On territoriality, linguistic borders and the protection of minorities

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The powerful argument made by Philippe Van Parijs in favour of the principle of territoriality as the foundation for language legislation is an important contribution to a debate that has been under way in this country for several decades and that, from time to time, paralyses political life. Once again, today, there is no broad consensus regarding the answer to questions such as: should the territoriality principle or the personality principle apply? Should we proceed on the basis of homogeneous linguistic regions or recognise the rights of linguistic minorities as well? Is it desirable for Belgium to sign treaties on the protection of minorities? Do individuals always have the right to speak the language of their choice, or can they be compelled to use the official language of the linguistic region where they live? Is the linguistic boundary beyond discussion or must it remain open to the possibility of change?

1. Social cohesion

It is to his credit that Philippe Van Parijs sets out very clearly what precisely is at stake in this debate: it is, indeed, a matter of "linguistic justice based on respect for all languages." The "equality of languages" was for a long time far from a reality in this country. In 1921, the socialist Pierard, speaking before the Belgian Chamber of Representatives, referred to the situation as an erroneous principle: people are equal, language are not. French is a global language, Flemish is spoken only by a few million people; with French you can travel around the world, while with Flemish you can be understood at most from Ostend to Edinghen, he argued. And he was right: languages are not equal. They do, however, deserve equal respect because the people who use them are equal and deserve equal respect. For Philippe Van Parijs, that is the essential foundation for the principle of territoriality: by allowing every language to be "Queen" in its own area, one shows the language and the people who speak it equal respect. An equally important foundation for the territoriality principle in our times, in my view, is that in the multicultural society of the 21st century, where dozens of languages are often spoken in a given area, there is great need for a *lingua franca*, a common language that enables everyone truly to live together, to understand each other, to be able to communicate with each other and to establish a shared vision of society. That *lingua franca* cannot be anything other, at a national or regional level, than the language that has traditionally been spoken in a given area and that has also been defined as an official language for that area.

Many states opt in their Constitution for one or more official languages. They do so not in order to infringe on private linguistic freedom, but to regulate public use of language in their institutions, government, law courts, army, education, etc. Although the choice of official language has traditionally been left to the national (constitutional) legislators, the importance of that choice is increasingly recognized at an international level as well. It is worth noting in this regard that there is

growing emphasis on the fact that the official language must not be undermined by an overly generous recognition of the rights of linguistic minorities. The Explanatory Report (1995) of the Framework Convention for the Protection of National Minorities already stated explicitly that "knowledge of the official language is a factor of social cohesion and integration". In the same vein, the European Charter for Regional or Minority Languages also points out from the outset (in its Preamble) that "the protection and encouragement of regional or minority languages should not be to the detriment of the official languages and the need to learn them". In recent texts by the OCSE High Commissioner on national minorities, the Venice Commission and the European Court of Human Rights, the emphasis is placed primarily on the role of the official language in a multilingual society and on the subjective rights that citizens can derive from the existence of an official language. In his recent assessment of the "Draft Law on Languages" in Ukraine, the OSCE High Commissioner on National Minorities pointed out that:

> The State language can be an effective tool in ensuring cohesion. Consequently, promoting the use of the State language is also beneficial to persons belonging to national minorities. Having a command of the State language increases the opportunities for effective participation in society at all levels. This requires that persons belonging to national minorities are given and make use of the opportunity to learn the State language. All members of society, including persons belonging to national minorities, may be expected to use the State language in certain communicative situations in the public domain, as specified by law. To put it differently, there is no right of persons belonging to national minorities never to be expected to use the State language.

The Venice Commission, in its recent opinions "On the Act on the State Language of the Slovak Republic" and "On the Draft Law on Languages in Ukraine", also strongly emphasized that "the promotion of the State language guarantees the development of the identity of the State community, and further ensures mutual communication among and within the constituent parts of the populations."[1] It also noted that the official language has to play an important role "in maintaining the cohesion between the different linguistic groups of the country"[2] and that it has an "integrative force". In this context, the European Court on Human Rights ruled in its decision in the case of *Mentzen v Latvia* 14: "the Court acknowledges that the official language is … one of the fundamental constitutional values in the same way as the national territory, the organisational structure of the State and the national flag. (...) by making a language its official language, the State undertakes in principle to guarantee its citizens the right to use that language both to impart and to receive information, without hindrance not only in their private lives, but also in their dealings with the public authorities."

2. Stable borders and minority rights

To plead in favour of the territoriality principle is necessarily to plead for stable linguistic boundaries. For the principle implies that when people migrate to live in another linguistic area, they learn the official language of that area in order to be able to deal with the official institutions, communicate with local residents and, in short, to integrate into the society to which they now belong. It is therefore contrary to the territoriality principle to argue that the boundary between two countries or two linguistic regions within one country should be changed if it appears after a certain time that a large group of newcomers has not learned the language of the area in question. At the international level,

[1] CDL-AD(2010)035, §42.
[2] CDL-AD(2011)008, §97.

this option has already been rejected. Even where there is a large concentration of a linguistic minority within parts of a state – as is the case in many European states – this is not seen as a reason to accept attachment to another state, i.e. the kin-state. Precisely in order to prevent demands by linguistic minorities from leading to conflicts between states, the Framework Convention for the Protection of National Minorities rejects the demands of minorities for a change in borders[3]. It does, however, require states to protect national minorities within their own territory.

Although this is not explicitly addressed in his paper, there are indications that Philippe Van Parijs does not really share this approach. On the one hand, he has argued elsewhere for a change in the linguistic boundary by attaching a number of municipalities on the periphery to the bilingual Brussels-Capital Region, and on the other hand, in the paper under discussion here he does not mention the protection of linguistic minorities. Perhaps the suggestion for a limited change to the linguistic boundary may be understood as a pragmatic position, adopted in the hope that such a compromise would make it possible at last to settle the dispute regarding the linguistic boundary. Philosophers are often wary of too much pragmatism. And rightly so, in my view. By changing the linguistic boundary because a number of Flemish municipalities adjacent to Brussels have over the years become predominantly French-speaking, one would pave the way for further changes in future to the linguistic boundary in municipalities with comparable linguistic compositions. Moreover, to do so would be to reward those who do not respect the language of the area, which after all is the foundation of the territoriality principle which is being defended.

The principle of territoriality does not necessarily mean completely homogeneous linguistic areas. Philippe Van Parijs does not argue for this either. He notes that the territoriality principle is often limited to "the coercitive regulation of (state organised or state-subsidised or at least state-recognised) education and to communication in public settings." That leaves room for the individual's linguistic freedom and for the rights of linguistic minorities in the private sphere, in the broad sense of the word. A territoriality principle that did not leave room for these rights and that aimed at achieving complete assimilation would not be tenable, nor would it be acceptable. The territoriality principle is not absolute. Its relativization is the *conditio sine qua non* if one is to demand respect for the language of the area and the inviolability of the linguistic boundaries. The right to keep one's own language and cultural identity is developing, within international law, into a fundamental right. It deserves protection, without thereby detracting from the status of the official language. As the Venice Commission once again stressed recently, it is a matter of striking a "fair balance between the protection of the rights of minorities on the one hand and the preservation of the State language as a tool for integration on the other hand."[4]

The editor-in-chief of *De Standaard*, Bart Sturtewagen (2011) recently wrote: "There is only one way out of the political impasse if the Flemish and the francophones are ready for a twofold paradigm shift. The francophones must understand that there can be no covenant with Flanders as long as the integrity of the Flemish territory is not recognized. But in exchange for that recognition, Flanders must learn to live with speakers of other languages, francophones, on its territory. Flanders is entitled to demand that they respect our language and culture. But it must also offer them the space to live out their own culture." In the Belgian context, the "fair balance" will indeed consist both in strengthening

[3] See Art. 21 Framework Convention for the Protection of National Minorities: "Nothing in the framework Convention shall be interpreted as implying any right to engage in any activity or perform any act contrary to the fundamental principles of international law and in particular of the sovereign equality, *territorial integrity* and political independence of states." (my italics)
[4] CDL-AD(2011)008, §116.

the territoriality principle and the position of the official language of each region, and in recognizing the right of minorities to their own language and culture.[5]

References

Sturtewagen, Bart. 2011. "Over de kansen voor België. Weg uit logica van winnaars en verliezers", *De Standaard*, 16-17 July 2011, 38-39.

Velaers, Jan. 2009. "Het kaderverdrag tot bescherming van de nationale minderheden: een 'non possumus' voor Vlaanderen?" [The Framework Convention for the Protection of National Minorities: a 'non possumus' for Flanders?], in A. Alen and S. Sottiaux, *Taaleisen juridisch getoetst*, Kluwer, 103-185.

[5] See also Velaers (2009).