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Language and Nationalism: Two Cases of Ignoring Language Rights of a National Minority

Abstract: In this paper the author deals with the complexity of the interethnic relations in the Western Balkans on ground of two interesting “linguistic” cases. The first one refers to reactions and protests caused by the possibility of the equal official use of Serbian language and the Cyrillic script in Vukovar (Croatia). The other case refers to the ignorance of the municipal authorities in Priboj (Serbia) to declare Bosnian as an official minority language in the municipality. These two cases reflect legal, political, social, and linguistic aspects of the national minority language rights. They show that the law is not omnipotent, and that the effects of legal instruments strongly depend on the wider social context.

Keywords: Nationalism, national minority, language rights, Priboj, Vukovar

Introduction

The ideological background of the breakup of Yugoslavia was the ideology of nationalism with the central goal to create separate “national” states. Since a nation was perceived in ethnic terms the ethnic nationalism aimed at secession from Yugoslavia as a multiethnic state and at creation of a new political ethno-nation within the borders of an independent state. The ethnic concept of the nation extremely complicated the situation since in former Yugoslavia the border lines between the republics did not fully overlap with the ethnic lines. The intention to fit together the nation and the ethnos, both by territorial expansion and expulsion of citizens of the other “ethnic kind”, has caused violent conflicts and in the long-term burdened the interethnic relations in the region. Despite nationalistic aspirations and efforts (sic!), the national states that emerged after the breakup of Yugoslavia did not achieve the nationalistic ideal of mono-ethnicity. Although the wars have provoked significant demographic changes, all new states of the former Yugoslavia are multiethnic. Under new circumstances once constitutive peoples in the Yugoslav federation have become national minorities in the new independent states: Serbs are now a national minority in Croatia, and Croats and Bosniacs are national minorities in Serbia.

In all new states formed on the ruins of the former Yugoslavia the concept of ethnic nation remained one of the central milestones of the statehood. Common ethnicity and culture, a shared language, a shared history, and common ancestral struggles are central for the creation of the nation based on ethnic criteria. As the core elements of the ethnic concept of a nation A. D. Smith identifies genealogy and presumed descent ties, popular mobilization, and vernacular languages, customs, and traditions (Smith, 1991: 12). The nation in this ethnic

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sense is based on so-called natural, pre-state categories such as ancestry, language, and culture; it is one culture and ancestry community. In this respect the process of national state building in the 1990s in the region of ex-Yugoslavia underwent parallel with the revival of the ethno-national identification, whereas such identification was both positive and negative. The “positive identification” we can link to identifying and stressing out the marks that are characteristic for the respective ethno-nation. It is essential to identify “who we are”. However, the identification is not possible without its negative aspect that is essential to identify “who we are *not*”. The process of self-definition of nation was always a process of differentiation towards other (neighboring) nations in which the differences were brought out and deepened (cp. Lottes, 1992). This was so obvious in the post ex-Yugoslav ethno-national building. For the creation of its own identity every nation has created its “Alter ego” to which it ultimately had to differ. It is not sufficient just to be who you are, but it is additionally necessary not to be who you are not (Bugarski, 2009: 106). Additionally to other positive characteristics, being Serb means not to be Croat, or Bosniak, and vice versa. In this context the issue of language becomes highly interesting.

On the surface, language is one of the central elements of national identity. However, the situation with language is not so simple since there is no direct correlation between language and nation. If one compares the number of living languages (few thousands) with the number of recognized (national) states (193 member states of the UN), it is clear that not every language is linked to a nation and respectively national state. Examples of Jews or Roma show that national boundaries can exist among groups that do not share a common language. Slightly different, the example of the Swiss identity shows that a national identity can be built among people who speak and identify themselves with different languages. On the other hand, examples of the USA, UK, Australia, and other English speaking nation states show that the same language can bear different national identities. Same show the example of Germany and Austria, or examples of Spanish speaking nations in Latin America. This twofold character of language comes from its two aspects, the linguistic one (language as the communication tool) and the political one (language as the symbol). In the process of national state building language has gained significant political importance, since the written “national language” was perceived as a tool for homogenization and standardization of the population (Hobsbawm, 1992: 93). The idealism of the national state in the 19th century distinguishes the harmony within the triangle nation-state-language as the highest value, and the standardization of national languages becomes one of the central instruments in the national building process. National languages are almost always semi-artificial constructions, and thus they are rarely the primordial foundations of national culture and the matrices of the national mind, as national mythology supposes them to be (Hobsbawm, 1992: 54). Moreover, the standardization of a national language results from attempt to create a standard idiom from a variety of idioms that people speak, that further on become dialects. The selection of a dialect that develops to a standard language is often a political question with political implications (Hobsbawm, 1992: 54, 111). As a result of the standardization of national languages the linguistic borders became much rigid, and whole traditions, oral, or in some cases written, vanished under the pressure to use standard language (Geary, 2007: 49). And this could not happen without the monopoly of the state, mostly manifested through the obligatory education and bureaucracy. Thus, the state is the central factor that links nation and language,

and as Hobsbawm observed it “Languages multiply with states; not the other way round” (Hobsbawm, 1992: 63).

The developments with the Serbo-Croatian language after the late breakup of Yugoslavia fully fit into the previous statement. Perceived as the language of the Yugoslav federation and with the Serbian version that was put in favor, the Serbo-Croatian was a target of the language separatism. In line with the ideology of ethnic nationalism that directly links language and nation, every of the new established states proclaimed its own national language. On the ground of Serbo-Croatian four languages emerged: Bosnian, Croatian, Montenegrin, and Serbian. From the linguistic point of view this separation is rather artificial and politically motivated, since the language structures basically remained the same. People (nations) who once spoke Serbo-Croatian do not have communicational problems even if they now speak Bosnian, Croatian, Montenegrin, or respectively Serbian. But at the level of elites, philologists, historians, politicians, etc. one insists on the linguistic diversity, that is artificially overstressed with the central intention to emphasize the differences among respective nations. Thus, diverse national language policies were predominated with language nationalism and mainly aimed at emphasizing the differences towards the *other*. In the case of Bosnian, Croatian, and Montenegrin, the linguistic nationalism had predominantly the form of the linguistic separatism, where the main goal was to differ from the Serbian (Bugarski, 2009: 106f). The Serbian linguistic nationalism reflected the glorifying of the Cyrillic script and proscribing the Latin script as a “genuine Croatian script” (Bugarski, 2009: 77).

This linguistic mishmash becomes relevant for the protection of national minorities in the region because Serbs as a national minority in Croatia, and Croats and Bosniacs as national minorities in Serbia can, under some legal preconditions, use their own language in official communication with the public authorities. This possibility raises legal, political, social, and linguistic controversies.

In this paper we will deal with the complexity of the interethnic relations in the region on ground of two interesting “linguistic” cases. The first one refers to the protests caused by the possibility to declare Serbian as an official minority language in Vukovar (Croatia). The other case refers to the ignorance of the municipal authorities in Priboj (Serbia) to declare Bosnian as an official minority language in the municipality. To some extent these cases show similarities: both municipalities lie on the border, both local regions were involved in the recent wars, in both cases the national minority is a new minority, and in both cases all involved ethnic groups (majority and minority) have spoken the same language but in different dialects. The cases show differences in the reactions to the problem: in Vukovar the possibility that Serbian with its Cyrillic script can be an official language in municipality has provoked massive protests and has gained political attention; on the other hand, in Priboj the municipality assembly for years blocks Bosnian language to become an official language and this caused complicated legal struggle with no way out.

Language Rights of National Minorities: An Outline of the Legal Framework

The concept of the national minority protection means that persons who belong to a national minority enjoy special rights for the protection of their cultural identity. This concept is a modification of the liberal model according to which for the position of the individual in the state his/her ethnic origin is irrelevant. In the liberal state emphasis is placed on the citizen

who is the subject and object of universal moral values, rights and obligations. The citizen, as an abstract individual, is stripped of any religious, cultural, or any other collective inclinations and preferences (Tamarkin, 2002: 129). The basic principle of a modern state is the equality of its citizens. No state can be considered as democratic if it does not guarantee equal rights to all citizens regardless of ethnicity. Yet, the main objection to the liberal model is the question, if the state can be really value neutral and if the equal treatment can actually lead to inequality. If the standard for the “equal” is measured by the majority, on the base of the cultural model of the majority or dominant group, this initially neutral concept leads to suppression of minority identities and thus to assimilation. Diverse demands with regards to the recognition of special collective rights of ethnic, linguistic, religious or similar groups led to the modifications of the liberal concept with the elements of multiculturalism. Guaranteeing of equal rights to all citizens remains the basic principle, but persons who belong to national minority enjoy additional rights to express, preserve and develop their ethnic, cultural, linguistic and religious identity.

The right to use own minority language is one of the central national minority rights and as such it is guaranteed both on international and national level. The right of persons belonging to a national minority to use their minority language refers to private, public, and official use of a language. Private use of a minority language means that persons belonging to a national minority in their private communication, oral and in writing use their own language. Public use of a minority language means the use of the language in a public place, outside, or in the presence of other persons². With regards to protection of private and public use of a minority language, the role of state is primarily passive, since its primary obligation is not to interfere or in any way hamper such use of minority language. However, positive action of a state is needed if non-state parties hinder the use of a minority language. Official use of a minority language refers to the use of such a language in relations with the state/public authorities. It is upon the state, depending on the international instruments it has ratified and on the national minority standards in its national law, to define the scope of the right to official use of a minority language, i.e. before which state or public institutions and in which cases persons belonging to a national minority can use their own language. For the implementation of the minority right to official use of minority language the role of the state is essential, since it presupposes that also the state communicates in the minority language. Official use of minority language includes several different rights: the right to use surname and first names in the minority language and the right to official recognition of them; the right to display in minority language signs, inscriptions, and other information of a private nature visible to the public; the obligation of the state to display traditional local names, street names and other topographical indications for the public also in the minority language; the right to use the minority language before judicial authorities (or even more that the proceedings are conducted in the minority language); the right to use the minority language in contact with administrative authorities or public services providers; the right to submit oral or written

² Explanatory Report on the Framework Convention for Protection of National Minorities, Article 10 Paragraph 1. <http://conventions.coe.int/Treaty/EN/Reports/Html/157.htm>.

applications and documents in the minority language, and the right to get judicial or administrative documents in this language³.

The ratio of the minority language rights is multiple. In the first place language rights are essential for the freedom of expression. Language rights are important for communication, especially if this communication is with public authorities, in which case language rights support the enjoyment of other human rights. With no doubt the comprehension is best in the first language (usually, “mother” tongue), and it is much easier to submit applications or to understand generally complicated judicial or administrative documents if these are in that language. In addition to this communicational level, language rights have much to do with a specific symbolic level. As it is stated in the Explanatory Report to the Framework Convention for the Protection of National Minorities, the use of minority language represents one of the principal means by which persons belonging to a national minority can assert and preserve their identity⁴, both on the group and on the individual level. Thus language rights have further social and political implications: together with other instruments for the intercultural cohesion they can play important role to incorporate minorities in the wider society and hence to strengthen the legitimacy and the stability of the community⁵. Finally, language rights contribute to the preservation of the minority language as a cultural value, and thus to a cultural diversity of a society.

The Croatian and respectively the Serbian legal orders acknowledge special rights to national minorities for the protection of their identity. On ground of the state constitutions, ratified international treaties, diverse laws, and by-laws, national minorities in both states enjoy language rights. Here we will not further elaborate the set of the language rights guaranteed in the both legal orders⁶, but for the purpose of this paper we will briefly discuss the legal status of the languages that emerged on the grounds of the Serbo-Croatian.

According to Article 12 of the Croatian Constitution, the official language in Croatia is Croatian with the Latin script. Serbian language with the Cyrillic script can be used as a minority language if the conditions set in the Constitutional Law on the Rights of National Minorities⁷, and the Law on the Use of National Minority Languages in Republic of Croatia⁸ are met. Croatia has acknowledged the Serbian language as a minority language in its declaration contained in the instrument of ratification of the European Charter for Regional or Minority Languages. Additionally, Croatia has signed a bilateral international agreement with (at the time) Serbia and Montenegro, now succeeded by Serbia, that among other things regulates the use of minority language of Serbian minority in Croatia, and vice versa. The

³ See Article 10 and Article 11 of the Framework Convention for the Protection of National Minorities, and Article 9 and Article 10 of the European Charter for Regional or Minority Languages.

⁴ Explanatory Report on the Framework Convention for Protection of National Minorities, Article 10 Paragraph 1. <http://conventions.coe.int/Treaty/EN/Reports/Html/157.htm>.

⁵ However, in societies with underdeveloped intercultural communication and with no adequate minority policy, language rights can lead to the isolation of the minority group and can create “parallel worlds” of the majority and the minority (or the minorities).

⁶ See Bašić, Goran, Đorđević, Ljubica (2010): *Ostvarivanje prava na službeni upotrebu jezika i pisama nacionalnih manjina u Republici Srbiji*, Beograd: Zaštitnik građana Republike Srbije; Petričušić, Antonija (2013): Ravnopravna službena uporaba jezika i pisma nacionalnih manjina: izvori domaćeg i međunarodnog prava, *Zagrebačka pravna revija*, Vol. 2, br. 1, pp. 11-39.

⁷ „Narodne novine“ no. 155/2002, 47/2010, 80/2010, 93/2011.

⁸ „Narodne novine“ no. 51/2000, 56/2000.

agreement does not explicitly indicate the name of the language, but since the authentic languages of the agreement are Croatian and Serbian, one can conclude that the minority language rights guaranteed with the agreement refer to these languages.

In Serbia the official language is Serbian language with the Cyrillic script⁹. Bosnian, Croatian, and Montenegrin can be used as national minority languages according to laws and bylaws that regulate the issue of the national minority protection. In its ratification of the European Charter for Regional or Minority Languages Serbia has declared, among others, Bosnian, and Croatian, as the languages to which the selected measures of the Charter will apply.

Although this paper is limited to Croatia and Serbia, it is interesting to mention the legal “fate” of the Serbo-Croatian language in Bosnia and Herzegovina, and in Montenegro. In Bosnia and Herzegovina, official languages are Bosnian, Croatian, and Serbian. Interestingly enough, the Constitution of Republika Srpska does not indicate the name of the languages, but regulates that the official languages are “the language of the Serb people, the language of the Bosniak people, and the language of the Croat people” (Article 7.1, Amendment LXXI). Montenegrin is in Bosnia and Herzegovina protected as regional or minority language, according to the declaration contained in the instrument of ratification of the European Charter for Regional or Minority Rights. Interesting, and the most integrative is the Montenegrin Constitution. According to it, in Montenegro the official language is Montenegrin. Cyrillic and Latin script are equal. Constitution stipulates that Serbian, Bosniak, Albanian, and Croatian are also in official use¹⁰.

This brief overview shows that legally the four languages that have emerged from the Serbo-Croatian are recognized as separate languages, and that under set preconditions they can enjoy the protection as national minority languages. Thus, if the conditions set within respective national legal orders are met, the principle of the rule of law obliges the state to implement the adopted legal norms on the official use of the respective national minority language. Yet, the two cases discussed below show that the law is not omnipotent, and that the effects of the legal instruments strongly depend on the wider social context.

Case One: Cyrillic in Vukovar (Croatia)

The Croatian Constitutional Law on the Rights of National Minorities regulates in Article 12.1 that equality in the official use of a minority language and script shall be exercised in the territory of a self-government unit where the persons belonging to a national minority make at least one third of the population. As the results of the census of 2011 have shown that 34.87% of the population in Vukovar belongs to the Serbian national minority, the threshold set in the Constitutional law is reached for Serbian and Cyrillic script to be in official use in Vukovar. As a reaction to the census results the Croatian government has announced that bilingual signs would be introduced in the city of Vukovar, and provoked massive protests against Cyrillic in Vukovar. The protest were organized by the “Headquarters for the Defense of Croatian Vukovar”, a group formed mainly by veterans, former prisoners, and war invalids, and with the predominantly nationalistic discourse. For a while, the introduction of Cyrillic in Vukovar

⁹ Article 10.1 of the Constitution of Serbia, „Službeni glasnik RS“, no. 98/2006.

¹⁰ Article 13 (para. 1-3), „Službeni list Crne Gore“, no. 1/2007.

has stirred up the Croatian political scene, and once again it has manifested the political dimension of the language.

In the Serbo-Croatian the two dichotomies have distinguished the Serbian and the Croatian dialect. The first dichotomy refers to *ijekavica*, that is perceived as a characteristic of Croatian, and *ekavica*, that is perceived as a characteristic of Serbian. The other dichotomy refers to Latin and Cyrillic script, whereas the first one is traditionally linked to Croatian, and the former one to Serbian. However, linguistically the situation is not so simple, since the dividing lines are not so strict. Serbs who live in Croatia, Bosnia, and some parts of western Serbia speak Serbian in ijekavica enunciation. Spoken language of a Serb from Croatia is more similar to a language his/her neighbor Croat speaks, than to a language a Serb living in south Serbia speaks (cp. Bugarski, 2009: 21). Situation with the script is also not so simple, since Serbian can be written in both Latin and Cyrillic scripts. Nevertheless, the ethnic nationalism influenced the language, and after the dissolution of Yugoslavia the language policies in Croatia in Serbia overemphasized the differences between Croatian and Serbian and created the language identity in opposition to the “*other*”. The language engineering in Croatia underwent mainly in the form of language puritanism, in which internationalisms or “Serbisms” were exchanged with the Croatian words (Bugarski, 2009: 106). In Serbia, the linguistic nationalism addressed the script, whereas it glorifies Cyrillic as genuine Serbian script immanent to the Serbian national identity, and proscribes Latin script as imposed “from the West” to weaken the Serbian national spirit (see. Bugarski, 2009: 77). In nationalistic discourses on both sides the script becomes a significant symbol of a national identity, and an important dividing line between Croatian and Serbian language. Nationalists in both countries perceive Latin as a Croatian script, and Cyrillic as a Serbian script, ignoring the fact that many other nations write in these scripts.

This symbolism of the script was so obvious in the protests about Cyrillic in Vukovar. The loudest voices in the protests were those against the Cyrillic and the bilingual (Latin and Cyrillic) signs in the town of Vukovar. The protesters put the Cyrillic script in the context of the recent wars, and perceived it as a danger to the Croatian identity and an insult to war victims¹¹. The “Headquarters for the Defense of Croatian Vukovar” argued that since the wounds of war are still open, and Vukovar is still looking for 400 people who disappeared during the war, and the perpetrators of war crimes against Vukovar’s Croats have yet to be punished, the time has yet not come to introduce bilingualism in Vukovar¹². Further they argued that equality in the official use of Cyrillic and Latin script would provoke interethnic intolerance and jeopardize peace in the town¹³. The protesters claimed that Vukovar should be exempted from the implementation of the Constitutional Law on the Rights of National Minorities or that the equal use of the Serbian language and Cyrillic script should be under moratorium for 10 years. The controversy of the equal official use of the Cyrillic script in Vukovar has evoked reminiscences about Vukovar as a symbol of war martyrdom, and Croatian

¹¹ „Cyrillic divides Serbs and Croats in Vukovar“, <http://www.balcanicaucaso.org/eng/Regions-and-countries/Croatia/Cyrillic-divides-Serbs-and-Croats-in-Vukovar-130292>

¹² Ibid.

¹³ „Više od 20.000 ljudi prosvjedovalo u Vukovaru“, <http://danas.net.hr/hrvatska/vise-od-20000-ljudi-prosvjedovalo-u-vukovaru>

independence. In this context, the Cyrillic was stigmatized as the script of the enemy, the script of the war cry.

In their reactions to the protests, the president and the prime minister of Croatia have answered that Croatia respects the rule of law and that the implementation of the Constitutional Law on the Rights of National Minorities is beyond any doubt. The president Josipović stated that he expects from politicians to explain to citizens the importance of the respect for the Constitutional Law on the Rights of National Minorities, and added that if one does not want to respect the law, the law has to be changed. This statement has provoked strong criticism, after which the President came with the explanatory statement: “The Constitutional Law has to be implemented, consistently and fully. To politicians and political parties that treat the Constitutional Law only as a façade for the international community, I sent a message that it would be more honest to initiate the change of the Constitutional Law, than to block its implementation by using diverse excuses”¹⁴. However, President Josipović noted that “in some cases one should think about the *dynamics*, but in no way about the postponing of the implementation of the Constitutional Law” (italic is mine). The *gradual* introduction of the Cyrillic Josipović acclaims as “a voice of reason, and a wish that, acknowledging the historical circumstances, national minority rights are implemented in the best way”¹⁵. Milorad Pupovac, the President of the Serbian National Council in Croatia, has also spoken about the gradual introduction of the Cyrillic script. Pupovac also acknowledged the reality in which the Cyrillic has to be introduced in official use in Vukovar, and stated that “since it is about Vukovar, one has to be careful”. According to Pupovac, it has to be agreed to what extent and in what tempo the bilinguism can be implemented in Vukovar. The situation has to be solved in the manner that no one cheers or sorrows, Pupovac said¹⁶.

The legal consequence of the 2011 census results in Vukovar is that in line with Article 12.1 of the Constitutional Law on the Rights of National Minorities Serbian language and Cyrillic script shall be in equal official use in Vukovar. The implementation of this legal norm presupposes the amending of the Statute of Vukovar, that should in detail regulate the aspects of the implementation of national minority language rights, and explicitly regulate every single right that falls under the official use of a national minority language¹⁷. The amending of the Statute presupposes the majority vote in the city assembly. Bearing in mind the political constellation in the Vukovar assembly after the local elections in May 2013¹⁸ it remains uncertain if there will be sufficient votes to amend the Statute. Interestingly enough, the current Statute of the city of Vukovar¹⁹ already contains the norm on Serbian language and Cyrillic script. Article 61.3 of the Statute guarantees to persons belonging to the Serbian national minority the right freely to use Serbian language and Cyrillic script in social and

¹⁴ „Josipović pojasnio izjavu o ustavnom zakonu i ćirilici u Vukovaru“, <http://danas.net.hr/hrvatska/josipovic-pojasnio-izjavu-o-cirilici-u-vukovaru>

¹⁵ Ibid.

¹⁶ „Pupovac: Ćirilica nije ratno već mirnodopsko pitanje“, <http://www.politika.rs/rubrike/region/Pupovac-Cirilica-nije-ratno-vec-mirnodopsko-pitanje.lt.html>

¹⁷ Naputak za dosljednu provedbu Zakona o uporabi jezika i pisma nacionalnih manjina u Republici Hrvatskoj, „Narodne novine“, no. 33/12.

¹⁸ In the local elections held on May 19, 2013, HDZ has won 42.04% of the votes, SDP 32.02% of the votes, SDSS 10.94% of the votes, and the other lists did not reach the 5% threshold, http://www.izbori.hr/2013/Lokalni/rezult/krug-1/r_08_16_5185_000.html?t=1373902323012.

¹⁹ Statut Grada Vukovara, „Službeni vjesnik“, no. 4/2009.

public life, as well as in the official communication in public affairs that are in self-governmental jurisdiction of the city of Vukovar. Serbian language and Cyrillic script were introduced in the official use in Vukovar already in 2009, but because of the controversy of the issue this general norm remained unimplemented²⁰. The new developments show that the equal official use of Serbian language and Cyrillic script remain in Vukovar an open case.

Case Two: Bosnian in Priboj (Serbia)

Priboj is a multiethnic municipality situated in the southwest Serbia, in the region that Bosniaks usually call Sanjak and Serbs Raska region. The largest ethnic communities in the municipalities are Serbs, Bosniaks, and Muslims. According to the Statute of the municipality of Priboj²¹, the official language in the municipality is Serbian with the Cyrillic script (Article 5 of the Statute). Since according to the census of 2002 Bosniaks made ca. 18% of the total population in Priboj, the general conditions set out in the law are met for the Bosnian language to be used as an official language in the municipality. Yet, the persistent denial of the municipal authorities to change the Statute in regard to Bosnian language has caused the “Priboj language case”. The problem of the Bosnian language in Priboj has three layers: legal, linguistic, and political.

According to the Law on Local Self-Government (Article 20 point 33) and the Law on Official Use of Languages and Scripts (Article 11) the issue of the official use of national minority languages is in jurisdiction of municipalities. A municipality regulates what languages are in official use on its territory with the municipal statute adopted by the municipal assembly. If the number of the persons belonging to a national minority reaches the 15% of the total population in the municipality, a municipal assembly is obliged by the law to proclaim the language and the script of the respective minority as an official language in the municipality²². Thus, if the 15% threshold is reached the margin of appreciation of the municipal assembly is narrowed, since according to the law in such cases the official use of a national minority language is obligatory. Nevertheless, the official use of a national minority language on the territory of a municipality has to be legally declared in the municipal statute, an act that is adopted by the municipal assembly. The problem can occur, as it has occurred in Priboj, if the municipal assembly lacks the necessary majority vote to enact the statutory change with regard to the official use of a national minority language. The case of Priboj where the municipal assembly has for years refused to amend the statute with regard to official use of Bosnian language has shown that the Serbian legal systems lacks effective legal instruments to remedy such violation of the law. According to Article 22 of the Law on Official Use of Languages and Scripts the supervision over the implementation of the law is in jurisdiction of diverse ministries. Yet, they can perform this supervision after the respective language is declared as one of the official languages in the municipality. Additionally, the

²⁰ The controversy of the Cyrillic perpetuates every time someone raises the question of its use in Vukovar. In 2010 the Deputy Major of Vukovar, Dejan Drakulić, asked that three deputies in the city assembly who belong to Serbian minority get working materials of the city assembly in Cyrillic, and that the indignation on his office in the city hall is in Cyrillic, and faced hard criticism. <http://danas.net.hr/hrvatska/trazio-dokumente-na-cirilici-i-na-noge-digao-hsp>; <http://www.jutarnji.hr/dogradonacelnik-trazi-cirilicu-kao-sluzbeno-pismo/537796/>.

²¹ „Službeni list opštine Priboj“, no. 12/2008.

²² Article 11.2 of the Law on Protection of Rights and Freedoms of National Minorities, and Article 11.2 of the Law on Official Use of Languages and Scripts.

ministry responsible for the local self-governance cannot intervene with the autonomy of the municipality and order in what way the statutory regulation should be amended. Furthermore, the ministry cannot substitute the municipal assembly and on its own decide what languages are in official use in the municipality. The ministry can only recommend to the municipality to amend the statute, but this recommendation is not obligatory in its character. The ministry does not have any legal instrument on its disposal by that it could pressure the municipality to introduce the language of the national minority that has reached the 15% threshold as an official language in the municipality. The ministry can only, according to Article 82.1 of the Law on Local Self-government, bring the case before the Constitutional court and question the legality of the municipal statute. However, in some previous cases the Constitutional court has taken the standpoint that it is not competent to assess the legal loopholes, nor it is competent to assess the implementation of the laws and bylaws²³. Thus, legally the case is brought to the dead end.

The “Priboj language case” has provoked reactions of the Serbian Ombudsman and of the Commissioner for Protection of Equality. In 2010 the Serbian Ombudsman has recommended to the President of the municipal assembly and the municipal authorities in Priboj to amend the municipal Statute in line with the constitution and the laws and thus to open the way for persons belonging to Bosniak national minority to officially use their language and script²⁴. The Commissioner for Protection of Equality has declared that the omission of the municipality of Priboj to introduce Bosnian language and Latin script is an act of discrimination on ground of ethnicity. For that reason the Commissioner has recommended to the municipality of Priboj without delay to take all necessary measures to introduce Bosnian language and Latin script in the official use²⁵. However, the respective recommendations of the Ombudsman and the Commissioner are in their character a soft-law and their implementation depends on the institutions they address. There are no legal instruments that can enforce these recommendations if the voluntarily implementation lacks. The Priboj municipality did not comply with these recommendations and thus they degraded to a dead letter.

Legally, the “Priboj language case” is a clear case. The municipality of Priboj has the legal obligation to amend the municipal statute with regard to the Bosnian and the Latin script and the omission to do this is a clear violation of law. Yet, the Serbian legal order does not provide effective legal remedies to remedy this violation, and thus it is not capable to enforce the rule of law.

The “Priboj linguistic case” has a linguistic dimension as well. For those who oppose the official use of the Bosnian language the main argument is that in Priboj all speak the same language no matter to which ethnical community they belong. Indeed, in Priboj both Serbs and Bosniaks speak in *ijekavica*, and generally it is not possible to identify if a person belongs

²³ See the decision of the Constitutional court IU-297/96 of February 1, 2001 („Službeni glasnik RS“, no. 15/2001), and the conclusion IUI-150/2008 of November 5, 2009 (Bilten Ustavnog suda 2/2009, pp. 398f, http://www.ustavni.sud.rs/Storage/Global/Documents/Sudska_Praksa/2_2009.pdf). Further on this issue see: Bašić, G./Đorđević, Lj., 2010: 46f.

²⁴ „Preporuka Zaštitnika građana opštini Priboj u vezi sa usaglašavanjem opštinskog statuta“, <http://www.pravamanjina.rs/index.php/sr/podaci/dokumenta/-/418-preporuka-zatitnika-graana-optini-priboj-u-vezi-s-usaglaavanjem-oprinskog-statuta>.

²⁵ Case 1291/2011 of October 29, 2011. www.ravnopravnost.gov.rs/rs/национална-припадност.

to Serbian or Bosniak ethnic community on the way he/she speaks. In order to avoid as many claim “artificial” division, many people of the region do not indicate the language as Serbian or Bosnian but just as “our language”, stressing out the regional specifics. Some would even argue that the recognition of the Bosnian language as an official language in Priboj would harm the local dialect of Bosniaks in Priboj by imposing standard Bosnian language that is “engineered” in Sarajevo. Yet, the linguistic arguments, even if they are right, cannot be used (or misused) to ignore the law. Since the laws acknowledge language rights to Bosniaks in Serbia, the municipality of Priboj has no competence to question the identity of the Bosnian language. The municipality is obliged to ensure that Bosniaks in Priboj can communicate with the authorities in their own language, and it is up to them if they will use this right and to which extent. The other question is if the municipality has the capacities to fully implement language rights of Bosniaks, and if the implementation of these rights is essential for their status in Priboj. But this is the general question about the legal status of the languages that emerged from the Serbo-Croatian, and if it is rational and opportune to treat them as separate languages. Bilingualism is costly; it presupposes bilingual personnel, translation units, issuing bilingual documents and forms, and one could ask if this all is necessary bearing in mind that at the linguistic level these languages are one language²⁶. However, the Serbian legal order has accepted the (political) concept of the language separatism, and it recognizes to Bosnian, Croatian, and since recently Montenegrin the status of the national minority languages. Nevertheless this is often declaratory, since the state has not developed capacities to implement the proclaimed language rights.

The third layer of the “Priboj linguistic case” is political. This language dispute plausibly shows that the language is just a symbol; it is an instrument in the nationalistic discourse, and below the surface it is all about denying or acknowledging the Bosniak national identity. By insisting on the statutory norm that in Priboj the official language is Serbian with Cyrillic script the Serbian local elites indirectly deny the Bosniak national identity following the nationalistic cliché that Bosniaks are converted Serbs, and that they all speak Serbian. On the other hand, the Bosniak elites follow the nationalistic cliché that a nation needs its own national language. They insist on the linguistic particularities, emphasize Bosnian language as an important element of their national identity, and use language as additional dividing line to demonstrate that Bosniak and Serbian are two separate and independent identities. Bearing in mind scars of the recent wars, the linguistic dispute in Priboj reflects the interethnic tensions in the local community and it shows that between two ethnic groups there is no mutual trust. At the same time, ignoring the language rights of Bosniaks in Priboj burdens the interethnic relations in Priboj, since at the symbolic level the municipality excludes from the local community those citizens who identify themselves as Bosniaks.

Meanwhile, on the popular census in 2011 the number of declared Bosniaks in Priboj has declined to ca. 14%²⁷. Under this circumstance the municipal authorities could argue that the 15% threshold is not reached, and that there is no obligation to introduce Bosnian as an official language in the municipality. This would be perverting the law and formal legalizing

²⁶ This argumentation one can find at the ICTY. It has solved the complicated language puzzle as it introduced the concept of the Bosnian/Croatian/Serbian (BCS, or also known as BHS) that it treats as a single language. <http://www.icty.org/sid/165>

²⁷ Interestingly, the number of those who declare as Muslims has inclined from 4.69% (2002) to 7.16% (2011).

of the unlawfulness. According to the law, if a national minority language is in official use eventual demographic declines cannot abolish such status. The fact that Bosnian is not an official language in Priboj is a result of the violation of the law, and since once the Bosniaks in Priboj have reached the 15% threshold, the new demographic developments do not nullify their language rights in Priboj.

Conclusion

In line with the nationalistic ideology, the new states that emerged from the former Yugoslavia opted for the “nation-state-language” symphony, and politically annulled Serbo-Croatian language as a symbol of the Yugoslav federation. With a political decree being formulated into the legal norms, Serbo-Croatian vanished and four new languages were established. The political nationalism has influenced the linguistic nationalism, and the new language identities were built on the differences to the “other”. The language became a significant symbol of national identity, and its political and symbolic dimensions overwhelmed its linguistic dimension. The controversies about the Cyrillic script in Vukovar and the Bosnian language in Priboj show that the genuine problem is not about the language or script as such but about what it symbolizes. These two examples show that nationalistic discourse and war reminiscence are still alive, and that interethnic distance is still present in the region. Recent wars, ethnicification of the politics, and the populism have deepened the interethnic distance between different ethnic groups and caused mutual mistrust²⁸. The cases of Priboj and Vukovar also show that both states, Croatia and Serbia, did not develop adequate mechanisms to promote intercultural dialogue, and to strengthen mutual understanding that would underpin reconciliation between majority and minority ethnic groups (Croats and Serbs, and respectively Serbs and Bosniaks) that are perceived as former “enemy sides”. Finally, these two examples show the weaknesses in respecting of the rule of law, and indicate the selective implementation of the laws. With regards to the national minority protection both states have enacted legal acts formally to meet the European standards, but they did not developed comprehensive national minority policy that can support implementation of the laws, and so implementation gaps occur.

²⁸ However, the interethnic distance is not constant, but it depends on wider social and political circumstances: it is deeper in periods of interethnic conflicts or tensions, and it becomes narrower in periods of stabile interethnic relations.

References:

- Bašić, Goran/ Đorđević, Ljubica (2010): *Ostvarivanje prava na službenu upotrebu jezika i pisama nacionalnih manjina u Republici Srbiji*, Beograd: Zaštitnik građana Republike Srbije.
- Bugarski, Ranko (2009): *Nova lica jezika*, Beograd: Biblioteka XX vek.
- Geary, Patrick (2007): *Mit o nacijama. Srednjovekovno poreklo Evrope*, Novi Sad: Cenzura.
- Hobsbawm, Eric J. (1992): *Nations and Nationalism since 1780: Programme, Myth, Reality*, Cambridge: Cambridge University Press.
- Lottes, Günter (1992): „Zur Einführung: Staat, Nation, Region- zu drei Prinzipien der Formationsgeschichte Europas“, in: Lottes, Günther (ed.): *Region, Nation, Europa: Historische Determinanten der Neugliederung eines Kontinents*, Heidelberg: Physica-Verlag, pp. 10-43.
- Petričušić, Antonija (2013): Ravnopravna službena uporaba jezika i pisma nacionalnih manjina: izvori domaćeg i međunarodnog prava, *Zagrebačka pravna revija*, Vol. 2, br. 1, pp. 11-39. <http://revija.pravo.unizg.hr/index.php/zpr/article/view/36/15> (Accessed July 10).
- Smith, Anthony D. (1991): *National Identity*, London: Penguin Books.
- Tamarkin, Mordechai (2002): “The Moral Ethnicity of Scale – Titular Nation-States and Political Order in the Former Communist Realm”, in: Zuckermann, Moshe (ed.): *Ethnizität, Moderne und Enttraditionalisierung*, Göttingen: Wallstein Verlag, pp. 129-152.