the first documents presenting the Sardinian ‘language’ appeared in XI century, the island started leaving its Byzantine past behind and entered in touch with the Italian peninsula, with the republics of Genoa and Pisa. Contrary to the Latin West where the Carolingian objective consisted in restoring the official use of traditional Latin, Sardinia presented a rich oral and written production in *volgare*, in patrimonial and juridical documentation.

As previously mentioned, the Medieval Sardinian linguistic production consisted in juridical and official documents of the four kingdoms. It is essential to mention the *Carta de logu de Arborea*, a piece of legislation containing the fundamental laws of the kingdom. From a narrative perspective, it is possible to find a chronicle of a kingdom written by *il giudicato di Torres* of the North-West of Sardinia. It told the story of the kingdom, through the chronology of its rulers and their biographies. Subsequently, when Sardinia stopped gravitating around Italy, it started to be influenced by the Iberian Peninsula, by both Catalan and Spanish languages. At that moment, the Sardinian ‘language’ started to import into its vocabulary many words from Spanish and Italian,

¹⁵¹ Viridis, M. (2003). *Convengo internazionale La lingua e la cultura della Sardegna. La lingua sarda fra le lingue neolatine. Storia uso e problemi*, (1-10). Tokyo. (p.4)

considered as the languages of the tradition. Meanwhile, an intellectual and managerial class able to give breath to a literature production in *volgare* did not emerge. This period was characterised by a plurilingual sociolinguistic context, hosting different cultural codes that impeded the creation of a singular cultural identity and language.

In XVIII century, Sardinia went back under the influence of the Italian culture, through the cession of the kingdom to the Savoia family in 1720. From this moment, a progressive italianisation started through the substitution of Spanish with Italian in churches, schools, and public administration.¹⁵² The enlightenment spirit reached also the island, allowing it to participate to the cultural renovation of the time. In this period, authors like Matteo Madao started denouncing the contamination of the Sardinian ‘language’ by the foreigner influences and argued in favour of the *ripulimento della lingua della nazione Sarda*.¹⁵³ Already shaping the concept of nation of the following century, he established the link between the concept of nation and language. With a sort of ‘romantic’ approach, he advocated for a more elevated formal Sardinian, and for a rediscovery of the forgotten and despised native language. However, such objective was complicated to achieve, because of the proactive Italian linguistic actions towards the italianisation of the country, consisting in school literacy, the single army recruitment, and the contemporary phenomena of industrialisation, spread of mass media and internal migration.

In more contemporary times, Sardinia and its local dialects suffered the same experience of all other Italian regions and dialects. Indeed, dialects were stigmatised in schools and in the ‘good society’. The use of dialect was associated with the idea of ignorance and bound the person to the perception of illiterate farmer and shepherd. Such

¹⁵² Hrvatin, M. (brak daty). La diversità linguistica in Sardegna: la lingua sarda tra le sue diverse varianti e l'italiano . 245-252. (p.246)

¹⁵³ Viridis, M. (2014). Matteo Madao e la questione della lingua sarda. 1-15.

attitude towards dialects and localisms caused the emergence of feelings of inferiority, subalternity, and insecurity. For such reasons, many families abandoned the dialect in the family use and started to use Italian as much as possible in all domains of communication. However, such general approach led to a decrease in the number of locutors, above all in the recent new generations. From a sociolinguistic perspective, today Sardinian is in a diglossia situation without bilingualism. The number of locutors is between 1.000.000 and 1.350.000, and generally they know both Sardinian and Italian.

A clarification from a linguistic point of view is essential to continue the current analysis. At the time of this work, the Sardinian 'language' remains fragmented and divided into dialects, without a unification. None of the different varieties has ever been able to impose itself over the others, and a common agreement on a common version of Sardinian has never been achieved. For these reasons and the considerable differences between such varieties, Sardinians from different parts of the island prefer to speak Italian amongst themselves.

The island presents different varieties of dialects, which are the following ones. In terms of territorial extensions, the largest communities are the *logudorese* in the North, and the *campidanese* in the South. From a more specific perspective, it is possible to find four dialectal groups: *lugoderese*, *nuorese-barbaricino* and *campidanese*, constituting the Sardinian linguistic branch, and *gallurese*, result of the Corsican migrations. To these varieties, it is possible to add the *sassarese*, coming from a fusion of *lugoderese* and Italian; the dialect spoken in Alghero, that is a Catalan dialect. Finally, and in the archipelago *del Sulcis* a variety of the Ligurian dialect is spoken, called *tabarchino*.¹⁵⁴

From an historical point of view, the region of Sardinia has always claimed and affirmed its identity, and as a matter of fact, it is one of the five Italian regions with a

¹⁵⁴ Hrvatin, M. (brak daty). La diversità linguistica in Sardegna: la lingua sarda tra le sue diverse varianti e l'italiano . 245-252. (p.248)

special-statute order. The theme of identity is a sensitive subject for Sardinians, who have often been labelled as parochialists, due to their attachment to their place of origin. As previously presented, it is possible to trace language claims in favour of a Sardinian ‘language’ as far back as the XVIII century, and the debate around a standardised language for the Sardinians is still ongoing and relevant nowadays. After the progressive Italian literacy, during 1970s the issue of a written and public use of Sardinian opened a vibrant debate.¹⁵⁵ An important aspect in the linguistic debate also concerned the language teaching, that posed numerous doubts and problems because of the lack of a standardised Sardinian.

However, in this direction the Regional Council intervened in 1993, adopting a regional law for the safeguarding and promotion of the culture and language of Sardinia. It aimed at establishing a new subject in schools regarding the teaching of the ‘language’, literatures, history, history of art, music, dance, geography, and ecology of Sardinia. The regional law was sentenced as unconstitutional at its articles 23, 24 and in the entirety of part IV by the Constitutional Court judgment 290/1994. In its judgement, the Court judged as unconstitutional the regional piece of legislation for a problem in the distribution of competences between the State and the region. Indeed, the school programmes, at the time of the sentence, were a competence of the central State, and the regions could only implement and integrate, but they could not change in its structure and content.¹⁵⁶ Furthermore, the judges provided no recognition of the existence of a Sardinian language, and demonstrated how the lack of such recognition was a clear obstacle to ensuring the presence of Sardinian in schools.¹⁵⁷

¹⁵⁵ Ibidem

¹⁵⁶ Pres. cons. ministri c. Regione Sardegna, 290 (Corte Costituzionale luglio 13, 1994).

¹⁵⁷ Wells, N. (2018). State recognition for "contested languages" : a comparative study of Sardinian and Asturian, 1992-2010. 243-267. (p.249)

Despite the judgment of the Constitutional Court, before the State recognition of the Sardinian language in 1999 with law n.282, the Regional Council adopted in 1997 the law n. 26 - *Promozione e valorizzazione della cultura e della lingua della Sardegna*. The law affirms the value of the Sardinian ‘language’ as fundamental good to valorise and more broadly at article 1.2., it states:

*“...tutela e valorizza la libera e multiforme espressione delle identità, dei bisogni, dei linguaggi e delle produzioni culturali in Sardegna, in conformità ai principi ispiratori dello Statuto speciale.”*¹⁵⁸

The same dignity of Italian is accorded not only to Sardinian, but also to the Catalan of Alghero, to the *tabarchino* of the archipelago del Sulcis, to the *sassarese* and *gallurese* dialects. Updated few years later, “the law also contains a provision to adapt to the more favourable provisions, with regard to the Sardinian and Catalan languages, contained in the general law on the protection of historical minorities (L. 482/1999).”¹⁵⁹ The region adopts the regional legislation inspired by the European dimension and by the constitutional principle of linguistic pluralism as stated by art. 2.2:

“La Regione considera tale impegno parte integrante della sua azione politica e lo conforma ai principi della pari dignità e del pluralismo linguistico sanciti dalla Costituzione e a quelli che sono alla base degli atti internazionali in materia, e in particolare nella Carta europea delle lingue regionali e minoritarie del 5 novembre 1992, e nella Convenzione quadro europea per la protezione delle minoranze nazionali del 1° febbraio 1995.”

Among the measures and operational instruments envisaged for the implementation of the provisions of the law, there are:

“the setting up of services for the recognition, cataloguing and conservation of the regional cultural heritage; the establishment, at the Regional Department for Education, of a Regional Observatory for Sardinian culture and language; the encouragement of the establishment of local Councils for Sardinian culture and language; the launch of a census of the Sardinian linguistic repertoire; the facilitation of local

¹⁵⁸ For the complete text: <https://www.gazzettaufficiale.it/atto/stampa/regioni/originario>

¹⁵⁹ Borsi, L. (2017). *Minoranze linguistiche*. Roma: Servizio studi del Senato. (p.22)

interventions for the restoration of place names in the Sardinian language; the drawing up, by the Regional Council, of a three-year Plan of Interventions aimed at achieving a balanced diffusion in the regional territory of initiatives in favour of the Sardinian culture and language, also through the granting of financial contributions.”¹⁶⁰

In the educational domain, the law presents again what had already been approved in 1993, this time ‘integrating the correspondent intervention of the State’ at its own expenses, as affirmed at article 17. The Regions supports and promotes the introduction in schools of subjects relating the culture and the language of the island. As also sustained by Antonio Rubattu:

*“Nel caso della lingua sarda, uno degli strumenti principali della tutela è il diritto fondamentale all’apprendimento, alla sua corretta trasmissibilità.”*¹⁶¹

From a linguistic rights’ point of view, at article 23 the region allows the use of Sardinian in the councils of the region and of municipalities, even though it must be accompanied by an official written Italian translation. Such approach represents a step forward in the protection of Sardinian linguistic rights, even though it does not reach the degree of French and German in the Northern regions. In these terms, it needs to be intended the local variety of Sardinian of the place of interest.

Indeed, the issue of a standardised language was still not solved. The following year, in 1998 the region with the chief of the Department of Education Benedetto Ballero, appointed a group of linguists to propose a standardised version of Sardinian. The Committee elaborated in 2001 the LSU version (*Limba Sarda Unificada*), that consists in the formulation of a written form of Sardinian. Such version has been strongly criticised and attacked by most of Sardinians, since it is based mainly on the *lugoderese* dialect. In 2006, the regional administration experimented the use of the LSC version (*Lingua Sarda*

¹⁶⁰ Ibidem

¹⁶¹ Rubattu, A. (2006). L’insegnamento della lingua e della cultura sarda. *Revista Philologica Romanica*, 69-72. (p.71)

Comuna). However, also the LSC was criticised, since that variety has been judged as artificial and not spoken by anyone. The debate, as already affirmed, is still ongoing and seems to not find a solution in the short term. Indeed, some intellectuals, like Professor Virdis, argue against a standardised version of Sardinian, since it would entail a sacrifice of local varieties of dialects that represent a key component of the individual and collective identity. On the other hand, others argue that such sacrifice is necessary if the will is to revitalize Sardinian and to foster its use, that is constantly decreasing. Such decrease is labelled by Rubattu as a ‘cultural desertification.’¹⁶²

Meanwhile, Professor Roberto Bolognesi also underlines another important element of the linguistic situation in the regional scenario. He highlights the fact that Sardinian (local dialects) is today spoken less and less, above all in younger generations. Indeed, he presents an important problem, linguistically speaking, for Sardinians. He argues that most Sardinians today do not speak either Italian nor Sardinian. In elder generations, they speak an Italianised Sardinian, whereas a majority, including young generations speak the Regional Italian of Sardinia, consisting in the use of an Italian vocabulary but following the Sardinian grammar structure of sentences.¹⁶³ Such middle categories between the standard Italian and Sardinian, represent a confusion of codes and a mix of languages that actually gave birth to a hybrid language. In this context the locutors do not present a bilingual scheme, on the contrary they do not manage to switch from one code to another, ending in mixing the two. Bolognesi insists then in the need of tending towards bilingualism and of implementing a suitable teaching approach and programme able to make students bilingual over time. In order to do so, he encourages a change in the teaching approach that starts from a collective change in the mindset face to Sardinian. Once Sardinian will be considered, valorised, not stigmatised, and not still

¹⁶² Ibidem

¹⁶³ Bolognesi, R. (2002). Un programma sperimentale di educazione linguistica in Sardegna . 115-130.

associated with regression and ignorance, it will be properly taught. This teaching of Sardinian and Italian grammars will represent the starting point to make locutors more aware of themselves, and from those differences, they will better understand the differences with Italian, making it more probable to master both languages and achieve bilingualism.¹⁶⁴

In conclusion, it is possible to affirm that also in the regional case the theme of minority languages is dealt with in the framework of linguistic rights and civil rights. The discourse around it of the cultural value of the regional languages and traditions is not framed by a cultural heritage law perspective. On one hand it could not be different for chronological reasons taking as a parameter the 2003 UNESCO Convention. On the other hand, even after the ratification of the Convention, as far as minority languages are concerned, they still lay in the domain of civil rights, without presenting a change in the way of dealing with the subject.

¹⁶⁴ Ivi p. 121

CHAPTER III

The French case

1. An historical reconstruction of the evolution of the French language, and the national linguistic policies

*“Pour les Français, dans leur inconscient, cette langue est non seulement le signe de l'appartenance à une communauté, mais celui d'une union mystique. Parler, écrire le français, c'est communier avec l'âme de la France.”*¹⁶⁵

The French language has always been strongly tied to the history and development of the French State and nation. From a sociopolitical perspective, its use has often been associated in the national history to ‘the’ element of the French nation, excluding, in some cases perceiving as enemies, all those who did not speak it, establishing a game about identity based on the linguistic variable. Such mindset has been particularly evident in the times of the French Revolution, when the abbot Grégoire affirmed:

*“Le fédéralisme et la superstition parlent bas-breton ; l'émigration et la haine de la République parlent allemand ; la contre-révolution parle l'italien et le fanatisme parle basque.”*¹⁶⁶

In linguistic terms, French pertains to the branch of romance languages, along with Italian, Portuguese, and Spanish. In the progressive disuse of Latin in the Western Europe, the French context was strongly influenced by Franconian, the Germanic language of Franks. Throughout the centuries, the French territory experienced the coexistence of two linguistic groups, those of *langue d'oc* (Southern France/Occitane) and those of *langue d'oïl* (Northern France). An old version of French appeared in the Oaths of Strasbourg of 842 and its position was strengthened by Hugues Capet becoming king in 987.¹⁶⁷

¹⁶⁵ Rouart, J.M (2003). Adieu à la France qui s'en va.

¹⁶⁶ Paveau, M. (2003). La langue française de patrimoine en héritage, ou le savoir comme argument. *Le français d'aujourd'hui*, 113-121. (p.114)

¹⁶⁷ Eloy, J. (1994). La langue française, objet de politique linguistique. *The French Review*, 403-413. (p.405)

The legal regulation of the French language started with the ordonnance of Villers-Cotterets of 1539, establishing the compulsory use of the *langage maternel français*, that however was still not contemporary French. The current French originates from the Parigian Francien, a variety of *langue d'oïl* spoken in the zone of the *Île-de-France*, which started its progressive affirmation during Middle Age jointly to the economic and political power of the city. In XVI century, after the Wars of Italy and entering in relations with the Italian Renaissance, some French intellectuals started advocating in favour of a cultivated language cleaned by barbarisms. This claim was embodied by the establishment of the *Académie française* in 1635 by Cardinal Richelieu.

Progressively, French became the language of the king's court and of the crown's administration. This process was speeded up during the French *Grand Siècle* (XVII century), above all under the kingdom of the *Roi Soleil* (Louis XIV). At that time, French was not spoken in the entirety of the French territory. Indeed, the kingdom presented a plurilingual context with multiple locutors speaking different dialects, regional languages such as Breton, and minority languages, mainly of the boarders' territories such as Catalan, Basque, and Alsatian. Because of the annexation of such territories at the borders with other countries, and the perception of the linguistic subject as a national security problem, the Sun King started a radical linguistic policy aimed at banning such foreign languages.¹⁶⁸ Excepted for the Alsace region, he continued in the direction of his previous rulers, who already in 1620 issued an edict imposing the use of French for the supreme tribunal of Pau (South-Western France). Moreover, the Sun King understood the efficiency of education in his linguistic objectives and imposed the use of French in schools in the Roussillon region, which had been annexed in 1659. In order to reach not only the *élites* but all social classes, he obligated the priests of the region to hold their

¹⁶⁸ Van Goethem, H. (1989). La politique des langues en France, 1620-1804. *Revue du Nord*, tome 71, n°281, 437-460. (p.438)

ceremonies and pray in French. More generally, in XVII-XVIII centuries an important linguistic policy of francisation was perpetrated in all the 'ex-foreigner territories.' Only in Alsace the use of French was required solely at the highest levels of administration, while in the ordinary life its use was tolerated, even ignored. Edict after edict, kings imposed the use of the national language in tribunals and as a requirement for the redaction of official documents on penalty of nullity in case of redaction in a different language. For the new territories, such as Corsica which was annexed in 1768, there existed a window of time to adapt and comply with the linguistic requirements of the kingdom.

The attempts of francisation in the linguistic policy reached its peak during the French Revolution, started in 1789. When the Revolution started, the revolutionaries noticed that the majority of the population spoke a dialect or a foreign language. In the framework of the *Ancien Régime*, lower classes did not have access to education, and spreading the use of French and of culture amongst the more ignorant was not a concern of the noble class. In contrast, the Revolution aspired towards the unity of the people and of the nation, and it had to be done both from a territorial and a linguistic point of view. In order to achieve such an objective, education again was strongly considered and with the decree of 20 July 1794 multiple municipalities had to organise structures for the mandatory learning of French for younger sections of the population. In the same period, the government imposed the immediate use of French for all authentic acts of law and made it impossible to register private writings in other languages than French. The years 1793-95 became known as the years of the 'Linguistic Terror'. It is important to take into account the attitude of revolutionaries towards dialects and foreign languages in the way they acted in their spheres of action. For instance, the abbot Grégoire in its report for the Public Education Committee, opened the discussion about *la nécessité et les moyens*

*d'anéantir les patois et d'universaliser l'usage de la langue française.*¹⁶⁹ The use of dialect was conceived as a leftover of the *Ancien Régime* and as an obstacle to the diffusion of the ideas of Enlightenment and of the Revolution. Conceived as the 'language of freedom', French was perceived by the jacobins as the 'only' language of the nation.¹⁷⁰ However, despite the commitment and efforts of the government, and given the resistance of local communities, it was impossible to eradicate the use of foreign languages in the short term. Consequently in 1795 the French courses and the other linguistic policy measures were suspended and the revolutionary linguistic policy came to an end. The tolerance towards dialects and foreign languages, or better the failure of a universal francisation, persisted until 1804 under the emperor Napoleon I. Among the measures undertaken, it is possible to find once more the compulsoriness of the use of French for notarial acts. He succeeded in spreading French within upper classes, doing something that the Linguistic Terror had not been capable of in 1794.

If the upper class was beginning to know and to use French, this was not the case for the rest of the society. During the Restoration period and the II Empire, two main events shaped the French linguistic path. First, in 1832 the knowledge of the orthography became mandatory to access public positions; and in 1859 the *Cour de Cassation* affirmed *que la règle qui veut que les actes soient rédigés en français a un caractère d'ordre public.*¹⁷¹

It is with the III Republic that the diffusion of French language was boosted within its society. Thanks to the law *Jules Ferry* in 1882, compulsory education for all children was instituted, including in its article 1 the teaching of French language and literature.¹⁷²

¹⁶⁹ Ivi p.453

¹⁷⁰ Giacomo, M. (1975). La politique à propos des langues régionales: cadre historique. *Langue Française*, 12-28. (p.17)

¹⁷¹ Ziller, J. (2006, October). Le droit français de la langue, entre les mythes d'une tradition interventionniste et la réalité de nouvelles angoisses. *EUI Working Papers, Law No.2006/10*, 1-12. (p.4)

¹⁷² *Ibidem*

From that moment, the official instructions for teachers followed the idea that *les langues locales doivent être impitoyablement pourchassées comme obstacle à la connaissance du français*.¹⁷³ Consequently, the use of French in education became a cornerstone in the educational field, and it has been implicitly consecrated by the jurisprudence of the *Conseil Constitutionnel* and of the *Conseil d'Etat*, when dealing with the teaching of Corsican, Polynesian and Kanak languages.¹⁷⁴

Furthermore, even though the interest of this thesis is not to analyse the role of French on the international level, its increased importance during XIX and XX centuries must be acknowledged.

First, it became the language of diplomacy and gained prestige within the literature and scientific environments. Second, in the same period France was the second largest empire on Earth, just after the British one, reaching its peak during the 20s and 30s of XX century. Consequently, France exported its language to all its colonies worldwide and such influence is still detectable nowadays after the decolonisation period of the second half of XX century.

Returning exclusively to the *France Métropolitaine*, similarly to the Italian case, thanks to the implementation of compulsory education, to the compulsory use in public administration, and to the diffusion of media, French was spread in the national territory, and finally imposed itself. During XX century, the political attitude towards the language consisted in valorising it. Such valorisation occurred through the creation of the *Haut Comité de la langue française* in 1966, the decree of 7th January 1972 concerning the enrichment of the language through the creation of ministerial committees for

¹⁷³ Giacomo, M. (1975). La politique à propos des langues régionales: cadre historique. *Langue Française*, 12-28. (p.21)

¹⁷⁴ Ziller, J. (2006, October). Le droit français de la langue, entre les mythes d'une tradition interventionniste et la réalité de nouvelles angoisses. *EUI Working Papers*, Law No.2006/10, 1-12. (p.8)

terminology in order to enrich the French vocabulary, and the *loi Bas-Lauriol* concerning the use of French language.¹⁷⁵

Nowadays regional languages and *le patois* are no more conceived as threats to the national security. However, today another language is feared to undermine the stability of French in its motherland. After WWII with the beginning of globalisation, the role of English language constantly increased, substituting itself to French on multiple international levels. Even in France the use of English words in many fields of ordinary life is today a reality. This trend and the debate on sovereignty triggered by the ratification of the Maastricht Treaty in 1992, pushed the French legislator to solemnly affirm the primacy of French in the domestic juridical system. In 1992, the constitutional reform n. 92-554 changed article 2 of the Constitution setting forth that *la langue de la République est le français*. Subsequently in 1994, *la loi Toubon* replaced *la loi Bas-Lauriol*. An interesting element is present in article 1, affirming that: “*la langue française est un élément fondamental de la personnalité et du patrimoine de la France.*” The language is elevated at the constitutional level as a fundamental element of the national cultural heritage. Moreover, the law recognises the right of French citizens to express themselves and to receive all useful information in French in public communications, in education, and in the workplace. Such principle is implemented for instance in work contracts, consumer services, administrative and civil contracts, and in commerce. The latter has also been object of judicial review by the European Court of Justice, affirming that it could lead to restrictions to the free movement of goods and products, according to article 14 of 79/112 directive and article 30 of TFEU.¹⁷⁶ According to the *Conseil Constitutionnel*, following article 11 of the Declaration of the Rights of Man and of the Citizen, the officiality of French needs to be harmonised with the freedom of

¹⁷⁵ Ivi p.5

¹⁷⁶ Ivi p. 9

communication and expression, entailing an individual right in choosing the most suitable terms for expressing oneself thoughts.¹⁷⁷ The constitutional provisions found the officiality of French as language of public services, meaning in the exercise of public service mission by people of private law in the entirety of the French territory, not only in the metropolitan area.¹⁷⁸ With its judgment, the Court differentiated the obligation of use of French in public life from the private one.

In conclusion, from the times of Revolution until today, the importance of French language in France has been constantly strengthened and eventually anchored to the constitutional charter. Used in the past as a tool to impose rulers' sovereignty and the national unity, once imposed in the motherland, French started to be conceived as a good to protect.

Extremely linked to the concept of identity, when English started gaining ground, it was not only the French language to be threatened, but also the French identity itself, fearing an amalgamation and progressive disappearance into a broader European and Western status. Also because of a more open and permissive approach towards regional languages, and willing to recall the primacy of French embodying the union of the French people, the legislator tried to protect the national language under the shield of linguistic rights of the French people in its entirety. The choice of linguistic rights, guided by the supreme constitutional principles of equality and indivisibility of the nation, represented a more effective path than protecting French language from a cultural heritage law perspective. Such perspective, indeed, could represent a risk. Once the state had recognised language as a cultural heritage *per se* to safeguard, such condition would have possibly been extended also to regional languages, leading to new local political claims

¹⁷⁷ Décision n. 94-345 DC du 29 juillet 1994 – Loi relative à l'emploi de la langue française

¹⁷⁸ See *Décision n. 96-373 DC du 9 avril 1996 – Loi organique portant statut d'autonomie de la Polynésie française*

for autonomy. Furthermore, such binding linguistic rights which are definitely more effective than mere cultural measures of promotion.

2. The evolution of regional languages status and protection

*“L’histoire du droit des langues régionales est marquée par le sceau de la réglementation bien plus que par celui de la liberté.”*¹⁷⁹

Even though France has always fought for freedoms of all kinds and the social equality of its citizens, blurring into attempts to impose a sort of social uniformity through its linguistic policies, it restrained the liberties of the French people. As presented in the precedent paragraph, Paris imposed its language on national dialects and minority languages through its administration and national education.

In the revolutionary period before, and under the III Republic after, a rhetoric of contempt towards regionalisms and minority languages emerged and was exacerbated. However, such idioms and dialects survived against the revolutionary attitude embodied by the words of abbot Grégoire of *unir en un seul coeur, comme en un seul peuple, tous les Français* through the common language, and were weakened, but not eliminated, from the introduction of the universal compulsory education of III Republic.¹⁸⁰ The law *Jules Ferry* in 1882 represented the moment when the process of regional languages’ decay started.

The attempts to eradicate regional languages in schools are reported by Marc-Olivier Padis, affirming that *les témoignages du mépris, des humiliations, des punitions infligées aux petits enfants qui parlaient leur langue maternelle à l’école ne sont que trop*

¹⁷⁹ Malo, L. (2011). Les langues régionales dans la Constitution française: : à nouvelles donnes, nouvelle réponse? *Revue française de droit constitutionnel*, 69-98. (p.70)

¹⁸⁰ Martin, M. (2019). Le statut juridique des langues régionales en France. 71-84. (p.73)

nombreux.¹⁸¹ He adds that the State implemented all sort of measures in favour of the triumph of French :

*“classement comme patois des langues comme le basque et le breton, entièrement différentes du français, omission volontaire dans les manuels de classe de toute allusion à l’histoire et à la culture des groupes parlant les autres langues, interdiction de l’emploi des langues régionales dans l’administration, les services publics, les forces armées, les médias, etc...”*¹⁸²

2.1. Linguistic minorities in France

As far as linguistic minorities are concerned, it is possible to list the largest. The first are the Germans from Alsace and Lorraine, who are around 1.5 million. They experienced multiple repressive attitudes by the central government during the first half of the previous century. In these areas German dialects are spoken, and this gave rise to various autonomist movements during the 1930s.

The second largest minority in France is represented by the Bretons, living in the North-West. They have a population of over half a million and are a Celtic appendage of the British Isles. After the French annexation in 1532, they retained a certain degree of autonomy. Between the XVI and XVIII centuries they underwent a policy of francisation.

At the beginning of the XX century, thanks to the emergence of cultural clubs and associations, a normalisation of Breton was promoted, and the emergence of independence movements prosecuted after the Second World War for showing sympathy towards the German occupiers. In the 1960s, Breton nationalism reorganised itself into various groups, at times breaking out into violent demonstrations. In the South, it is possible to find the Catalans of Roussillon and Cerdany regions, making up around 200.000 people. In these regions, Catalan was weakened by the absence of a written tradition, and only in the 1960s the territory experienced a cultural renaissance.

¹⁸¹ Padis, M. (2014). Les langues minoritaires en France : une chance pour l’intégration. *Esprit*, 10-12. (p.103)

¹⁸² Ibidem

Once more located in the South of the country, Basques in the South-Western regions make up around 100.000 people and are concentrated in the Bayonne areas, the former provinces of Lower Navarre. The linguistic specificity, which is very popular and supported by the Spanish Basques, has given rise to autonomist demands, both moderate and terrorist.

As far as Corsica region is concerned, it was obtained from the Republic of Genoa in 1763, with 200.000 Corsicans the language changes from the North to the South. In the North they speak an idiom more similar to Tuscan, whereas in the South they speak another version which is closer to the *gallurese* of Sardinia. In the face of a massive attempt of francisation during the XIX century, a cultural movement, aimed at emphasising Corsican rights, gained momentum, going hand in hand with the growth of various autonomist and independence movements. It was only in the 1980s and 1990s that Paris made moderate concessions in the area of the protection of the Corsican idiom and of the specificity of the island, reinforcing them in 2002.

Finally, in the North-East, the Flemish population amounts to approximately 100.000 people. They are localised in the '*arrondissements*' of Dunkirk and Hazebrouck, although in ancient times Flemish was spoken also in the zones of Lille and Valenciennes. The process of decline was facilitated by the lack of concrete forms of protection and the post-World War II repression of local organisations, guilty of supporting the occupiers. It was only in the 1960s that there was a cultural awakening in an attempt to safeguard the language.¹⁸³

In addition to such minorities, there are also several «alloglot communities». In the South-East, in the zones that were previously Italian, it is possible to find the Franco-Provençal dialect, with strong Ligurian and Piedmontese influences. In this case the

¹⁸³ The information on such minorities were reported by Trabucco in Trabucco, F. R. (2005). Il regime linguistico e la tutela delle minoranze in Francia. Il politico, 523-541.

French authorities have always excluded and removed the existence of different dialects that were not Occitan. However, also in the zone of Nice, there are autonomist claims in order to protect the identity and the city's dialect. In addition, different dialects of *langue d'oïl* are scattered across the whole French territory, in the regions of Normandie, Picardie, Loraine and Bourgogne. Consequently, it is possible to state that France presents a pluralistic reality from a linguistic perspective, that collides with the idea of a uniformed identity under the flag of the State single mother tongue.

2.2. The beginning of the legislation on regional languages

Dialects and regional languages survived throughout these centuries. As previously affirmed, their condition has constantly been characterised by the hostility of the central government in their direction. However, also in times when dialects and regional languages were repressed in schools, there was no shortage of intellectuals and frontmen that supported the promotion of such idioms. It is possible to recall the position expressed by one of the most influential French politicians of all times, Jean Jaurès, who in 1911 put forward the idea of introducing regional languages in primary schools, convinced that children would have benefited from.¹⁸⁴ Furthermore, during the period 1923-1938, official instructions for schools by the central dicastery seemed to be progressively more opened towards a linguistic liberalisation, probably, according to Mathée Giacomo, because of the democratisation process that the country was experiencing.¹⁸⁵ The linguistic liberalisation took a step forward during the V Republic, after WWII. In this period autonomist movements started to emerge in Bretagne, Corsica, Alsace, Occitanie, and in the Basque territory. According to Muriel Martin, the

¹⁸⁴ Giacomo, M. (1975). La politique à propos des langues régionales : cadre historique. *Langue Française*, 12-28. (p.22)

¹⁸⁵ Ibidem

ethnolinguistic minorities seemed to have understood that they had been victims of an ‘internal colonialism’, triggering a cultural domination and a strong emigration towards the industrial centres of other regions.¹⁸⁶ They committed themselves in fighting for the recognition and protection of their linguistic heritage, focusing it on claims in the education and audiovisual fields.¹⁸⁷

It was after the Second World War, after the liberation, that the central government's historical hostility to regional languages reached a turning point. The French legislator started an initial and careful process of openness in the regard of the idioms that it repressed for centuries.

In 1951, the parliament adopted the law n. 51-46 of 11th January 1951 *relative à l'enseignement des langues et dialectes locaux*, also known as *loi Deixonne*, proposed and sustained by the deputy Maurice Deixonne from Tarn (Occitanie). This law authorised the interested schools to propose the optional teaching of the regional languages of Basque, Breton, Catalan, and Occitan. In practical terms this meant that the lessons could take place only if there were schools, students but also teachers willing to embark into it. Among the regional languages allowed, many others were left out, such as those of Corsica, Lorraine, Alsace, and Flandres. Such exclusion can be read as the expression of a fear of encouraging a possible irredentism of those communities, and of the doctrine for the ‘allogenous’ languages. Indeed, the three were considered as the *patois* of foreign languages (Italian, German, and Dutch).¹⁸⁸

In its practical implementation, the law resulted in being more symbolic than a tool for the promotion of local idioms. Strictly bound to the territorial principle of application, minimised for the final school exams, because of the lack of ministerial

¹⁸⁶ Martin, M. (2019). Le statut juridique des langues régionales en France. 71-84. (p.73)

¹⁸⁷ Ibidem

¹⁸⁸ Giacomo, M. (1975). La politique à propos des langues régionales : cadre historique. Langue Française, 12-28. (p.23)

implementing circulars and other obstructing ones, the law *Deixonne* could be limitedly implemented for students over 11 years old. However, it was warmly welcomed by regionalist movements, since it represented a change of attitude of the State towards the subject. As reported by Giacomo:

*“Le texte des projets de loi traduit, en particulier dans l’exposé des motifs, la prise de conscience du fait que la diversité linguistique n’est pas nécessairement génératrice de séparatisme et que l’unité nationale peut au contraire être vérifiée par l’apport culturel propre aux couches populaires de chaque région, dont l’expression linguistique originale est le véhicule.”*¹⁸⁹

Subsequently, in 1966 a circular of the Ministry of National Education established some Academic Committees of Regional Studies, and in 1974 Corsican was included in the ‘allowed’ regional languages of the *loi Deixonne*.¹⁹⁰ In 1975, such attitude is confirmed by the law n°75-620 of 11th July 1975 *relative à l’éducation*, known as *loi Haby*, whose article 12 affirms that *“un enseignement des langues et cultures régionales peut être organisé tout au long de la scolarité.”* As far the measures foreseen by the legislation about education are concerned, the system faced some difficulties in the implementation process, indeed the number of students having the possibility of attending regional languages’ courses was small. This situation fed the action of cultural organisations, such as *Défense et Promotion des Langues de France* (DPLF), denouncing the lacks from the public service.¹⁹¹

Even on the formal level, the situation did not experience notable changes for a considerable amount of time, since all the different governments refused to put the subject of regional languages on the agenda. A small step was taken in 1982, when the circular *Savary* dealt with the topic affirming three principles: the commitment of the State in favour of regional languages, the creation of a favourable statute in the framework of the

¹⁸⁹ Ibidem

¹⁹⁰ Martin, M. (2019). Le statut juridique des langues régionales en France. 71-84. (p.74)

¹⁹¹ Ivi p. 75

National Education, and the voluntariness of students and teachers. Formally, the dicastery intended to emphasise the role of regional languages as a tool for protecting the French language and culture. In practical terms, it launched the experimentation of bilingual classes and extended the previous measures to high schools. Such vision was then confirmed by the 1995 circular *Darcos*, adding and stressing on institutional partnerships with territorial entities and State organisms.

Such process ran parallel with the administrative decentralisations of the French State during the 1980s. Indeed, thanks to regional councils and assemblies, some missions for the regional languages were created. Always in the educational field, it has to be mentioned the role played by the private primary schools, established during 1970s. Because of the lacks from the public service concerning the teaching of regional languages, the private ones compensated. It is possible to mention the *diwan* in Bretagne, the *ikastola* in the Basque area, the *scoletta* in Corsica, the *bressola* in Catalonia, and the *calandreta* in Occitanie.¹⁹²

Even if regional languages experienced a development of their situation in the educational field, it is true that the State action limited itself to that sphere. Indeed, it intervened on schools, but still not on culture, meaning the other cultural fields. For the audiovisual domain, the journey of regionalisation started thanks to the law n. 82-652 of 29th July 1982 *sur la communication audiovisuelle*, that in the perspective of the decentralisation, stated that “audiovisual communication is free.” From this perspective, the legislator set forth some regional committees for the audiovisual communication, aiming at promoting the regional identity. From 1983, the national channel France-Région 3 embarked on a regionalisation policy, airing some content in Basque, Catalan, and Occitan. A first careful step of liberalisation in this domain has been limited to small

¹⁹² Ivi p. 77

initiatives, given that more substantial content in regional languages still does not exist in the public communication. Such attitude has to be read as the attempt of the State to prove its commitment in acknowledging the existence of regional languages, but from the perspective of components of one single culture, the French one. Such mindset indeed does not blur into any concessions from a linguistic rights' point of view, but just as timid cultural measures of promotion. A very illustrative example is offered by the researcher Marc-Olivier Padis, who reports that Corsican medias were entitled to broadcast just 45 hours of broadcasts in Corsican per year, in comparison to Welsh ones in the United Kingdom, which can broadcast 45 hours per week.¹⁹³

3. The non-ratification of the European Charter of Regional or Minority Languages and the legislation on regional languages

Thanks to the European context, the decade of 1990s seemed to open a new window of opportunity for the supporters of regional and minority languages.

In 1992 indeed the Council of Europe launched the European Charter of Regional or Minority Languages. Even though France was progressively adopting an attitude of liberalisation and openness towards the 'languages of France', it signed the Charter only in 1999. In these years France was adapting its constitution to the requirements of the Maastricht Treaty, and passed the amendment enshrining the officiality of the French language as the language of the Republic. In addition to these factors, the legislature was concerned about the possible risks of adopting the Charter, which could have given regional autonomist groups the right to make further autonomist claims. Nevertheless, the principles of the Charter seemed to be in contrast with the constitutional principle of equality of all citizens and of unity of the French people, reaffirmed by the Constitutional Court on a Corsican law in 1991, stating the non-existence of a regional people but only

¹⁹³ Padis, M. (2014). Les langues minoritaires en France : une chance pour l'intégration. *Esprit*, 10-12. (p.104)

of a French one.¹⁹⁴ If on the European level different countries were embracing the principle of plurality and protection of their national minorities' cultures, in France the domestic context did not seem so favourable. In addition to the constitutional amendment, in 1994 the legislator passed the *loi Toubon*, following the path of reaffirming the supremacy of French language within the domestic borders. However, an internal debate on the possible French adoption of the Charter took place.

*“Le débat fait alors rage entre les tenants d’une certaine « orthodoxie » jacobine qui défendent l’usage unique du français, dans la droite ligne de leurs aînés révolutionnaires, et ceux qui seraient favorables à une certaine promotion des langues parlées dans les régions.”*¹⁹⁵

The former president Jaques Chirac in 1996 expressed himself in favour of sustaining regional languages. From the perspective of a future signature, given the national debate that saw many voices being raised in favour of protecting regional languages perceived as part of the national heritage, the government commissioned two reports on the subject, as well as a study on the compatibility of the Charter with the Constitution.

On that note, it is relevant the redaction of the Cerquiglini report, commissioned by the Ministry of Education and the Ministry of Culture. The linguist Bernard Cerquiglini detected 75 languages that could have benefited of a new status from the Charter. He focused on some principal elements: the cautious nature of the principles of the Charter, its flexibility, the difficult definition of regional or minority languages, and the linguistic heritage of France.¹⁹⁶ In his report, he analysed the difficulty for the French context to deal with the label of ‘languages traditionally or historically spoken in a territory’ and ‘languages of immigration’. Indeed, French legislation in terms of

¹⁹⁴ Décision n°91-290 DC du 9 mai 1991 – Loi portant statut de la collectivité territoriale de Corse

¹⁹⁵ Beacco, J. i Cherkaoui Messin, K. (2010). Les politiques linguistiques européennes et la gestion de la diversité des langues en France. *Langue française*, N°167, 95-111. (p.104)

¹⁹⁶ Maatta, S. K. (2004). The European Charter for regional or minority languages, French language laws, and national identity. 167-186. (p.175)

citizenship is based on the *lex solis*, so many French citizens speak languages imported from older generations born abroad. Furthermore, Cerquiglini attacked the territorial principle of the Charter from several perspectives. “According to French Republican principles, a language is part of national heritage, not part of that heritage of a particular group: for example, Corsican is not property of Corsica but of the French nation.”¹⁹⁷ Finally, he highlighted the importance of the written norm in order to consider a language as such. In these terms, he also affirmed that the ‘dialects’ of *langue d’oil* cannot be considered as dialects, but as regional languages.

Subsequently to this report, President Chirac signed the European Charter attaching a declaration providing an explanatory interpretation of the document from the French side. Such declaration specified that the ‘groups of speakers’ were interpreted as not conferring collective rights to the speakers of regional or minority languages.¹⁹⁸ Indeed, without such specifications, “that corresponded to Cerquiglini’s suggestions to emphasises culture over territoriality”, the government could not have signed the document.¹⁹⁹

Before proceeding to ratification, on 20th May 1999 the President of the Republic, based on article 54 of the Constitution, questioned the Constitutional Court about the legitimacy of the ratification taken into consideration the interpretative declaration provided, which was supposed to remove all problems of compatibility. The Court, through its judgment n. 99-412 DC of 15th June 1999, sentenced its incompatibility. It recalled, as common in its jurisprudence, the principle of unicity of the French people and of equality. Principles that are enshrined in article 2 of the 1958 Constitution: “*La France est une République indivisible, laïque, démocratique et sociale. Elle assure l’égalité*

¹⁹⁷ Ivi p. 176

¹⁹⁸ Ibidem

¹⁹⁹ Ivi p. 177

devant la loi de tous les citoyens sans distinction d'origine, de race ou de religion." It could be argued to also add '*ou langue*', considering the conclusions of the Court's decision.

*"La Charte européenne des langues régionales ou minoritaires, en ce qu'elle confère des droits spécifiques à des 'groupes' de locuteurs de langues régionales ou minoritaires, à l'intérieur de 'territoires' dans lesquels ces langues sont pratiquées, porte atteinte aux principes constitutionnels d'indivisibilité de la République, d'égalité devant la loi et d'unicité du peuple français."*²⁰⁰

In addition, the Court denied the normativity of the interpretative declaration, which according to the jurist Jacques Ziller seems curious, given the non-self-executing character of the treaty.²⁰¹

3.1. Recent legislative developments on regional languages

The Constitutional judge has always elected the primacy of French at the expenses of other languages, as it can be easily imagined. Thus, in this context regional languages today have a secondary status, and are tolerated for teaching, only and exclusively if not imposed, but optional, as reminded by the Court about the teaching of Corsican.²⁰² The administrative Courts historically have always refused any concession to regional languages. The only cases where it is possible to note a more effective approach towards regional languages are the *territoires d'outre-mer* as the *Nouvelle Calédonie* or the *Polynésie Française*. Inscribed in a decentralisation process of the State, these territories benefit from a positive territorial discrimination that cannot be foreseen for the metropolitan territory.

²⁰⁰ Décision relative à la Charte européenne des langues et cultures régionales ou minoritaires, no. 99-412 DC (Conseil Constitutionnel Juin 15, 1999) – Commentaire de la décision, p.3

²⁰¹ Ziller, J. (2006, October). Le droit français de la langue, entre les mythes d'une tradition interventionniste et la réalité de nouvelles angoisses. EUI Working Papers, Law No.2006/10, 1-12. (p.7)

²⁰² Martin, M. (2019). Le statut juridique des langues régionales en France. 71-84. (p.78)

Moreover, it has to be underlined the constant reluctance of the French State to commit also on the international level in any sort of pacts, or agreements concerning national minorities. It could be possible to argue that France has been living in the spectrum of autonomism and acted consequently at all levels in order to prevent possible claims. The case of the ratification of the International Covenant on Civil and Political Rights in 1980 can be cited, when regarding article 27 the French delegation affirmed: *“La France est un pays où il n’y a pas de minorité et l’article 27 n’a pas lieu de s’appliquer en ce qui concerne la République française.”*²⁰³ Or even in 1995, when the Council of Europe adopted the Framework Convention for the Protection of National Minorities. In that instance France did not even sign the document.

As far as regional languages are concerned, thanks to the progressive decentralisation process, with the creation of regions, the sensitivity towards them progressively increased. A restricted possibility of safeguarding came with the creation in 1986 of the *Conseil National des Langues et Cultures Régionales*, a consultative body for the subjects related to linguistic minorities, and the *Conseil Académique des Langues Régionales*, aiming at coordinating the teaching of regional languages at the university level.²⁰⁴ Allowed by law, the teaching of regional languages is nowadays more present than in the past. According to Trabucco, in 2001 1,5% of 12 million students attended optional regional languages’ courses.²⁰⁵

More recently, article 40 of the constitutional law n. 2008-724 of 23rd July 2008 about the modernisation of the V Republic institutions, introduced article 75-1 in the Republican system. Such article states that: *“les langues régionales appartiennent au patrimoine de la France.”* At first sight the provision seems widening the horizons of

²⁰³ Ivi p. 80

²⁰⁴ Trabucco, F. R. (2005). Il regime linguistico e la tutela delle minoranze in Francia. Il politico, 523-541. (p.538)

²⁰⁵ Ivi p.539

regional languages protection and of their communities' linguistic rights. However, it is not the case. This point has been clarified by the Constitutional Court with its decision n. 2011-130 QPC of 20th May 2011. In that occasion, the *Conseil d'Etat* advanced a *question prioritaire de constitutionnalité* regarding the conformity of rights and freedoms that the Constitution grants face to an article of the Educational Code, taking into consideration article 75-1. The Court, recalling the preparatory works of the constitutional law, affirmed that the legislator manifested that it was not in his intentions to create "*un droit ou une liberté opposable dans le chef des particulier sou des collectivités territoriales.*"²⁰⁶ The judges added that: "*A cet énoncé constitutionnel manque l'ensemble des attributs essentiels d'un droit ou d'une liberté que sont la détermination de son objet et l'identification de son titulaire et de ceux auxquels il serait opposable.*"²⁰⁷ The court further recalled what the rapporteur mentioned on the subject of regional languages, whose objective was:

"marquer l'attachement de la France à ce patrimoine sans pour autant créer un droit pour les particuliers d'exiger de la part des administrations l'usage d'une autre langue que le français ou des droit spécifiques pour des groupes."²⁰⁸

Consequently, article 75-1 does not create any kind of right or freedom, and there is no constitutional right regarding the teaching of regional languages at the benefit of students. So, from this perspective, the situation remains unchanged.

The new constitutional provision however presents a novelty in the constitutional framework that had never dealt with the subject of regional languages. At first sight, it would seem that France included the protection of regional languages anchoring them to the principle of safeguarding intangible cultural heritage, given the intangible elements of the object. However, again it is not the case. As reported by Marie Cornu, France set

²⁰⁶ Décision n.2011-130 QPC du 20 mai 2011 – Commentaire de la décision par le Conseil Constitutionnel (p.2)

²⁰⁷ Ibidem

²⁰⁸ Ibidem

up a system of protection of languages, that for the essence of the object is characterised by intangibility, but without referring to the notion of intangible cultural heritage. It adopted such approach both in the constitutional reform and in the *loi Toubon*.²⁰⁹ Article 75-1 would look essentially like a declaratory principle, and the possibility of transmitting regional languages through education derives from primary law, since as it has been confirmed by the Court, there is no constitutional right covering their teaching. What can be stated with certainty is that the French legislator has not gone back on his steps, and on the contrary is progressively embracing the idea of a plurilingual state-of-the-art to protect, stepping away from the ancient idea of single and uniformed French society.²¹⁰ Nevertheless, such approach does not mean that French law is ready to welcome the principle of minorities' protection, given that it remains extremely tied to the dogma of the societal unity, as constantly recalled by the constitutional judge.²¹¹

More recently, in 2021 the French legislator's attention has returned to the theme of regional languages. He adopted the law n. 2021-641 of 21st May 2021 on the *protection patrimoniale des langues régionales et à leur promotion*. He intervened both on the Code of Education and on the Code of Cultural Heritage. On the latter, article 1.1 sacralises the status of languages, not only French but also regional languages as linguistic heritage, as part of the cultural heritage.²¹² Furthermore, in the same article, he declares the commitment of the State and of *collectivités territoriales* in teaching, diffusing, and promoting regional languages.²¹³ With this law, the legislator balances the scope of the

²⁰⁹ Cornu, M., Vaivade, A., Martinet, L. i Hance, C. (2020). Intangible Cultural Heritage Under National and International Law, Going Beyond the 2003 UNESCO Convention. (p.64)

²¹⁰ As a Western European country, as also emerged in the European Charter of Regional or Minority Languages, the concept of plurilingual society does not include the migrants' dimension.

²¹¹ Trabucco, F. R. (2005). Il regime linguistico e la tutela delle minoranze in Francia. *Il politico*, 523-541. (p.539)

²¹² Loi n. 2021-641 du 21 mai 2021 ;

Le second alinéa de l'article L. 1 du code du patrimoine est ainsi modifié :

1° Sont ajoutés les mots : « et du patrimoine linguistique, constitué de la langue française et des langues régionales »

²¹³ 2° Est ajoutée une phrase ainsi rédigée : « L'Etat et les collectivités territoriales concourent à l'enseignement, à la diffusion et à la promotion de ces langues. »

loi Toubon, editing it through the addition of article 21 affirming that: “ *Les dispositions de la présente loi ne font pas obstacle à l’usage des langues régionales et aux actions publiques et privées menées en leur faveur.* ”²¹⁴ Finally, another important novelty offered by this law is about toponymy. At its article 8, the law states that:

“*Les services publics peuvent assurer sur tout ou partie de leur territoire l’affichage de traductions de la langue française dans la ou les langues régionales en usage sur les inscriptions et les signalétiques apposées sur les bâtiments publics, sur les voies publiques de circulation, sur les voies navigables, dans les infrastructures de transport ainsi que dans les principaux supports de communication institutionnelle, à l’occasion de leur installation ou de leur renouvellement.*”

After its adoption, the present law has been the object of control by the Constitutional Court, that blocked a few articles for unconstitutionality. The first one concerned article 4, that foresaw the possibility of the teaching method by ‘immersion.’ This meant that the communication language used was not French, but the regional language. It is important to mention, as also the Constitutional Court did, that the French Code of Education allows bilingual schools. Indeed, for the regional languages’ teaching, two possibilities can be envisaged. The first is *un enseignement de la langue et de la culture régionale*, and the second *un enseignement bilingue en langue française et en langue régionale*.²¹⁵ For the ‘immersion’ method, only one language would have been preponderant and it would have been the regional one. Consequently, the Constitutional judge, recalling article 2 of the Constitution, and the principle of the unicity of the French language for the use in public administration and for all those people called upon providing a public service, declared it unconstitutional. Similarly, another unconstitutionality concerned article 9, which foresaw the possibility of introducing regional languages’ signs for the acts of *état civil*. The court rejected this article,

²¹⁴ Ivi art. 3

²¹⁵ Décision n. 2021-818 DC du 21 Mai 2021, Loi relative à la protection patrimoniale des langues régionales et à leur promotion ; Commentaire (p.13)

reasserting that the language of public administration is French and, all the graphical signs that do not follow French orthography are not allowed, including those of the '*langues de France*'.

In conclusion, it is possible to affirm that the legislator, since 1951, has been progressively opening its horizons to the acceptance and acknowledgment of the French linguistic richness. He intervened mainly in two domains: education and audiovisuality. Far from granting any sort of linguistic right, the French State seems however to have understood the importance of its linguistic heritage, trying to protect it, even if in a limited manner. It could be affirmed that on one hand it is trying to revitalise such idioms, or if read from another perspective, trying to not lose them forever. Nevertheless, it may be useful to reaffirm that the attitude of the French State, even if more concessional than before, it is still strongly bound to the idea of unity of the French people and to the principle of the equality of all citizens in front of law, leading to the non-recognition of any kind of specific rights for particular subgroups. Finally, as a Western European country, it is highly visible that the State excludes from its radius of 'protection' all migration languages, an attitude of all European countries, that is also perceivable in the European Charter of Regional or Minority Languages.

4. The Corsican Case

In terms of regional languages' protection, because of its social and political specificity and of its history, Corsican language is the one benefitting the most from the gradual concessions made by the French State. The history of the Corsican community and of its language dates back to the pre-Latin era, as also reported by the historian

Jean-Marie Arrighi. Indeed, nowadays it is still possible to detect in a part of the Corsican vocabulary the traces of those times.²¹⁶

Before the Roman conquest, Corsica had been a passage territory for numerous peoples: Ligurians, Phoenicians, Greeks, Carthaginians, and Etruscans.²¹⁷ During the Roman period, as a part of a centralised State, Corsica was latinised both on a linguistic level and on a social one. Arrighi sustains that Corsican language probably followed the same path of other Italian continental dialects after the Roman empire. From a popular Latin, it experienced a slow evolution until IX century that led to a new language.²¹⁸ During Middle Ages, the Corsican territory saw the passage of multiple peoples. For this reason, Corsicans often looked for protectors that could guarantee them safety, while their social structure, because of the proximity and influence exercised by Tuscany, was a mosaic of small autonomous communities that reminded the Italian *comuni*. Indeed, it is during the second half of Middle Ages that the region sewed its strong ties with the Italian context. In XI century, the episcopate of the Republic of Pisa extended its presence on Corsica. After the religion, the judiciary system was exported too, and the region lived under the Pisan control until 1284, when Pisa was defeated in the battle of Meloria by one of the other Italian marine republics, the one of Genova.

After a period of conflict between Genova and the Aragon crown, that lasted almost 200 years, Genova imposed its control in 1401. However, during its ruling Genova never managed to impose a linear control on the island. Intermittently, foreign ‘countries’ helped insurgents to turn against the Genovese control, establishing small independent entities.²¹⁹ Among the foreigners that fed the aspirations of rioters, it is possible to detect the French crown, the kingdom of Aragon, the Republic of Pisa, and the Papacy. For all

²¹⁶ Arrighi, J. (2008). Langue Corse: situation et débats. *Ethnologie française*, 507-516. (p.507)

²¹⁷ Bottiglioni, G. (1932). *Lingua, etnografia e folklore della Corsica*. Lares, 3-17. (p.7)

²¹⁸ Arrighi, J. (2008). Langue Corse: situation et débats. *Ethnologie française*, 507-516. (p.508)

²¹⁹ The concept of country and nation-state was not universally applicable.

these centuries, the island lived in strong contact with the pre-Italian society, in particular with the close Tuscany. Indeed, the Corsican *élite* used to receive its education at the university of Pisa and many Tuscans also migrated on the island. Therefore, the cultural influences were multiple, even if from a linguistic perspective Corsican dialect resisted the phenomenon of ‘tuscanisation’, retaining many structures and terms from Latin.

From a political perspective, the Genovese ruling class often exploited the island to swell the republic’s coffers. During the century of the enlightenment, the situation was exacerbated, and the independentists united themselves under the lead of Pasquale Paoli in 1755. The revolt led to the establishment of the Independent State of Corsica. In 1764, Genova signed the Treaty of Compiègne with the French crown, asking help and financing the French troops in order to reconquest the insurgent island. France occupied the region and failed to corrupt Paoli, envisaging a possible French annexation of the territory. It has to be taken into consideration that Genova had been experiencing a decline for two centuries at the moment of the rebellion. From this perspective, France procrastinated in intervening militarily, while the debt of the city towards the crown was increasing. It increased so much that the insolvent Genova eventually signed the Treaty of Versailles in 1768, ceding the island to France.

It was at that moment that Corsica became part of France, even though until the French Revolution it was part of the personal patrimony of the king. France considered the island as a strategic resource in its Mediterranean perspective, but at the same time it perceived the island as undeveloped. For this reason, the French ruler foresaw *la nécessité imprescriptible de porter le département, dans un délai aussi bref que possible, au niveau de civilisation atteint par la France continentale.*²²⁰

²²⁰ Cini, M. i Biancarelli, B. (2008). Corse et Italie : proximité et fractures. *Ethnologie française*, Vol. 38, 427-435. (p.431)

For a considerable amount of time, because of the historical entrenchment of the Italian language on the island, Corsica experienced a sort of bilingualism. Indeed, while in schools and in the administration, French was progressively imposed, in many circumstances and contexts of the daily life, Italian was still the language of use. Italian literature circulated for the entirety of XIX century, and only in 1896 the first newspapers in Corsican, *A tramuntana* and *U Libecciu*, appeared. Even the religious dimension was still permeated by the Italian language, indeed it was only in 1938 that the bishop prohibited the use of Italian for praying.

However, the progressive francisation of the island advanced and the language of the Hexagon finally imposed itself during the XX century. Nevertheless, a linguistic consciousness about the Corsican language was already born in the late XIX century, and the first dictionary of the Corsican language was published by de Falcucci in 1915.²²¹ The subject of language was strongly linked to the concept of the identity of the Corsican ‘people’, who started quite soon to demand autonomy.²²²

One of the main objectives of Corsicans was to promote their language and dialects, above all through its teaching. Characterised by a pronounced polyonymy, Corsican was not a normalised language. Indeed, it had and still has two main branches, one located in the North and the other in the South of the island. In addition, in these two groups there are several differences between cities, which are not however especially pronounced, allowing a mutual comprehension between the locutors of different parts of the island.

For the educational claims that Corsicans advanced, a key aspect to take into account is the theme of the codification and purification of the language, previously in

²²¹ Arrighi, J. (2008). *Langue Corse: situation et débats*. *Ethnologie française*, 507-516. (p.510)

²²² Between inverted commas because, according to the French Constitutional Court, a Corsican people does not exist.

relation to Italian and later in relation to French. Indeed, already in the XX century before fascist era in Italy and even more during it, Corsicans tried to find an orthography distant from the Italian one, since for long time it had been considered as a *patois de l'italien*. As already mentioned, the language discourse often went together with claims for autonomy, which did not mean independence. Indeed, in this period Corsicans advanced such claims appealing to a sort of moderate 'Cyreneism', through newspapers as *l'Annu corsu*, and later in 1955 through the magazine *U Muntese*.

More recently, given the influence that French exercised on the regional language, especially nationalist activists elaborated the same principle with French and published in 1971 their manifest: *le Livre Vert*.²²³ In this document, they emphasised and encouraged the research of the original and pure Corsican, deploring the use of the contaminated one by French. Regarding this *corse distancié*, they argued in favour of its use for teaching.

The educational claims related to autonomy started around the 1970s. Indeed, when the *loi Deixonne* passed, allowing the teaching of some regional languages where Corsican was not included, there was no significant agitation on the island. It is in this period that the cultural and linguistic claims started. Initially, they came mainly from the independentist movements, which denounced the *génocide culturel perpétré par le centralisme*.²²⁴ The independentists founded their claims basing them on the principle of the *Volksgeist* of XIX century, the definition of a nation basing it on the concepts of land, language, and culture.²²⁵ During these years, such movements instrumentalised the linguistic element in order to 'chase away the coloniser', which can be illustrated by the famous slogan "*I Francesi Fora*" (The French out). In the following decades the

²²³ Blackwood, R. (2012). La politique linguistique en Corse: les attitudes des insulaires envers la planification linguistique du corse. *Synergies, Pays germanophones* n°5, 119-128. (p.123)

²²⁴ Lefevre, M. (2002). *Langue, terre et territoire en Corse*. Hérodote, 38-59. (p.40)

²²⁵ Ibidem

independentist movement radicalised even further. The movement was one of the major promoters of the protection and valorisation of Corsican language, however it was not the only one. Indeed, many other sections of Corsican society also considered language as a primary political good to safeguard, but they were not associated to radical groups.

After a political and social debate and mobilisation, the *loi Deixonne* was extended to Corsican in 1974, debunking the idea of Corsican as an allogeous dialect, and fully considering it as a regional language. A vital role in this period had been played by the *Scola Corsa*, a cultural association that voluntarily taught Corsican to adults, and that represented a point of reference for the linguistic issues, such as orthography. Indeed, at that time, given also the polyonymy of Corsican, the language was still not entirely ready to be taught. It is essential to mention that to sustain its importance during those years, the *Scola Corsa* redacted the *Primu vucabulariu di a lingua corsa*, which had two versions: one for the locutors of the Northern part of the island, and one for those of the Southern one.²²⁶ However, Corsican schools proceeded in the teaching program and employed young scholars as professors. They did not impose a standard version of the language; on the contrary they taught and used the local variety.

Throughout the years, through the establishment of particular statutes, the Corsican institutions assisted to an increase of their competences in the educational domain and regarding their regional language. In 1982, the statute foresaw the organisation by the Corsican institutions of ‘complementary activities’, and it obtained a right of legislative initiative. The year after, Corsica used the latter in order to propose a generalisation of bilingualism and the mandatory teaching of Corsican, immediately rejected by the Prime Minister of the time advocating for the ‘respect of pluralism.’²²⁷

²²⁶ Etori, F. (1975). L'enseignement de la langue corse. *Langue Française*, 104-111. (p.109)

²²⁷ Arrighi, J. (2008). *Langue Corse: situation et débats*. *Ethnologie française*, 507-516. (p.511)

The autonomy and linguistic claims continued and another important opening from the State came in 1991 with the law n. 91-428 *portant statut de la collectivité territoriale de Corse*. A controversial piece of legislation that on one hand conceded certain autonomies to the Corsican legislator, and on the other, thanks to the intervention of the Constitutional Court, resized the autonomist spirit of the territory. As already presented in the previous paragraphs, article 1 of the initial version of the law affirmed the existence of a Corsican people, as a component of the French one, granting its right to protect its cultural identity, and economic and social interests. The decision n. 91-290 DC of 9th May 1991, brought Corsicans back to the French national model and perspective, affirming the opposition to the constitutional principle of a “single French people.”²²⁸ Nevertheless, the new statute enlarged the competences of the local institutions in organising the educational offer and in promoting the language not only in schools, but also in the audiovisual networks. A key aspect for the language teaching is the formal acknowledgement of its inclusion in the timetable of students.²²⁹ From this moment, the teaching of LCC (*Langue et culture corse*) became a shared competence of the State and of the local authority.

In addition, the region committed to implement a general action for changing the toponymy of the island, to create Corsican speaking kindergartens, to diffuse cultural products in Corsican and to contribute financially to foster its use.²³⁰ In 1997 the Corsican Assembly adopted the first measures establishing that all students are automatically enrolled to Corsican courses, and a first bilingual course for primary school was also envisaged. In order to respect the Constitutional Court’s decisions concerning the optionality of the regional languages’ teaching, students and parents can request to not

²²⁸ Décision n° 91-290 DC du 9 mai 199, points n. 10-11

²²⁹ Corse, L. P. (2022). *Lingua Corsa: Rapport d'orientation sur la politique linguistique*. Rapport n° 2022/02/303 (1-54). Assemblée de Corse. (p.11)

²³⁰ Lefevre, M. (2002). *Langue, terre et territoire en Corse*. Hérodote, 38-59 (p.50)

receive such teaching. The autonomy statute of 1991 opened the gates also to audiovisual. Corsican language started to be broadcasted limitedly on France 3 and on public radios, such as Radio Corse Frequenza Mora, which is totally bilingual.²³¹

In the following years, following the adoption by the Council of Europe of the European Charter of Regional or Minority languages, a political debate about its adoption in France took place. Particularly in Corsica the Charter had many supporters from all political affiliations. In this atmosphere another internal debate emerged concerning a possible co-officiality of Corsican next to French on the island. On 1st December 1992 in Corte, the first *consulta* of the Corsican language dealt with *Lingua corsa, lingua nazionale*. The supporters of the co-officiality advocated against the State ‘jacobinism’ that was reinforced by the constitutional amendment formally establishing “French as the language of the Republic,” and by the *loi Toubon* of 1994.

Such provisions were a clear obstacle to the Corsican objective of co-officiality, and together with the State reluctance to ratify the European Charter, it further fed the linguistic and autonomist claims. The 1990s offered multiple largescale demonstrations and strikes, above all carried out by students, as was the case on 12th January 1993, when the *Associu di liceani corsi* joined forces with the *Associu di parenti corsi*.²³² During these years the Corsican Assembly voted in favour of the signature of the European Charter, proposing a list of articles which were not against the Constitution. On 5th April 1997 a big demonstration took place in the island, then followed by other more political demonstrations about autonomy. The process of *U riacquistu*, the process of autonomy and linguistic claims, reached its peak of tension in the late 90s. These years represented a meaningful period due to two highly relevant events. The first is the decision of the Constitutional Court that put a definitive end to the European Charter path, judging it as

²³¹ Ivi p. 52

²³² Ivi p. 44

unconstitutional; and the other is the death of the *Préfet* Claude Erignac, assassinated in Ajaccio by Yvan Colonna. This event triggered many further incidents and heavy social tension on the island. It also represented the starting point of the Matignon process, a period of negotiations, tension and dialogue between Paris and Ajaccio. This process ended in 2002, when the law n. 2002-92 of 22nd January 2002 *relative à la Corse* completed the autonomy statute of 1991. As far as the Corsican language is concerned, the law modified the code of education, affirming that “*La langue corse est une matière enseignée dans le cadre de l'horaire normal des écoles maternelles et élémentaires de Corse.*”²³³ In addition, it fostered the presence of the Corsican language on the audiovisual platforms, and regulated the teaching of Corsican through a convention between the State and the *Collectivité de Corse*.

In the recent years, the Corsican Assembly adopted several *délibérations* aiming at reinforcing the role of language in the administration and in all dimensions of the island. For instance, on 17th May 2003, the Corsican Assembly adopted the resolution n.13/096 AC *approuvant les propositions pour un statut de coofficialité et de revitalisation de la langue corse*. Even though there is no co-officiality status, the regional institutions act as if *de facto* there is. However, in practical terms, some Corsican institutions already used to publish their documents in Corsican, but only alongside a French version. So, full documents in Corsican exist but they are quite few, and always have a correspondent in French. Moreover, in its juridical system and administration, Corsica does not use the regional language, since as the Constitutional Court recalled multiple times the language of the administration is French, and it is the only language with a legal value. In its communication, the regional institutions use the regional language mainly for titles, but the content of documents or publications is in French. An

²³³ Corse, L. P. (2022). *Lingua Corsa: Rapport d'orientation sur la politique linguistique*. Rapport n° 2022/02/303 (1-54). Assemblée de Corse. (p.12)

interesting aspect in the linguistic approach of the Corsican institutions is that sometimes the regional language is used by the members of the Corsican Assembly.

Nevertheless, the action of the *Collectivité de Corse* of fostering and promoting the use of Corsican is non-stop. With the previous plan *Lingua2020*, and with the new one now, Corsican authorities are increasing their action to spread the language in all social aspects, aiming at revitalising its use among people in daily life. Meanwhile, the Corsican Assembly continues to advocate in favour of a co-official status of the language on the island, and of a constitutional development towards the reinforcement of article 75-1. Claiming a constitutional change, it hopes to see its objective of co-officiality fulfilled, ultimately establishing the legal basis for a bilingual society.

CONCLUSION

“La sicurezza di «chi si è», migliora il rapporto di apertura: un rapporto molto diverso da quello dominato dalla paura e dalla necessità di difendersi. È il pericolo genera paura, l’odio si alimenta con l’odio, la paura con la paura e la difesa attiva non è altro che il prodotto finale di un processo psichico che presuppone la riconquista della propria collocazione identitaria. «Comprendere chi si è» e «appropriarsi della propria identità» diventa perciò uno dei fattori alla base delle relazioni pacifiche fra gli esseri umani.”²³⁴

Acknowledging whether language is a fundamental element able to shape the identity of an individual and of a social group was the primary intent of this thesis, as a way to understand if language *per se* can be identified as a cultural heritage element in need of safeguard on the basis of international, regional and national legislations.

From this perspective, it is possible to recall the 1989 UNESCO Recommendation on the Safeguarding of Traditional Culture and Folklore, that identifies language as a form of folklore. According to this recommendation, languages are equated to other cultural expressions such as literature, music, and architecture. Consequently, it could be possible to deduce that language could be placed under protection in order to ensure its survival, as well as the other forms of cultural expression. In the same direction, also the 1982 Mexico City Declaration on Cultural Policies affirms the inclusion of languages among the categories of cultural heritage. In these terms, De Witte sustains that that language would seem an appropriate object of protection.

Because of the intangible pattern that characterises languages, this thesis focused on discovering which could be considered the most suitable international conventions able to safeguard such a peculiar «good».

If we consider the 2003 UNESCO Convention for the Safeguarding of the Intangible Cultural Heritage, there would be no space for the recognition of language as

²³⁴ Rubattu, A. (2006). L'insegnamento della lingua e della cultura sarda. *Revista Philologica Romanica*, 69-72.

intangible cultural heritage *per se*, since it binds language to its functional use of “vehicle of the intangible cultural heritage”. The research also reported how, according to Smeets and Cornu, language possesses the necessary elements for recognising it as intangible cultural heritage. Despite the theoretical possibility, their inclusion into the Convention faced the opposition of states that strongly linked it to issues of sovereignty, identity, and territory. However, even if language could be included in the definition of intangible cultural heritage, several criticisms regarding the effectiveness of such international tools emerged.

Indeed, it has been strongly criticised the museumification approach that the Convention presents. This archivistic approach is embodied by the inventorying system, that would possibly crystallise a heritage that, in opposition, is in constant development. Furthermore, such listing method could lead to a hierarchy between the recognised objects of protection and those that are not. In addition, it is also important to highlight States parties’ discretion in choosing their own recipients of protection. In this field, some States could exploit their competences for the identification of the object to protect, through ignoring the instances of parts of their societies for political reasons, or even worse exploit the system for ideological purposes. Finally, as far as languages are concerned, inventorying and listing endangered languages needing protection, would not entail their revitalisation, but just a formal recognition.

In any case the Convention is not extended to languages *per se* in almost the totality of States parties. Consequently, the following issue that this thesis tried to investigate concerned the alternatives to a cultural heritage law path.

At the international level, linguistic issues pertain to the cultural rights’ domain, while in regional and national contexts, they are more often included in the civil rights’ one. Internationally, the 2005 UNESCO Convention on Cultural Diversity limitedly

protects languages indirectly through the promotion of cultural activities, goods and services that very often have a particular linguistic form, and through the negative duty of not interfering with the private choice of persons to speak a minority language.

Linguistic rights' recognition is strongly interconnected to the capacity of access to other fundamental rights, such as the right to self-determination, the right to education, the right to access cultural resources and the right to one's language. Their enforcement is embodied by the adoption of legal rules guaranteeing the use of non-dominant languages in the public sphere, such as media, and their transmission through education. It is important to underline that, the linguistic recognition is intrinsically linked to the principle of the *linguam instrumentum regni* which represents the basis of the nation-building process and its strengthening for many countries, in particular for the European ones.

However, a linguistic law exists and De Witte elaborates the definition of «linguistic heritage law». According to him, it is characterised by “a set of general normative statements, a series of public bodies undertaking corpus planning tasks, and public funding mechanisms for specific linguistic activities.”²³⁵ Such a corpus of measures generally falls within a separate domain from cultural heritage law.

If at the international level it is possible to point out the absence of tools protecting linguistic heritage, at the European regional level the situation is different. Always far from pursuing a cultural heritage law path, Europe offers some resources for the protection of linguistic minorities, therefore safeguarding a linguistic heritage. The first relevant step is the European Charter for Regional or Minority Languages adopted by the Council of Europe in 1992. Its provisions are characterised by flexibility and by an *à la carte* approach. It intervenes in several domains such as the judicial, administrative,

²³⁵ de Witte, B. (2020). Language as Cultural Heritage. W F. Francioni i A. Vrodoljak, The Oxford Handbook of International Cultural Heritage Law (371-378) (p.375)

cultural, economic, social, educational, cross-border trade, and media. The Charter has been widely ratified, excepted by a few countries, including Italy and France. During the 90s, in 1995 also the Council of Europe elaborated the Framework Convention for the Protection of National Minorities, ratified by Italy but not signed by France. The spirit of such regional commitments aimed at promoting and protecting linguistic minorities and their languages, while balancing them with the national interests and priorities. Indeed, all measures of promotion are encouraged, at the condition that the adoption of such measures would not threaten the status of official languages.

Finally, the last part of the first paragraph highlighted the commitment of the European Union in promoting multiculturalism and multilingualism, which are at the foundations of its existence. In order to foster such principles, the EU bound its fundamental law, in the Lisbon Treaty, to the Charter of Fundamental Rights of the European Union, whose articles 21-22 prohibit any kind of discrimination based on language, and oblige the Union to respect the linguistic diversity. Nevertheless, the action of the EU in this field is marginal and subsidiary, given that the educational and linguistic policies are a Member States' competence.

Such competence is analysed in the following chapters in the two cases of Italy and France, investigating the type of approach adopted in order to deal with linguistic minorities and the safeguarding of their linguistic heritage. The two countries present some similarities but several points of difference. Firstly, both of them are unitarian states, previously characterised by a centralised structure, and later, from the birth of the Republic in Italy and from the 1980s in France, by a progressive regionalisation in the first case and decentralisation in the second. From this perspective, linguistic claims were often associated with autonomist claims, blurring, in some cases, into independentism.

This element is essential for the comprehension of the dynamics of linguistic rights' concessions, that have always been balanced with the unitarian national interests.

In both cases, the linguistic dimension played a crucial role in the nation-building process and in strengthening their unification. The common idiom represented the foundation of the common identity and culture, and one of the main instruments of control of the central power. This was translated into the imposition of the national language through its exclusive use in justice, public administration and later in schools. Education in particular played a crucial role in spreading the standard language, which in both cases was ignored by the majority of the population. Indeed, both countries' citizens did not know Italian and French, but spoke mainly dialects or allogenous languages. Consequently, schools were used to literate the population, and in the French case to weaken minorities' languages, thus their identity.

Furthermore, another similarity is represented by the fact that dialectal and linguistic minorities experienced the repression and the consequent contempt by the State and its apparatus. Indeed, allogenous minorities were not allowed to use their language to express themselves in schools and in several public contexts. The stigmatisation perpetrated in schools towards dialects, permeated also into society, triggering a social inferiority complex on the part of dialect locutors. Nowadays, such contempt is disappearing, and a rediscovery of dialects is occurring, while multiple local legislators and actors of the civil society are fostering their promotion.

Moreover, both countries embarked in different periods on a path of openness towards linguistic minorities. Firstly, based on the territorial principle, Italy recognised some national minorities speaking German, French and Slovenian in the North of Italy, respectively in South Tyrol, Valle d'Aosta and Friuli Venezia-Giulia. As a consequence of international treaties with their countries of reference, (Austria, France and ex-

Yugoslavia) these minorities benefit from a strong protection status, indeed they are also named 'super-protected'. As a matter of fact, in South Tyrol and Valle d'Aosta, German and French are juridically equated to Italian. Subsequently, the State opened the gates of protection also to historical national minorities thanks to law n. 482/1999. The minorities deserving protection are listed by primary law, and their identification is an exclusive state competence. From this perspective, dialects are excluded. However, the promotion of dialects pertains nowadays to the cultural policy of regional and local legislators. It is possible to affirm that Italy elaborated its own system of linguistic minorities' protection at different degrees. It approached the subject conceding linguistic rights to the 'super-protected' national subgroups in a perspective of civil rights' law, whereas it adopted an attitude tending more towards cultural rights for the historical national ones. The establishment of this differentiated system of protection probably represents one of the reasons why Italy did not ratify the European Charter of Regional or Minority Languages.

As far as France is concerned, the State inaugurated its first concessions in 1951 with the *loi Deixonne*, allowing the teaching of the Basque, Breton, Catalan, and Occitan regional languages, later extended to Corsican. The French legislator mainly focused on the educational dimension, preserving the exclusivity of French in public administration and justice. Anchored to the principle of equality of its citizens and of the unicity of the French people, the legislator is reluctant in conceding any kind of linguistic right to regional communities, indeed, France has never ratified the European Charter of Regional and Minority Languages. Furthermore, the legislator focused mainly on the cultural perspective of the protection of regional languages, elevating their status through law n. 2008-724 of 23rd July 2008 about the modernisation of the V Republic institutions. The law introduced article 75-1 in the Constitution which states that: "*les langues régionales appartiennent au patrimoine de la France.*" The concept of linguistic heritage has been

subsequently associated to the one of cultural heritage by law n. 2021-641 of 21st May 2021 on the protection *patrimoine des langues régionales et à leur promotion*. Intended as a component of cultural heritage, the legislator promotes regional languages in a mere cultural policy perspective. Compared to the Italian case, France did not reach certain levels of protection, as for instance the South Tyrolean one has, excluding the existence of any co-official language, and of any kind of linguistic or ethnic minority within ‘the French people’. However, through the measures adopted, both countries aimed at revitalising languages, moving far from the museumification approach typical of the UNESCO approach. On the contrary with the latter, they share the inventorying approach as a source to legitimise the objects of protection.

In addition, an important common point is represented by the activism of local actors and civil society, which is particularly evident in the following regional cases. Sardinia and Corsica are both characterised by some similar linguistic problems and by a similar political path. Both islands face problems about the standardisation of a common language, and for a long time their dialects have been considered as the *patois* of the Italian language. Both societies however claim a specific identity and the need for autonomy. Sardinia benefitted immediately from a special status thanks to its statute in political terms. On the other hand, Corsica increased its level of autonomy throughout the years until 2002. From a linguistic perspective, the promotion of Sardinian language was legitimately inaugurated in 1999 with the national law protecting national linguistic minorities. Whereas, Corsican started to be taught in 1974 and its promotion became a shared competence more recently. Currently, both regions have a wider spectrum of tools for promoting and implementing their cultural and linguistic policies and, both also share the objective of a bilingual island and the use of a normalised language for their official documents with a co-official status with their respective national languages. From this

perspective, it could be affirmed that Sardinia could be closer to this goal than Corsica, mainly for the attitude already adopted by the central legislator. The Italian State already conceded such possibility for its French and German speaking territories; therefore, it might be more prone to do so. On the contrary, it is very improbable that France will ever foresee a co-official language next to French, in any part of its territory.

In conclusion, the findings of this thesis show that languages can be theoretically associated with the concept of cultural heritage, identifying it as linguistic heritage. However, the typical instruments of protection envisaged by cultural heritage law, in particular the UNESCO ones, do not seem effective in the pursuit of an objective of revitalisation of endangered languages. On the contrary, they bring a crystallisation and museumification of a living heritage in constant evolution and adaptation. Despite this, an official recognition is represented by the locution ‘*conditio sine qua non*’, which is at the basis of the construction of any protection process.

If protecting languages is intended as their revitalisation, it is essential to remark that languages survive and live because they are spoken and a constant contact with its locutors is present. As a consequence, increasing the circumstances in which a language can be spoken obviously increases its possibilities of survival and of spreading, thus affects its hypothetical revitalisation. The possibility of speaking a given language with public administration, or in public contexts is disciplined by law. It can be affirmed that it mainly depends on linguistic concessions made from a civil rights’ perspective. In addition, the revitalisation process of a language is also influenced by the private dimension of individuals, meaning the private contexts in which a given language is used. In these terms, a sociological and cultural perspective needs to be strongly considered. This dimension is covered more by cultural rights and by the cultural policies of legislators.

Once recognition is obtained, the choice of the most suitable path to protect languages can vary depending on the intentions of decision-makers. Italy shows how with the combination of linguistic and cultural rights concessions, as in the case of South Tyrol, the goal of revitalising and protecting languages is achievable. Obviously, this entails a reduction of the cultural and political control of the central authorities. On the other hand, the alternative of a cultural heritage law path shaped by cultural concessions mainly in education and media, as in the French case, can slow down the process of extinction of a language, but might not be enough to guarantee its survival.

Finally, as far as the European context is concerned, the official languages of European countries have inextricably rooted roots in their respective societies. Consequently, it is improbable that regional and minority languages, with dialects, may today represent a threat for the national ones. Considering what has been presented and argued so far, probably the most suitable approach in order to protect national linguistic heritages relies on a balance between linguistic and cultural rights' concessions, acknowledging the richness and cultural importance of linguistic variations for society in its entirety.

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