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LEGAL IMPLICATIONS OF THE CONSTITUTIONAL PRINCIPLE OF TWO NATIONAL LANGUAGES IN FINLAND: SYMMETRY WITH THE POSSIBILITY OF ASYMMETRY

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Abstract

In Finland, constitutional status as national languages matters a lot for Finnish and Swedish. Against the background of pre-existing rules on bilingualism, Finland was not constituted in 1917 as a pure nation state, which would have meant that only one national language is identified. Because the legislation is enacted in both languages, and the administration and the courts are supposed to implement laws in both languages, the country is formally living up to its constitutional commitments, if not always in practice. Various requirements concerning the national languages need to be fulfilled. It must be taken into account that Finnish and Swedish are the national languages of Finland; the possibility for the two population groups to receive public services in their own languages must be guaranteed in an equal fashion. Everyone has the right to use their own national language in dealing with the public authorities; everyone has the right to receive decisions issued in their own national language; and public authorities shall provide for the cultural and societal needs of the Finnish-speaking and Swedish-speaking populations of the country on an equal basis.

Keywords: Constitution; language; nationalism; League of Nations; equality.

CONSEQÜÈNCIES JURÍDIQUES DEL PRINCIPI CONSTITUCIONAL DE LES DUES LLENGÜES NACIONALS A FINLÀNDIA: SIMETRIA AMB POSSIBILITAT D'ASIMETRIA

Resum

A Finlàndia, el rang constitucional de llengua nacional és molt important per al finès i el suec. En el context de la normativa preexistent relativa al bilingüisme, el 1917 Finlàndia no es va constituir com un estat nació pur, cosa que s'hauria traduït en la identificació d'una única llengua nacional. Com que la legislació es promulga en totes dues llengües i l'Administració i els tribunals haurien d'aplicar la llei en ambdues llengües, el país compleix formalment els seus compromisos constitucionals, tot i que no sempre és així en la pràctica. Cal complir diversos requisits amb relació a les llengües nacionals. S'ha de tenir en compte que el finès i el suec són les llengües nacionals de Finlàndia; per això, cal garantir que els dos grups de població puguin rebre els serveis públics en la seva pròpia llengua en igualtat de condicions. Tothom té el dret d'adreçar-se a les autoritats públiques i també de rebre les resolucions en la seva pròpia llengua nacional. I les autoritats públiques han de satisfer les necessitats culturals i socials de les poblacions de parla finesa i de parla sueca del país sense distincions.

Paraules clau: Constitució, llengua, nacionalisme, Societat de les Nacions, igualtat.

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Summary

1 Introduction

According to Section 17(1) of the Constitution of Finland, Finnish and Swedish are the national languages of Finland. The provision gives two points of departure for the regulation of linguistic matters, namely the principle of the official bilingualism of Finland and the principle of equality between the two national languages. In addition to Finnish and Swedish, other languages are also recognised in the Constitution and in the laws of Finland, such as the Sami language, the Roma language and sign language,[1] in a non-exclusive listing in Section 17(3) of the Constitution, but they are not accorded the same elevated status as the two national languages. It is, however, also possible to state that there is one official language constitutionally designated for a part of the country, namely Swedish for the purposes of the Åland Islands. Additionally, it is possible to state that there is one official language recognised for a group of persons, namely the Sami, an indigenous group whose homeland lies partially within Finland. These statutory references to official languages are differently fashioned both in relation to the two national languages and between themselves.

Because of this rather multifarious regulatory framework, it is possible to assume that official recognition matters, the issue being in which ways such recognition matters, that is, what the legal implications of such recognition are. A set of general implications can be collated from various constitutional provisions, international treaties and academic writings. These include the right to use one's own language in civil society (in the sense of linguistic existence); protection from language-based discrimination; the right to linguistically equal treatment by public authorities; the right to a linguistic identity; the right to education and other forms of information in one's own language; and the right to political and societal participation in one's own language.[2] Below, more specific legal implications will be outlined on the basis of the Constitution of Finland. Although the fundamental rules flowing from the principle of two national languages are of a constitutional-law nature, an important area of implementation of linguistic rules is probably administrative law, of which language law is a sub-set, while at the same time being relevant in other fields of law, such as procedural law.

Generally speaking, states can, with a view to their constitutional relationship to languages, be placed in three different categories (see table 1, below).[3] Starting from the third category, the attitude towards languages is based on the concept of the nation state, which in its pure form goes on to hold that there is 'one language, one people, one state', leading to situations where languages other than the one official one are more or less excluded and not even recognised as minority languages. States such as Greece and France, and in practice also Turkey, belong to this third category. The second category contains states which recognise the presence of minority languages within their territory and grant such languages certain rights, whilst at the same time operating upon the basis of the principle of the nation state. States such as Slovenia, Romania, Sweden and Hungary belong to this second category. The first category contains states which recognise, in a constitutionally relevant manner, two or more national or official languages. By doing so, these countries depart from the concept of the nation state and create another structure and fabric for the state, while not excluding the possible existence of other languages that would constitute minority languages.[4] States such as Finland, Switzerland, Canada, Ireland, Belgium, Singapore, and South Africa belong to this third category.

1 See also the Act on Sign Language (359/2015), which is based on the idea that there are two different sign languages in Finland, the Finnish sign language and the Finland-Swedish sign language, the latter being different from the sign language used in Sweden.

2 Antero Jyränki, 'Oikeus omaan kieleen – demokratia – oikeusvaltio', in Antero Jyränki (ed.), *Oikeuden kielet – Oikeus ja oikeudellinen ajattelu monikielisessä maailmassa*. Turku: Turun yliopisto, 1999, p. 92.

3 See Markku Suksi, 'Kahden kansalliskielen järjestelmä: tausta ja rakenteet', pp. 332-345 in *Oikeus* 2014(43):3. For other classifications, see Amy H. Liu, *Standardizing Diversity: The Political Economy of Language Regimes*. Philadelphia: University of Pennsylvania Press, 2015, pp. 22-48, who focuses, from an economic-political perspective, on language(s) of public education, and distinguishes between four types of languages regimes from the point of view of policy, at 48: 'One concentrates linguistic power in the mother tongue of the politically dominant; another shares linguistic power across multiple mother tongues; the third neutralizes linguistic power with the use of a lingua franca; and the fourth is a hybrid that recognizes a lingua franca and some set of mother tongues.' The Finnish linguistic system is probably best placed in the second category alongside Canada and Switzerland. See also José-María Arraiza, *Making Home Rules for Mother Tongues*. Åbo: Åbo Akademi University, 2015 (at http://bibbild.abo.fi/ediss/2015/arraiza_jose.pdf), where the Finnish system is placed in comparative frames from a public law point of view.

4 This, in fact, is an observation that could (and should) be taken into consideration when states in category I are reviewed before international treaty bodies such as the Advisory Committee on the Framework Convention on National Minorities or the Committee of Experts on the European Charter for Regional or Minority Languages about the performance of these states in relation to the minority or language provisions in the conventions. The national or official languages should actually be counted together to constitute 'the majority' in relation to the true minority languages. For instance, in Finland this would mean that the application of language law in

I. examples are: Finland, Switzerland, Canada, Ireland, Belgium, Singapore, South Africa, Bolivia.
II. examples are: Slovenia, Romania, Sweden (since 2009), Hungary (possible transfer to category III in the future?).
III. examples are: France, Greece, (Sweden pre-2009), Turkey (except so-called treaty minorities).

Table 1 Categorisation of states according to recognition of national or official languages and minority languages.

It is of course possible that a state does not make any mention at all of language in its constitution or its legislation in a manner that would make it possible to fit it directly into any of the three categories above. In such a situation, the language of the majority is often understood as being the default language of law-making, public administration and courts, which may indicate the position of the state either in category II or in category III.

With category I defined in the above manner, it becomes clear that the proper basis for comparison between a country in category I with other countries is, indeed, with countries in category I. From a methodological point of view, this group of countries becomes a natural basis for comparison, because the legal issues that they will have to try to address are similar. For instance in Finland, the equality of the national languages leads to the creation of two linguistic groups with equal linguistic rights, whereby it becomes problematic from a constitutional point of view to refer to the Swedish-speaking population as a linguistic minority. Against this background, it would not necessarily be very fruitful to compare a country from category I with countries in categories II or III. This can, of course, be done, but a comparison between countries in, for instance, categories I and II, would be likely to reveal a wealth of regulation and praxis in the category I country, whereas a category II country would normally not come anywhere near the country in category I in terms of linguistic provisions and the application of such provisions.

2 Building of constitutional consensus around the regulation of languages

2.1 History of language regulation

The western part of the area that is currently part of the Republic of Finland has been integrated with parts of what became the Kingdom of Sweden since early times. The gradual expansion of Swedish power also meant that the Swedish language came to dominate law-making, central administration and higher-court procedures, at least after Latin was set aside as a consequence of the reformation during the 16th century. However, in the area of present-day Finland, there appears to have also been some space for the use of Finnish at the local level both in public administration and in courts of law (although judgements were written in Swedish). This was the case to such an extent that a practical consideration in recruitment was whether the person was able to function in both Swedish and Finnish. In addition, a proportion of the population of the area of present-day Finland were Swedish speaking. The 1734 Code of Laws, ratified by the King in 1736, was translated into Finnish and finally also published in Finnish in 1759 (although the legally binding version was the one in Swedish). From 1743 onwards, the values of banknotes were expressed in writing in both Swedish and Finnish. Around the mid-1760s in the Diet (assembly) of Sweden, representatives of the constituencies of landed peasants from the area of present-day Finland requested and were granted a translator/interpreter to facilitate their legislative work.[5] Therefore, although the Kingdom of Sweden was unilingually Swedish by default, the use of the Finnish language was not blocked entirely.

After the separation of Finland from the Kingdom of Sweden in 1808-1809, Finland was made a Grand Duchy within the Russian Empire. At that point, the constitution and laws of Sweden were carried over to the Finnish jurisdiction, and the administration and courts continued to function more or less in the same way as previously, which meant that the dominant language was Swedish. The future leaders of the autonomous Finland often studied in Germany and picked up national romantic ideas. It was essential for the development

relation to Finnish and Swedish would constitute 'the majority', while the other languages, such as the three Sami languages, sign language, etc., would be true minority languages. In fact, for the purposes of the European Charter, Finland has identified Swedish as a lesser used official language (but at the same time made exceptionally broad commitments to the various provisions of the charter).

5 See Nils Erik Villstrand, *Riksdelen – stormakt och riksspräng̈ning 1560-1812*. Helsingfors: Svenska litteratursällskapet, 2009, pp. 177-189.

and strengthening of the Finnish language that from the mid-1860s, the language was appreciated and attempts to develop it into a useful language of *Bildung* and thus of administration and judiciary were undertaken. The national romanticism that started in the area of present-day Finland, forming the mystical people that some 200 years later can be recognised as Finns, was actually a project that transgressed linguistic barriers and that was initiated by Swedish-speaking Finns. Both Finnish and Swedish were, in 1863, designated by imperial decree as the official languages of the autonomous Finland to be used in the administration and in courts (with an implementation period of 20 years; a general rule of bilingualism was introduced only in 1902);[6] this move was motivated by recognition of the fact that in Finland there existed two linguistic groups. The adoption of bilingualism as the form for the new regulatory framework based on language was thus born and, for instance, the legislation enacted by the Finnish Diet (or Parliament after 1907) was published in both languages from the 1860s onwards. However, the process was by no means without complications, and contained almost from the beginning a seed of conflict between the two languages, something that became very visible during the 1930s, when nationalists of the extreme right advocated the abolishment of bilingualism. However, the system survived the challenge of the nationalists.[7]

By the advent of the independence of Finland in 1917, bilingualism already had a relatively long tradition behind it. Therefore, it was unsurprising that the Declaration of Independence of Finland was issued both in Finnish and in Swedish. When the new constitution of the independent Finland was being enacted in 1918-1919, Finnish and Swedish were identified as national languages in Section 14 of the Form of Government (Constitution) Act (94/1919; hereinafter: the FoGC Act). This meant that Finns would be governed in both Finnish and Swedish: the acts of parliament would, as specified in the parliament (Constitution) Act (26/1906, replaced by 7/1928), be enacted in both languages and they would be applied by administrative authorities and courts of law in both languages. The 1922 Language Act (148/1922) implemented the provision in the FoGC Act in a symmetrical and at the same time an asymmetrical manner: everyone was granted the right to decisions of public authorities and courts in his or her mother tongue, Finnish or Swedish. However, this existed in a regionally weighted way so that in areas that were entirely Finnish-speaking, a Swedish speaker could get only some services in Swedish in the form of translations, and in areas that were entirely Swedish-speaking, Finnish was only available in the form of translations. Bilingual authorities would, of course, function in both languages. This meant that the Finnish system of linguistic rights was, from early on, based on a combination of the individuality principle and the territoriality principle that introduced a gradation of municipalities into Finnish-speaking or Swedish-speaking municipalities, or municipalities that were bilingual with either Finnish or Swedish as the language of the majority.

By the time of Finnish independence and soon thereafter, the idea of self-determination was in vogue, both in politics and in law. In the peace negotiations following World War I, the use of the principle of self-determination was limited to those states that had been parties to the war (and in particular to the states on the losing side). Finland was not counted amongst states that had been parties to the war and, partly for that reason, the principle of self-determination was not applied to the attempts of the population of the Åland Islands to secede from Finland and join Sweden.[8] However, if self-determination had been applied in the Åland Islands case and if the inhabitants of the Åland Islands had been granted their wish to secede from Finland and join Sweden, for instance on the basis of a referendum, it is somewhat likely that the same principle would have been applied to the Swedish speakers in mainland Finland. Speculatively, as a possible consequence, a series of referendums in areas that were not entirely Finnish- or Swedish-speaking could have been organised in order to determine the new border between the two states.[9] A border drawn on the

6 Hans Kejserliga Majestäts Nådiga Förordning angående finska tungomålets lika berättigande med swenska språket uti allt sådant som omedelbarligen berörer den egentligen finska befolkningen i landet (26/1863). For an historical exposé, see *Uusi kielilaki*. Kielilakikomitean mietintö 2001:3. Helsinki: Valtioneuvosto, 2001, pp. 25-32.

7 In the 1930s, the only results the nationalists achieved in this respect were the lifting of the permanent designation of bilingual status for three cities, Helsinki/Helsingfors, Turku/Åbo, and Vaasa/Vasa, which today are still bilingual cities under the regular rules of the Language Act, and the linguistic transformation or 'Fennomanisation' of the University of Helsinki into a more Finnish-speaking direction by establishing that Finnish would be the main language of instruction and that some 27 professorial chairs would be reserved for Swedish-speaking instruction, the number being currently 28 chairs on the basis of Section 74(1) of the Universities Act (558/2009), not counting the professors of the Swedish School of Social and Local Government Affairs, which is a unilingual Swedish-speaking part of the University of Helsinki.

8 Markku Suksi, *Sub-State Governance through Territorial Autonomy*. Heidelberg: Springer, 2011, p. 144.

9 For an account of territorial referendums after World War I in, *inter alia*, Schleswig, Sopron and Klagenfurt, see Markku Suksi,

basis of linguistic criteria would have reconstructed the territory making it look very different on the map in comparison to the current borders. Of course, the relationship between the historical Kingdom of Sweden and the areas in current Finland was never of a colonial nature, so the colonial argument as a part of the principle of self-determination is also not applicable in this context.[10]

When the status of Finland was re-formulated in 1917, as an independent state, and when the FoGC Act was enacted in 1919, Finland was not defined as a unilingual state but as a bilingual state. Finland had been bilingual in terms of local government since the end of the 19th century and in terms of the central government and courts of law, and in terms of the parliament, since 1902 and 1907 respectively. Therefore, when the declaration of independence was issued in 1917, official bilingualism was already practiced. This is also the reason that the declaration of independence was given to the entire population in two languages, Finnish and Swedish. The bilingualism in 1917 gave expression to continuity concerning bilingualism, a continuity that was recorded in the 1919 FoGC Act. At that point, the level of legislative regulation of bilingualism was elevated from ordinary laws and decrees to the level of the Constitution. At that juncture, Finland chose a different principle for the organisation of the state than almost every other state that was born in the aftermath of World War I, which implemented the principle of 'one people, one state, one language'. In Finland, the organisational principle that was adopted was 'one people, one state, two languages'. The inclusion of the principle of 'one people, one state, two languages' in the Constitution was by no means uncontroversial or without complications, and in the parliament the proposal to include such a provision in the Constitution was supported by 106 votes out of 200 (Social Democrats and Swedish-Speakers' Party), while 86 votes (Agrarians and Conservatives) voted against it.[11] Eventually, Section 14 of the FoGC Act was passed as a part of the entire FoGC Act of 1919 by a qualified majority of two-thirds, that is, according to the constitution-making and constitution-amending formula, with 162 MPs voting for the FoGC Act and 33 against it.[12] There was thus a broad consensus for the overall solution. This was the case despite the bilingual declaration of independence having made reference to impending famine and unemployment and even though a civil war broke out in early 1918 between the Reds and the Whites: a system with two national languages was considered possible even under the austere and conflictual conditions of the time. Famine and unemployment as well as the consequences of the civil war threatened Finnish and Swedish speakers in an equal manner. In the same context, a linguistic organisation principle was included in Section 50(3) of the FoGC Act, according to which it should be taken into account, whenever jurisdictional borders of administrative districts are re-arranged, that districts shall be, if circumstances permit, unilingual, Finnish- or Swedish-speaking, or that the minority with the other language in such districts are as small as possible. In addition, Section 75(2) of the FoGC Act established the rule that a conscript, unless he himself does not wish another arrangement shall, as far as is possible, be placed in a unit which has the same language as the mother tongue of the conscript. This meant that the defence forces were linguistically organised and that the instruction was given in one of the two languages, although the language of command of troops was and still is Finnish.

2.2 Relevance of language rules for membership of the League of Nations

The emphasis on the continuity of the Finnish state structures from the era of autonomy and the continuity of bilingualism played an interesting part in the process that made Finland a member of the international community. After independence, Finland had an obvious interest in creating relationships with other states and inter-governmental organisations. The independence of Finland was relatively soon recognised by a number of states, and even Sweden does not seem to have imposed any conditions upon the recognition of Finland in 1918, such as conditions related to guarantees for the position of the Swedish-speaking population. It appears as if Sweden was not very interested in Swedish-speaking people living outside its borders and did not consider itself, then or later, as a kin-state with the task of protecting the position of individuals that

Bringing in the People – A Comparison of Constitutional Forms and Practices of the Referendum. Dordrecht: Martinus Nijhoff Publishers, 1993, pp. 242-245.

10 Suksi 2014, p. 335.

11 Riksdagen 1919 – Protokoll i sammandrag. Helsingfors: Riksdagen, 1921, pp. 102-103, 136-137. See also Fred Karlsson, 'E.N. Setälä kielipoliitikkona', pp. 281-291 in *Virittäjä* 2/2014.

12 Prior to the final vote, the enactment of the FoGC was declared urgent on the basis of Section 60 of the 1906 Parliament (Constitution) Act by 163 votes to 33.

speak the same language but reside in and are citizens of another state. Sweden was however interested in the Åland Islands, probably mainly for military reasons. The League of Nations was, however, cautious in relation to the newly independent states, such as Finland (which became a member in December 1920), the Baltic states, Albania, and the Caucasus states. Except for Finland, all of these new states had chosen as their principle of organisation the idea of 'one people, one state, one language'. In the beginning, the League of Nations was of the opinion that Finland, with its independence from 1917, was a new state and that Finland for this reason belonged to the same group of states as the other newly independent states. Therefore, the point of departure of the League of Nations was that Finland, in line with the other newly independent states, should conclude, under the auspices of the League of Nations, a so-called minority treaty with any such state that had a same-language population as a minority within the territory of Finland, or give another kind of commitment concerning minorities.[13]

In the case of Finland, such a minority treaty would have been concluded with at least Sweden and the content of such a treaty would have been the upholding of complete equality between people who belong to the majority and minority populations. The treaty between Finland and Sweden would only have concerned Finland and dealt with the Swedish-speaking minority in Finland, not the Finnish-speaking minority in Sweden. The treaty would therefore have been one-sided and it would have strained the sovereignty of Finland at least to some extent. In addition, such a minority treaty would have resulted in supervision measures on the part of the League of Nations and also in the possibility that claims about the correct implementation of the treaty could have been brought to the Permanent Court of International Justice for adjudication.

Drawing speculative conclusions on the basis of other states that became independent during this period of time, the political consequences of a minority treaty of this kind would have been such that the domestic linguistic minority would have been treated with suspicion concerning its political ambitions. The linguistic minority could perhaps have been suspected of using its position in order to effectuate secession and to join the kin-state designated in the treaty. In addition, many national disasters and calamities could have been blamed on the minority. Such a minority could even have been suspected of being a fifth column of some sort with the task of assisting the kin-state in a pending occupation of their state of residence. The implementation of a strong and ideologically motivated idea of a nation state could have brought Finland towards authoritarian rule and potentially closer to Germany than was the case during the first part of the 1940s. The other states that emerged as independent in the aftermath of World War I, such as the Baltic states, embarked on a road towards authoritarianism and totalitarianism as early as during the 1920s and in any case before the end of the 1930s.

At this juncture, Finland was unwilling to identify itself with the Baltic states, Albania and the Caucasus states. Instead, the Government of Finland argued through its diplomats to create an international understanding of Finland as a specific case, a state structure that had already existed during the 19th century. Diplomats from several states active in the League of Nations, such as Great Britain's ambassador, Cecil, were strongly of the opinion that Finland should be referred to the group of other new states and that Finland should be placed under the requirement of conclusion of a minority treaty. However, the ambassador of Finland, Mr Enckell, argued strongly against this generalising view and explained that Finland should be understood as an old state that had functioned from the 19th century onwards and that for this reason it should be counted amongst the other old and established member states and civilised nations. In other words, Finland wanted to dissociate itself from the group of states that was its 'formal' reference group in world politics after World War I, that is, the other new states. For that reason Finland wanted to emphasise the continuity of the state of Finland from the 19th century so that Finland could be regarded as an existing state at a point of time when other old and established states interacted with each other in international matters. The diplomatic endeavours of Finland were successful and, in July 1921,[14] the League of Nations refrained from requiring

13 See Carl Enckell, 'Minoritetstraktaterna', pp. 239-263 in Carl Enckell, *Politiska minnen II*. Söderström & Co. Förlagsaktiebolag, Helsingfors 1956.

14 In terms of time, the issue concerning the minority treaty was resolved for Finland more or less parallel to the Åland Islands issue, which led on 24 and 27 June 1921 to the adoption of the so-called Åland Islands Settlement before the Council of the League of Nations in which Finland and Sweden agreed that the Åland Islands should belong to Finland, but that the 1920 Self-Government Act for the Åland Islands (124/1920) would be complemented by some specific nationality guarantees for the preservation of the Swedish language, culture and local traditions of the Åland Islands.

the conclusion of a minority treaty by Finland.[15] In contrast to other newly independent states, Finland was at that point regarded as an old state.

The League of Nations was particularly impressed by the minority legislation, of which a part was already in effect during the period before independence and a part had been enacted by the parliament after independence. The greatest impression was perhaps made by the provision in the 1919 FoGC Act which designated Finnish and Swedish as the national languages of Finland. The League of Nations concluded that the position of minorities was arranged in Finland in the best possible manner and that the requirement of conclusion of a minority treaty could not improve the protection of minorities any further.[16] Finland chose freely to be bilingual and to continue to be so, without any external obligation created by the League of Nations or a minority treaty. It is, of course, debatable to what extent the provisions in the FoGC Act with reference to national languages were enacted in July 1919 in order to appease the secessionist Swedish speakers, in particular the inhabitants of the Åland Islands, or in anticipation of possible reactions at the international level. The League of Nations, however, did not even exist when the FoGC Act was enacted by the parliament of Finland, and when the parliamentary debates took place, even the Covenant of the League of Nations had not been concluded.

The argumentation of the government of Finland is based, at least in part, on the debate that took place during the 19th century over the constitutional position of Finland as a part of Russia.[17] At the Diet of Porvoo/Borgå in 1809, the Emperor of Russia, Tsar Alexander I issued a declaration on the basis of which it could be said that Finland had been elevated to a nation among nations, albeit as an autonomous part of Russia. After this event, Finland had a legal order of its own, a citizenship of its own, and an internal border towards the rest of Russia. The existence of a Finnish social order and jurisdiction could therefore be located in the period of autonomy, where the first structures of a domestic administration emerged during the 1810s. This constituted the starting point from which the 'state' of Finland started to construct, as an entity incorporated under public law, the continuity of its own existence until the era of independence, when it achieved this position as a subject of international law. Thus, it can be argued that its continuity as a state was not in fact broken in 1917 when Finland became independent from Russia,[18] but its form was changed when Finland moved from being an autonomous grand duchy into an independent state. This continuity and transformation convinced the League of Nations, which eventually conceded to the idea that Finland was, in 1921, an 'old' and already established state, not a new state that might be unstable and the activities of which the League of Nations should have regulated by requiring the conclusion of a minority treaty. Against this background, it could be possible to conclude that Finland had become a full member of the international community on the basis of an interpretation (which could even be accorded legal relevance) that emphasises continuity in the state structure and in the maintenance of a system of two national languages. In 1921, Finland was considered a 'state among states' and a 'nation among nations', largely because it had organised the position of its minorities in the best possible way.

2.3 The constitutional continuity of the system with two national languages

The recognition of Finland's position as an old state and nation soon after independence was very much based on Section 14 of the 1919 FoGC Act. The provision contained (in its original form until 1995) a general principle about two national languages, Finnish and Swedish, and in addition a provision that Finns speaking either of the two languages are entitled to use their mother tongue before courts of law and administrative authorities and to receive their judgments and decisions in their own language, either in Finnish or Swedish. On the basis of the principle of two national languages, a linguistic system was created which functions

15 See generally Enckell 1956, *passim*.

16 See *Protection of Minorities in Finland*. League of Nations Doc. A. 177. 1921. 1[B] (C.362), Geneva 2.10.1921. See also the letters of the Finnish ambassador in the matter Protection of Minorities in Finland. League of Nations Doc. C. 222. M. 161. 1921. I. Geneva, 7.7.1921. For the League of Nations, the issue was not only the linguistic circumstances of the country, but in part also the freedom of religion of religious communities and of persons of other religions than the established ones.

17 For an account of the debate, see Antero Jyränki, *Lakien laki*. Helsinki: Lakimiesliiton kustannus, 1989, pp. 413-418, and Osmo Jussila, *Suomen historian suuret myytit*. Helsinki: WSOY, 2007, pp. 230-243, who demolishes the myth that an act of union had been established at the Diet of Porvoo/Borgå in 1809 in such a manner that it would have created an obligation on the part of the Emperor of Russia.

18 However, views concerning a breach of continuity have been forwarded, e.g. by Jyränki 1989, pp. 472, 486.

neutrally and – with some exceptions – symmetrically within the courts and administrative authorities. The system of public authorities is constructed so that it is capable of producing decisions and documents in both languages.

When Section 14 of the FoGC Act was enacted, a conscious decision of a fundamental nature was made as to what kind of a social order would be maintained, a principled choice between the pure principle of nation state ('one people, one state, one language') and a strongly modified version of that principle ('one people, one state, two languages'). As a decision of a fundamental nature, it is comparable to elements of a social contract and is of equal importance with other fundamental decisions in the constitutional fabric of Finland. Decisions such as the choice, in 1906, between a directly elected parliament and indirect representation through estates; the choice, in 1917, between the independence of Finland and continued autonomy within Russia (the Soviet Union); and the choice, in 1918, between a republican and monarchical constitution. It appears that Finland modified the Swiss cantonal model when creating the current linguistic set-up of the country as one based on municipalities. The original intent may have been that self-government of a higher order would have been implemented in Finland by means of linguistically defined cantons, in which case Finland would have been divided into unilingual cantons, either Finnish-speaking or Swedish-speaking, or bilingual cantons. Because self-government of a higher order was never implemented in Finland as a system covering the entire country,[19] except for a particular system concerning the Åland Islands,[20] the Swiss model was implemented at the level of local government, where the municipalities were divided into Finnish-speaking and Swedish-speaking municipalities and bilingual municipalities where the language of the majority is either Finnish or Swedish. Because municipalities are the basic units of public administration in Finland, administrative and judicial jurisdictions of the state are in principle created on the basis of municipalities.

The provision in the 1919 FoGC Act concerning the two national languages more or less consolidated at the constitutional level the system that had been in use for Finnish and Swedish towards the end of the era of autonomy. The 1922 Language Act specified the implementation of the constitutional provision, for instance, by establishing that the organisation of the courts and the public administration was not obliged to function in the two languages over the entire country. In unilingual areas, it was sufficient for the organisations to function in one of the languages and to issue decisions in the other national language by way of translations, if need be. The 1995 reform of constitutional rights had no intention to amend, for instance, the content of the constitutional provision concerning national languages and linguistic rights. Moreover, the constitutional reform of the year 2000 had no intention to change anything in that respect, but carried over the content of Section 14 concerning the national languages, to Section 17 of the Constitution of the year 2000. Hence, in principle, there was a large measure of continuity at the constitutional level concerning the system of national languages through the constitutional reforms of 1995 and 2000.[21] There was, however, one element in the original arrangement from 1919 that was not carried over to the new Constitution in 2000, namely the provision in Section 75(2) of the FoGC Act on the right to carry out military service in one's own language. The provision was instead placed at the level of ordinary law, now found in Section 55 of the Conscription Act (1438/2007), with a corresponding provision in Section 152 of the Non-Military Service Act (1446/2007), which regulates so-called alternative service.

The provision concerning national languages in Section 14 of the 1919 FoGC Act was not born out of the one-dimensional and ideological point of departure of nationalism, but out of the linguistic practices that had emerged towards the end of the era of autonomy. The provision of the 1919 FoGC Act was carried over, via the 1995 reform of fundamental rights, almost in its original form to the Constitution of the year 2000. One

19 At the moment, a radical overhaul of the Finnish administration of health care and social care is underway, and a likely scenario is that regions with directly elected popular assemblies are established to take care of these municipal tasks. The Constitutional Law Committee in Opinion No. 63/2016 made it possible for the Parliament to place the more demanding segments of special health care in a unilingual Finnish-speaking municipal association, including for Swedish speakers in a neighbouring bilingual municipal association, under the assumption that it would not be legally necessary to always choose the alternative that is best in catering for the linguistic rights of the two language groups. It remains to be seen how this will alter the interpretation established in Opinion No. 21/2009.

20 See Suksi 2011, pp. 144-146.

21 For an analysis of language legislation in Finland until the end of the 1990s, that is, until a point of time when the new Constitution had not yet entered into force, see Kenneth D. McRae (with the assistance of Mika Helander and Sari Luoma), *Conflict and Compromise in Multilingual Societies – Finland*. Helsinki & Waterloo, Ont.: The Finnish Academy of Science and Letters & Wilfrid Laurier University Press, 1999, pp. 219-330.

reason for this is that the system of bilingualism is reasonable and historically viable: the Finnish speakers are governed in Finnish and the Swedish speakers in Swedish on the basis of legislation which has the same material content. Another reason may relate to factual circumstances. During the 1920s, the number of Swedish speakers was just over 300,000 individuals (12%) and currently they are somewhat below 300,000 individuals (5.4%). It is very likely that they will amount to around 300,000 also over the next 100 years. Those social and governmental needs that the Swedish speakers have in 2017 are more or less at the same level as around 100 years ago, and those needs are very likely to remain at the same level in the future.

The Finnish-speaking Finns can rely on receiving their public services entirely in the Finnish language, but Swedish-speaking Finns cannot, because their Swedish-language services are more frequently deficient. This state of things is not in compliance with the requirement of equality that the legislation and society of Finland is based on. Although the proportional of Finnish speakers has increased and the proportion of Swedish speakers has decreased in a corresponding manner (12%, 10%, 8%, 6%), the need for linguistic symmetry in the provision of public services has not disappeared. In fact, this proportional change of the Swedish-speaking population at the national level has a link to the proportional shares of the municipalities becoming unilingual.[22] The change has been reflected over several decades in the Language Act so that the national share of the Swedish-speaking population has been reflected in the percentage threshold that determines the change of a bilingual municipality into a unilingual one, on the basis of Section 5(2) of the Language Act. Hence, when the minority population in a municipality becomes less than 6% or less than 3,000 persons, the municipality becomes unilingual and is no longer under the obligation to provide most of the linguistic services established on the basis of the Language Act.

Because of the constitutional status of the Swedish language (category I), the position of Swedish in Finland is different to the position of a minority language in a pure nation state (category II or category III): Swedish is not, under the Constitution of Finland, a minority language and the Swedish speakers are not a minority group. In principle, both national languages are treated equally by the legal order of Finland and neither is favoured, both languages are 'implemented' on the basis of the law in the same way and symmetrically. It may be, from the point of view of current international law, that the Swedish-speaking population is a minority, but not according to the Constitution of Finland. Section 17 of the Constitution is not, however, limited to national languages only; in Sub-Section 3 it also recognises other linguistic groups, more specifically linguistic minorities, that is, the Sami, the Roma and those who use sign language. The provision in Section 17(3) of the Constitution of Finland concerning minority languages is open-ended in a manner that may, in the future, also open up a space for new linguistic minorities and their linguistic and cultural needs.

3 Political and legal content of the status as national language

3.1 Language of legislation

From the point of view of the separation of powers, the principle of two national languages in Section 17(1) of the Constitution of Finland has two sets of implications, one for the exercise of legislative powers and another for the exercise of executive and judicial powers.

The implications for the exercise of legislative powers of the principle of two national languages is visible in Section 51 of the Constitution on the use of languages in parliamentary activities, and in Section 79(4) on the language in which laws are enacted and published, both carry-overs from the previous constitutional legislation. It is, however, possible to discern certain differences in the regulation of the use of the two languages concerning the language of meetings in the parliament, on the one hand, and the language of the documentation used as the basis of meetings and publication of laws, on the other.

According to Section 51(1), 'the Finnish or Swedish languages are used in parliamentary work'. This provision concerning the language of meetings means that speeches in plenary and also in committees of the parliament can be made either in Finnish or in Swedish. Further provisions on the use of languages and interpretation are included in the Rules of Procedure of the parliament. The provisions in Section 76 of the Rules of Procedure indicate, however, that the primary working language in the plenary is Finnish.

22 See Uusi kielilaki 2001, pp. 54-55.

After a speech in Swedish in the plenary, a summary of the contents of the speech is given in Finnish. The explanation by the Speaker of the proposals made and the reasons for possible denials that the Speaker might have to issue on the basis of, for instance, unconstitutionality of a matter before the plenary shall be made both in Finnish and Swedish. The Speaker can decide that other messages from the Speaker shall also be issued in Swedish. Other expressions in the plenary made in Finnish, such as the contents of speeches made in Finnish, the proposals of the Speaker concerning the order of voting and messages issued only in Finnish are interpreted individually for those Swedish-speaking members of parliament whose proficiency in the Finnish language is not sufficient, if they so wish. Thus, it is possible to use Swedish in the plenary, but Finnish is to a great extent the working language. The committees of the parliament decide on the basis of Section 76(5) on whether interpretation is offered during meetings of committees. However, the proceedings of meetings are interpreted to individual committee members, if they so wish.

If there is a certain precedence for Finnish as the working language of the parliament, the provisions of the Constitution and the Rules of Procedure promote a greater linguistic equality. According to Section 51(2) of the Constitution, '[t]he Government and the other authorities shall submit the documents necessary for a matter to be taken up for consideration in the parliament both in Finnish and Swedish. Likewise, the parliamentary replies and communications, the reports and statements of the Committees, as well as the written proposals of the Speaker's Council, shall be written in Finnish and Swedish'. This means that the two national languages are already used at the outset of a matter in the parliament, which normally takes place by means of a government bill. However, Section 76(1) of the Rules of Procedure contains more specific rules on the language that will constitute the point of departure of the handling of the matter in the parliament, which is Finnish. A draft law is therefore dealt with in the committees and the plenary on the basis of the Finnish-language version, while the Swedish-language text is prepared by the offices of the parliament on the basis of the Finnish text. Nevertheless, the answer of the parliament, that is, the final version of the law passed by the parliament sent to the president for ratification, as well as other written documents, opinions and statements of the committees and written proposals of the Speaker's Council shall be issued in Finnish and in Swedish. In the case of problems encountered with the formulation of the Swedish version of the answer to the Government, it is the task of the Speaker's Council to resolve them.

An act that has been ratified by the president shall be published in the Statutes of Finland in both Finnish and Swedish, which is an important consequence of the principle of two national languages. The procedure explained above guarantees that the content of the laws is produced in the two languages. Thereafter, as established in Section 79(4) of the Constitution, '[a]cts are enacted and published in Finnish and Swedish'. Acts in the two languages are therefore equally authoritative for individuals, public authorities and courts of law, although the Finnish version has constituted the point of departure during the procedure in the parliament. According to Section 11 of the Act on the Statutes of Finland (188/2000), the statutes in general are published in both Finnish and Swedish, which means that not only acts of parliament, but also government decrees and possible other legislative enactments are issued in the two languages. This means that all the written norms of the legal order exist in both Finnish and Swedish.[23] The *travaux préparatoires*, that is, the government bills and the statements and opinions of the committees of the parliament, which are important as sources of law in the Finnish legal order, are issued in both Finnish and Swedish. It is therefore possible for people working in either of the two languages in public authorities and courts of law to find out what the purpose of the lawmaker was with a certain provision of the law. The status of the Swedish-language text of an act of parliament as equally authoritative as the Finnish-language text is thus supported by the existence of *travaux* in the two languages and by the existence of the secondary norms in the two languages. However, because court cases are resolved in the language in which they originated, the jurisprudence does not emerge in the two languages for each case, but only in one language for each case, either in Finnish or in Swedish. This means that another important source of law, jurisprudence, is mainly found in the Finnish language, since the cases resolved in Swedish are relatively speaking much fewer. The highest court instances, the Supreme Court for civil and criminal cases and the Supreme Administrative Court for administrative cases, nonetheless issue the case summaries of the most important cases in both languages. Furthermore, the highest guardians

23 As a legal order, Finland relies almost completely on written norms of positive law, leaving the extent of unwritten norms to a minimum.

of legality, the Chancellor of Justice and the Parliamentary Ombudsman, issue their annual reports and their opinions on the Internet in both languages.

3.2 Individual right on the basis of statutory law

The implications for the exercise of executive and judicial powers of the principle of two national languages is visible in Section 17(2) of the Constitution on the individual right to linguistic services and in Section 122(1) on the administrative divisions.

According to Section 17(2), '[t]he right of everyone to use his or her own language, either Finnish or Swedish, before courts of law and other authorities, and to receive official documents in that language, shall be guaranteed by an Act. The public authorities shall provide for the cultural and societal needs of the Finnish-speaking and Swedish-speaking populations of the country on an equal basis.' The first sentence of Section 17(2) expresses a core linguistic right for the person who in one way or another is object of measures by public authorities or courts of law or who needs to approach such organs for a decision in a matter. Everyone has, in such a situation, the right to use his or her own language, either Finnish or Swedish, and to receive the decision concerning one's right, benefit or duty in one's own language. This underlines the implications of the principle of two national languages.

However, the right to use one's own language in one's own case is not a constitutional right which is directly applicable and enforceable at the practical level, but it shall be guaranteed by an act of parliament. There is not just one specific act that guarantees the linguistic rights in Section 17(2), but several of them, although the Language Act (423/2003) is the one that lays down the basic provisions on how Section 17(2) is to be implemented. In the Language Act, various kinds of provisions are included, such as the linguistic denomination of municipalities, which can be either Finnish-speaking or Swedish-speaking or bilingual with either Finnish or Swedish as the language of the majority, depending on the number of people living in the municipality that belong to either of the two groups.[24] The regional state authorities are, on the basis of the Language Act, bilingual in areas where their jurisdictions cover municipalities that are unilingual Finnish- and Swedish-speaking or bilingual, while the central government, including the Council of State, the Ministries of the central government as well as the independent public authorities with the entire country as their jurisdiction, are bilingual in relation to the entire country.

In addition, the Language Act determines, *inter alia*, the rights of the individual in relation to public authorities, the linguistic duties of the public authorities, the court language in criminal, civil and administrative proceedings, and the manner in which entities of so-called indirect public administration should provide linguistic services. The operation of the Language Act is supported by the Act on the Knowledge of Languages Required of Personnel in Public Bodies (424/2003), which covers not only civil servants, but also regular employees, but leaves a lot of latitude to municipalities with respect to the language requirements of their civil servants and employees. In addition, the duty of the lawmaker to enact legislation for the implementation of Section 17(2) is visible in the establishment of a large number of other pieces of law, such as in Sections 30 (4), 31(1) and 90(2) of the Act on Municipalities (410/2015) concerning bilingual municipalities (see below, section 4.2). With respect to indirect public administration, there is also a requirement for the inclusion of linguistic rights in legislation that delegates the exercise of public authority to entities other than those that, formally speaking and under the Constitution, are understood as public authorities. This requirement is set out by Section 124 of the Constitution as a part of guaranteeing that constitutional rights are observed when public powers are exercised outside of the regular administrative organisations.

The Language Act introduces a combination of the so-called territorial principle and the so-called individual principle that leads to a slight deviation from the general applicability of constitutional rights over the entire country by organising the provisions of linguistic services on the basis of the linguistic denomination of municipalities. This means that bilingual municipalities where there is a Finnish- or Swedish-speaking

24 Until 2014, there remained three unilingual Swedish-speaking municipalities in mainland Finland, but they all filed a request for financial reasons with the Council of State to become 'voluntary bilingual' municipalities although the numbers of Finnish speakers did not exceed 8% or 3,000 persons, thus making them bilingual under the law. Therefore, the remaining 16 unilingual Swedish-speaking municipalities are found in the Åland Islands, where their linguistic status as unilingual municipalities follows from the Self-Government Act of Åland, not from the Language Act, which is not applied in the Åland Islands.

population exceeding 6 per cent of the entire number of inhabitants or where the absolute number of the minority population is at least 3000 persons have the duty to provide equal services in the language of the minority. This duty is replicated for state authorities and courts which include within their jurisdiction at least one municipality which has a Swedish-speaking population (which means that the central government, with jurisdiction everywhere in the country, is bilingual with a Finnish-speaking majority). Conversely, and because a large majority of the population is Finnish-speaking and because the Swedish-speaking population is found mainly on the southern, south-western and western coastal areas of Finland, municipalities in inland Finland and in the northern part of Finland are unilingual Finnish-speaking. This is also the case for those jurisdictions of the state administration and courts that do not contain any municipality where the number of Swedish speakers would turn the municipality into a bilingual one.[25] Therefore, whereas Section 17(2) appears to create a constitutional right to one of the two national languages on the basis of the individual principle, the Language Act actually introduces a territorial principle.

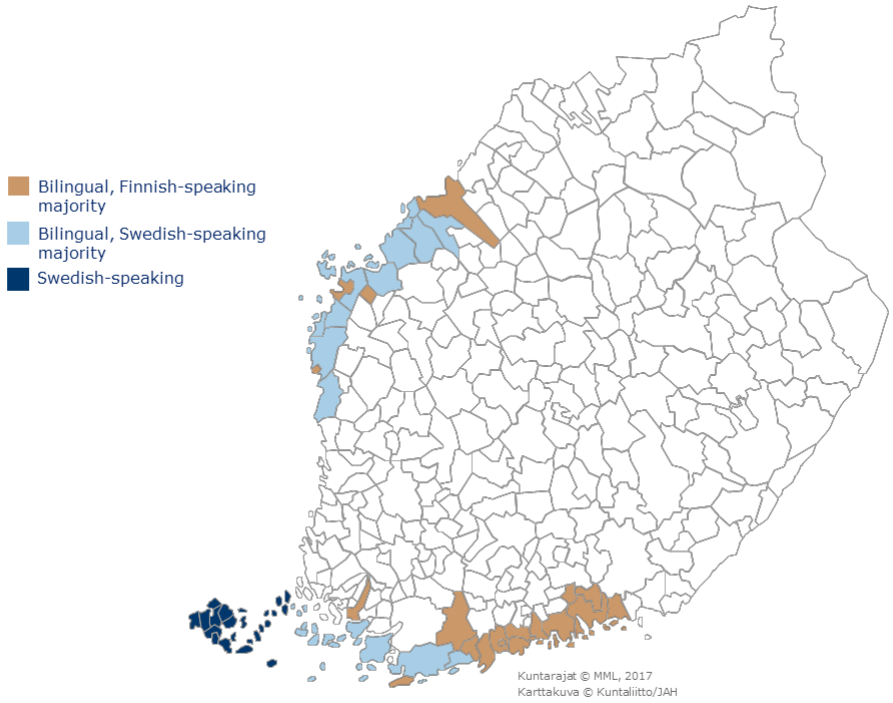

Figure 1 Map of Municipalities in Southern and Central Finland that were bilingual or Swedish-speaking in 2015
(source: National Land Survey of Finland and Association of Finnish Local and Regional Authorities)

According to the Constitutional Law Committee,[26] this kind of a territorial gradation or limitation of a constitutional right merited a study of the possibilities of removing the limitation, apparently because it was perceived as somewhat odd. The Committee came to the conclusion, however, that the proposal was not in breach of the Constitution, because the constitutional provision had been enacted with the aim of not changing the fundamentals of the system of linguistic rights in Finland.[27]

25 It is likely that close to half of the population is currently living in bilingual municipalities, situated in the coastal areas of southern and western Finland. Therefore, while the territorial principle lifts the obligation to provide services in Swedish from the main part of Finnish municipalities, which are unilingual Finnish-speaking and geographically located in inland Finland, the territorial principle concentrates the provision of equal linguistic services at the local government level in Finnish and Swedish to the municipalities of the coastal areas and to the municipal associations covering these coastal areas and often also many unilingual Finnish-speaking municipalities of inland Finland. There, the individual principle should apply whenever municipalities are in charge of the provision of public services.

26 Under Section 74 of the Constitution of Finland, the Constitutional Law Committee of the Parliament of Finland, a standing committee of the Parliament composed of MPs, is the authoritative body for the interpretation of the constitutionality of draft legislation. Because there is no constitutional court in Finland and because the possibility of courts of law to declare application of law unconstitutional under Section 106 of the Constitution is relatively narrowly drawn, the *ex ante* and abstract review of constitutionality of draft legislation is the main form of constitutional review. Therefore, the opinions of the Constitutional Law Committee are of major importance for outlining the linguistic rights enshrined in the Constitution.

27 Grundlagsutskottets betänkande 9/2002 rd angående regeringens proposition med förslag till ny språklag och lagstiftning som har samband med den.

The second sentence of Section 17(2) states a duty for the public powers to cater on an equal basis for the cultural and societal needs of the Finnish- and Swedish-speaking population. Here focus is on the equality between population groups and, therefore, there is a collective dimension to the linguistic rights.[28] This is not only a matter of a formal equality *de jure* in the treatment of the two linguistic groups, but instead the provision aims at guaranteeing a *de facto* equality between the Finnish- and Swedish-speaking populations. The right to use one's own language should thus also be realised in practice. The provision influences, for instance, the provision of public service and schools and other educational circumstances and information in one's own language. One example of the impact of the provision at the level of ordinary legislation is Section 4(4) of the Basic Education Act (628/1998), according to which a municipality which has both Finnish- and Swedish-speaking inhabitants has the duty to organise basic education (grades 1-9) separately for each linguistic group.[29] A similar provision is included in Section 6 of the Act on General Upper Secondary Education (629/1998). The language of day care is established in Section 11(2) of the Act on Day Care of Children (36/1973), according to which the municipality shall make sure that day care is offered in the mother tongue of the child, when that language is Finnish, Swedish or Sami. Legislation has provided a large number of other pieces of law that enforce the equality of the national languages in different spheres of culture and social activities. The provision in the second sentence of Section 17(2) can even be used to justify so-called positive discrimination of one of the linguistic groups, provided that justifiable and objective grounds for such treatment exist.

3.3 Administrative jurisdictions for linguistic services in the two languages on the basis of linguistic impact assessment

According to Section 122(1) on administrative divisions, '[i]n the organisation of administration, the objective shall be suitable territorial divisions, so that the Finnish-speaking and Swedish-speaking populations have an opportunity to receive services in their own language on equal terms'. Again, the focus is not on the individual, but rather on the collective group, because reference is made to populations. Unlike Section 17(2), this provision on administrative or jurisdictional divisions lacks the requirement that it should be implemented by means of an act. Therefore, the provision should be implementable directly in those instances where decisions are made about the organisation of administration. In practice, the Council of State is the governmental body making such decisions by means of decrees where the regional (and also local) jurisdictions of public authorities and courts of law are established by reference to the regions (created on the basis of municipalities as the basic administrative entity in Finland) that such jurisdictions encompass, sometimes also by making reference to the municipalities that the jurisdictions encompass. Yet at the same time, the wording appears less compelling than its predecessor in Section 50(3) of the 1919 FoGC Act, because the idea of achieving unilingual administrative jurisdictions or jurisdictions where the number of persons speaking the language of the minority, either Finnish or Swedish, would be as small as possible, has been dropped. At face value, Section 122(1) is framed more as a goal-oriented provision, the exact implications of which may appear unclear.

This purportedly more general and goal-oriented nature of the provision was at least to some extent changed with the draft legislation on regional administrative authorities dealt with in 2009. It turned out that the government bill had a consequence only for the Swedish-speaking population and threatened the realisation

28 However, see Eerik Lagerspetz, 'Valtio, oikeus ja kielellinen moninaisuus', pp. 75-90 in Antero Jyränki (red.), *Oikeuden kielet – Oikeus ja oikeudellinen ajattelu monikielisessä maailmassa*. Turku: Turun yliopisto, 1999, p. 83, where he proposes that linguistic rights do not have to be based on any intrinsic value in the existence of linguistic minorities, but on the importance of the languages for the individuals who speak them, which means that the collective dimension of linguistic rights and thus also a complication disappears. Hence, Lagerspetz appears to be emphasising language as an individual right and toning down the importance of collective aspects of the right to language.

29 Since 1968, there is a requirement in force that each pupil attending comprehensive school has to learn, in addition to English as a first foreign language, also the other national language as a compulsory part of the curriculum. The reasons behind the requirement are the maintenance of the Nordic connection and to some extent also the bilingualism of Finland. The obligatory Swedish for Finnish-speaking pupils has been controversial, less so the corresponding requirement of obligatory Finnish for Swedish-speaking pupils in mainland Finland. On 24 April 2017, the Government of Finland made the decision of aiming at commencing an experiment where around 2,000 pupils could be exempted from the requirement of learning Swedish by replacing that language with some other language other than English. This move was part of the platform of the nationalistic party of the True Finns that the party, while in government, wants to promote. It remains to be seen what the impact is for the overall language curriculum in comprehensive schools, in the case that the policy is implemented after the experiment.

of their linguistic rights before the regional authorities of the state. This particularly concerned the city of Kokkola/Karleby, which is bilingual with Finnish as the language of the majority. This city is situated in the region of Central Ostrobothnia, in which it is the only bi-lingual municipality and, by tradition, the city has been oriented towards the south with the Swedish-speaking heartlands, while the other municipalities are unilingually Finnish-speaking and traditionally oriented towards the north with no Swedish-speaking areas. In the context, the Constitutional Law Committee was of the opinion that implementing provisions that would be passed on the basis of a delegation provision in an act and that concern, *inter alia*, the division of jurisdictions is affected by the linguistic provisions of the Constitution. Therefore, if there are several alternative ways of defining administratively functional jurisdictional divisions, the duty to guarantee constitutional rights[30] presupposes that the alternative which works best towards guaranteeing constitutional linguistic rights is chosen.

The Constitutional Law Committee concluded that there is a risk that the opportunities for those who belong to a linguistic minority to have access to services in their language, and also their opportunity to have influence over the regional administration in general, may be compromised, in particular if the linguistic minority becomes a very small group on the periphery. It is a problem, at least from the point of view of the Constitution, if there is only one bilingual municipality within the jurisdiction of a public authority. In such a case it is not possible in practice to guarantee the opportunities *de facto* for the linguistic minority to access services on the same grounds as the linguistic majority through creating, for example, service units for the linguistic minority, as was proposed in the bill.

The Constitutional Law Committee emphasised that when jurisdictional decisions are made, in this case by the Government through decrees, the decision-making constitutes application of the law in the legal sense (apparently with a narrow margin of appreciation), which by implication does not contain any measure of political suitability or caprice, or at least such considerations should be minimised. For the decision-making by the Government, the Constitutional Law Committee opined that a linguistic impact analysis should have been made in a timely manner well before the bill was submitted to the parliament and advised that such an analysis be made also before the Government issues the relevant implementing decrees. It is notable in the context that the parliament does not, when passing legislation concerning regional or local authorities, establish the jurisdictional division between the territorial state authorities. Therefore, the interpretation of the Constitutional Law Committee was not, in this respect, directed only towards the bills that were about to be passed, but was also an *obiter dictum* of some sort directed towards the Government so that the Government would take the constitutional linguistic rights into account in the proper way when issuing the implementing decrees.[31] This, in fact, happened, because in the Governmental decree implementing the RSAA (Regional State Administrative Agencies) Act, the city of Kokkola/Karleby and the entire region of Central Ostrobothnia (including the unilingually Finnish-speaking municipalities) were joined with the RSAA of Western and Inner Finland, that is, with the Southern alternative instead of the Northern, which was the original proposal.[32]

It can be argued that the constitutional regulation concerning linguistic rights was considerably weakened with the Constitution of the year 2000 by shifting the balance between the individual principle and the territorial principle towards the former. However, the interpretation of the Constitutional Law Committee may be understood as a return to a stricter rule about linguistic rights: in comparison with earlier, relatively

30 Section 22 establishes a positive obligation on public authorities (the lawmaker, the public administration and the courts) to 'guarantee the observance of basic rights and liberties and human rights'.

31 The Chancellor of Justice, when supervising the constitutionality of the decision-making of the Government, concluded that the application of the linguistic provisions of the Constitution as outlined in the interpretation of the Constitutional Law Committee of the Parliament is legal in nature, thereby implying that the margin of appreciation of the Government is very limited and that the Government should follow the interpretation of the Constitutional Law Committee. Consequently, the region of Central Ostrobothnia was not joined with the northern alternative, the RSAA of Oulu, but with the southern alternative, the RSAA of Vaasa, because a linguistic consequence analysis showed that the RSAA of Oulu would not have been able to provide adequate linguistic services to the Swedish-speaking minority in the city of Kokkola/Karleby, while the RSAA of Vaasa was able to do so for both the Finnish speakers and the Swedish speakers.

32 The Government did not, in this context, utilise the option to separate the city of Kokkola/Karleby from the rest of the region of Central Ostrobothnia for the purposes of implementing the RSAA Act, although such an option has been outlined by the Constitutional Law Committee in the *travaux preparatoires* to the current Constitution. See Grundlagsutskottets betänkande GrUB 10/1998.

toothless reminders that linguistic rights are constitutional rights, too,[33] the current interpretation steps up the implementation requirements quite considerably. This is important with a view to the fact that a Governmental decree, such as one establishing the jurisdictions of regional state authorities, is not justiciable as such before courts of law. Complaints by individuals to the Parliamentary Ombudsman or to the Chancellor of Justice will not, consequently, be admissible before the implementation of such a decree has resulted in the violation of the rights of an individual in a concrete case.[34]

3.4 Linguistic impact assessment in local government

As established above, there exists in Finland a general principle concerning a duty to carry out linguistic impact assessments (hereinafter: LIA) in conjunction with administrative reform. This duty regarding LIA was first established by the Constitutional Law Committee of the Parliament at the point when the Act on the Regional State Administrative Agencies (896/2009) was dealt with by the parliament.[35] As explained above, the options for administrative reform are ordered so that the alternative for territorial organisation which is best from the point of view of the linguistic rights of the inhabitants must be chosen.[36] There was a subsequent referral of the specific linguistic issue to the Chancellor of Justice at the point when the Government of Finland was in the process of spelling out the contents of the implementing decree in which the jurisdictions of the regional state administrative agencies would be established. On the basis of this, it was made clear by the Chancellor that the interpretation of the Constitutional Law Committee must be followed by the Ministry of Finance and by the Council of State.[37] The drawing of the jurisdictional borders must cater for the linguistic rights of the Finnish speakers and the Swedish speakers. At this point, in the autumn of 2009, it seemed clear that the LIA was firmly established within two out of the three state powers, the legislative and the executive powers, on the basis of Sections 17 and 122 of the Constitution.

A judicial affirmation of the existence of the duty regarding LIA was produced through the Supreme Administrative Court in the case no. 2012:128 that dealt with the closing down of the child delivery clinic of Västra Nyland, operating in the town of Ekenäs/Tammisaari mainly in the Swedish language, but also able to assist in deliveries in Finnish. Ekenäs is located around 95 km to the west of Helsinki/Helsingfors, while the only remaining clinic within the Health Care District of Helsinki and Nyland (HNS, an entity organised as a statutory association of municipalities) which could guarantee child delivery services in the Swedish language on a 24/7 basis is in the town of Porvoo/Borgå. Porvoo/Borgå is to the east of Helsinki, and located some 189 km from Hanko/Hangö, a town in the western part of the same District. For economic reasons, the Board of the HNS decided, on 10 October 2009, that child delivery at the Hospital of Västra Nyland (VNS) would be discontinued from 1 June 2010 onwards, with pregnant women from the Ekenäs area being provided with the necessary services for childbirth at the other hospitals of the HNS. However, the nearest child delivery clinic is in Lohja/Lojo, which is mainly Finnish-speaking and unlikely in practice to be able to guarantee child delivery services in the Swedish language on an on-going basis, although there is certainly some capacity in this respect.

Concerning the legal process and the claims presented, in the first instance a request was made for the HNS Board to reconsider its original decision, but the original decision was not changed. After that, a large number of those involved in requesting the reconsideration filed formal complaints with the Regional Administrative Court of Helsinki (hereinafter: the Helsinki RAC) on the basis of the Act on Municipalities, which means that the grounds of the complaint are limited to legal grounds, while grounds of feasibility are excluded. The Helsinki RAC found no illegality and thus did not overturn the decision of the HNS Board, but resolved a host of procedural questions concerning the right to complain. Using the same legal remedy, several of the complainants, including private persons and private associations (NGOs) as well as municipalities that are

33 See, e.g. Opinion No. 72/2006.

34 It should be underlined that neither the Ombudsman nor the Chancellor of Justice are legal remedies proper for the purposes of revoking erroneous administrative decisions by the Government, but rather weak forms of reaction against maladministration.

35 See Opinion No. 21/2009.

36 For a guidance by the Ministry of Justice on LIA, see *Anvisning för bedömning av språkliga konsekvenser*. Justitieministeriet, Utredningar och anvisningar 46/2016. Helsingfors: Justitieministeriet, 2016. For what the LIA is and how it could be carried out in advance of administrative decision-making, see Markku Suksi, *Kielellisten vaikutusten ennakkoarviointi lainsäädännön ja hallinnon muutosten valmistelussa.* Oikeusministeriö, Selvityksiä ja ohjeita 68/2012. Helsinki: Oikeusministeriö, 2012.

37 See OKV/1370/2009.

members of the HNS municipal association, continued by filing complaints with the Supreme Administrative Court and claimed that the decision of the HNS Board must be repealed on various grounds found in a number of Acts of Parliament.[38]

There were a multitude of legal issues included in the complaints, *inter alia*, the following: Are the Swedish-speaking mothers put in a disadvantaged position in comparison with the Finnish-speaking mothers when the nearest hospital where service in Swedish could be guaranteed is in Porvoo/Borgå? Would a linguistic impact assessment have been necessary? Were the preparatory materials insufficient? Were there people in the decision-making process who could be faulted for conflict of interest? According to the Supreme Administrative Court, the Swedish-speaking mothers have not been exposed to discrimination on linguistic grounds. The decision process, furthermore, had not been faulty, the Board had not exceeded its powers, and the decision was not against the law in other respects either. The Court emphasised the fact that the HNS has the duty to fulfil the norms concerning linguistic service, including the language programme of HNS, at the hospitals within its jurisdiction. This underlines the fact that patients who belong to the linguistic minority must receive the services in their mother tongue. Therefore, the hospital in Lohja/Lojo also has the duty to organise its functions so that it can offer adequate services in the Swedish language. The Supreme Administrative Court decided to uphold the decision of the Helsinki RAC, which meant that the decision of the HNS Board was upheld.

In spite of the fact that the complainants were unsuccessful, the decision of the Supreme Administrative Court contains something of a partial victory for those who advocate a greater adherence to the linguistic rights of the inhabitants when administrative reform is contemplated. According to the Supreme Administrative Court, the Board of the HNS had a duty to carry out a linguistic impact assessment, which is a novel approach and extends the duty regarding LIA from the state administration to local government. As a matter of fact, the Court seems to have been of the opinion that there was no LIA carried out at a sufficiently concrete level. In this first case in which the duty regarding LIA was established, however, the preparation of the decision was not inadequate or inappropriate to such an extent that the procedural rules could be considered to have been violated. Now that all administrative agencies of the state and municipalities can be expected to know about the duty regarding LIA, the threshold for the adequate carrying out of LIA in an appropriate manner may be higher.

The Supreme Administrative Court makes reference to the findings of the Constitutional Law Committee of the Parliament in Opinion No. 21/2009 and of the Chancellor of Justice in the decision OKV/1370/2009 as concerns the duty regarding LIA and also makes reference to the LIA process in law-drafting as established in the guidelines of the Ministry of Justice.[39] However, the Court points out that the same requirements that are referred to in these three documents cannot be imposed upon an inquiry such as that which an administrative decision is based on and that deals with the closing down of an individual clinic at one of the hospitals of the HNS municipal association. The Court nonetheless thinks that the opinions of the Constitutional Law Committee, the Chancellor of Justice and the Ministry of Justice are grounded in the provisions of the Constitution and the Language Act, which require that the linguistic rights of both the Finnish-speaking and the Swedish-speaking populations are guaranteed. The Court then says that on these same grounds, and by taking into account Section 31 of the Administration Act (434/2003),[40] it is important to carry out an assessment during the preparation of a municipal decision that can be presumed to have or, as in the case at hand, clearly will have an impact on linguistic rights. This assessment must take into account how the decision or different alternatives to the decision can be estimated to impact on each of the linguistic groups.

38 The complaints were based on the Constitution of Finland (Sections 6, 17, 19, 22, 122), the Act on Local Government (Sections 4, 13, 14, 16, 52, 78, 81, 86, 88, 89, 90, 92, 100), the Administration Act (Sections 27, 28, 31), the Act on Specialised Care (Sections 18, 33 a, 35, as amended), the Act on the Position and Rights of the Patient (Section 3), the Language Act (Sections 2, 23, 35) and the Equality Act (Section 4) as well as the Government Decree on the Realization of the Right to Care and on Regional Co-operation (Section 7).

39 *Säädösehdotusten vaikutusten arviointi*. Uudet, yhtenäiset ohjeet. Työryhmän mietintö. Oikeusministeriön työryhmämietintöjä 2007:5. Helsinki: Oikeusministeriö, 2007.

40 In the translation into English of the Administration Act, the Act is termed the Administrative Procedure Act, and it is found in electronic form at http://www.finlex.fi/fi/laki/kaannokset/2003/en20030434.pdf (accessed on 20 January 2014). There is, however, a separate Act on legal remedies within the area of administrative law, entitled in English the Administrative Judicial Procedure Act (586/1996), found at http://www.finlex.fi/fi/laki/kaannokset/1996/en19960586.pdf (accessed on 20 January 2014).

Consequently, according to the Court, the HNS Board had a duty to assess the linguistic impact of a decision to close down the child delivery activities at the VNS when the decision was prepared. A certain measure of impact assessment was present in the preparatory documents of the Board decision, but the Court criticised a number of aspects. Among these were, the lack of inquiry into the specific willingness of the staff of the VNS to move to other delivery clinics; the lack of estimation of the impact of the closure on other branches of the VNS, in particular the pre-natal care; and the lack of evidence as to the extent to which a Swedish-speaking pregnant woman could be guaranteed service and care in her mother tongue at the other child-delivery units within the HNS municipal association (except at Porvoo/Borgå). With the exception of one customer satisfaction report, there had not been any inquiry that would have assessed the linguistic impacts at a specific level. The Court nonetheless found that the preparations for the decision had not been insufficient or misguided to such a degree that the decision of the HNS Board would have been made erroneously.

In this decision of the Supreme Administrative Court, the duty to carry out linguistic impact assessments when administrative reform is planned is connected to Section 31 of the Administration Act and to the duty of clarification. According to sub-section 1 of the Administration Act, '[a]n authority shall see to it that a matter is adequately and appropriately clarified, by obtaining the information and accounts necessary for the decision of the matter'. The provision places an active duty on an administrative authority to investigate a matter, and in combination with the provisions of the Constitution and the Language Act, the duty of clarification amounts to a duty to carry out an LIA when the population within the jurisdiction consists of speakers of Finnish and Swedish (presumably, in Lapland, this duty would involve jurisdictions with speakers of Finnish and Sami). This is an important finding for a number of reasons.

Firstly, the decision of the Supreme Administrative Court signals the fact that the duty regarding LIA is now also recognised by the judiciary, after similar recognitions by organs of the legislative and executive powers. Secondly, the decision is important because it gives a concrete legislative starting point for the realisation of linguistic rights in administrative reform by identifying Section 31 of the Administration Act as the point of departure. Because the Administration Act is a general law, Section 31 and the duty regarding LIA extends itself to all corners of administration generally, except where there is a special provision. Without this legislative starting point in Section 31 of the Administration Act, the LIA would easily be forgotten. Thirdly, the fact that the duty regarding LIA is connected to Section 31 of the Administration Act means that civil servants have a duty to comply with the requirement for an LIA and, if not, they can be held personally liable under the law for maladministration. The main forms of action in such cases against individual civil servants would be disciplinary administrative measures by superiors or referrals of the problem to the Parliamentary Ombudsman or the Chancellor of Justice (theoretically, even criminal charges and claims for damages could be possible).

Fourthly, the fact that the duty regarding LIA is connected to Section 31 of the Administration Act means that there is a legal basis for complaints to administrative courts, provided that the administrative decisions made are appealable.[41] Local government decisions would, in most cases, be appealable, but decisions by state agencies concerning administrative reform might not always be so, because there is no individual party directly affected by the decision concerning administrative reform and because the administrative reform is often done at the level of Government decrees, which are general norms and therefore not appealable. However, in such cases, the principles developed by the Constitutional Law Committee, brought into the ambit of the executive power of the state by the Chancellor of Justice would apply, at least in cases where the decisions concerning administrative reform are taken by ministries of the central government. Fifthly, the decision of the Court is important because it introduces a material threshold for the quality of the inquiry made into the linguistic impacts of the planned measure: the assessment should be adequate and appropriate. It seems on the basis of the criticism of the Court that the decision of the HNS Board did not quite reach the threshold. However, being the first case in which the LIA was connected to Section 31 of the Administration Act, the Court perhaps felt it had some latitude in granting the pass mark to the decision of the HNS Board. Nonetheless, the Court also spelled out what had not been done in terms of LIA, which means that the subsequent administrative agencies planning administrative reform should know what is expected in terms of exceeding the threshold of the LIA.

41 For such a connection between the LIA duty and Section 31 of the Administration Act, see also Markku Suksi, 'Två språk i kommunalförvaltningen – möjligheter enligt kommunallagstiftningen', *JFT* 5/2012, p. 536.

4 Projections of the official status and its ability to condition the implementation of the legal framework for languages

4.1 A combination of norms in the vertical and horizontal dimension

The system of laws concerning the two national languages is, as established above, based on Section 17 of the Constitution and contains, *inter alia*, the Language Act and more than 200 other Acts and Decrees that deal with the application of these laws in the two national languages, Finnish and Swedish. The regular content of the regulation of language in these laws is that the material provisions of the Act contain one provision that makes reference to the application of the law equally in the two languages. The structure of the system is complicated and requires an understanding of the historical and constitutional background of the system (see above). Most of these language rules operate in the vertical sphere, that is, between the public authorities and private individuals, while horizontal language rules constitute a smaller category and are not featured in pieces of legislation adopted by the Parliament of Finland as often as language rules for the vertical dimension.

Although most of the norms deal with the vertical dimension, a lesser part of the norms, perhaps in the order of 15-20%, are nonetheless relevant for the horizontal dimension, regulating language use in the private sphere. In most cases, the norms deal with product information (product safety, information about ingredients, etc.) or similar matters that the consumer has to be informed about, mainly in both languages. In some pieces of legislation, the use of language is specified as being either Finnish or Swedish. One example of how horizontal language rules are formulated in legislation is the Decree of the Ministry of Justice on Information concerning Life Insurance (177/2011), according to which the information from the insurer to the insured must be clear and easily understandable and written either in Finnish or Swedish according to the personal choice of the insured.[42] Without aspiring to be comprehensive, it would seem on the basis of a sketchy compilation of norms that provide for the use of Finnish and Swedish in the horizontal dimension[43] that the norms have been on the increase during the past decade or two. While this could be a consequence of the increased focus on constitutional rights, such an empirical conclusion should not be drawn lightly, because horizontal language norms have also existed earlier and could also be a result of EU law, which on occasion requires that national rules are implemented and published in the official languages of the Member States. In addition, some horizontal norms may have disappeared. One example is the provision in the Act on Cooperation in Business Corporations (725/1978), to which Section 11(6) was added in 1993 with the requirement that in bilingual municipalities, the employer is under the obligation to inform the employees in both languages of the country, that is, in Finnish and Swedish, about any important events (mergers, cuts, etc.) taking place in the company, provided that the number of employees who constitute the minority is at least ten and at the same time more than ten per cent of the staff. This provision disappeared for no particular reason when the new Act on Co-operation within Undertakings (334/2007) was enacted and therefore does not exist anymore. It seems that the Constitutional Law Committee of the Parliament of Finland, which is the authoritative interpreter of constitutional rules in Finland, was not asked to express its opinion on the Bill and thus to judge the effect of the abolition of the provision from 1993 in the context of Section 17 of the Constitution.

In addition to the more than 200 norms mentioned above, there is the general Language Act (423/2003) that implements the provisions of Section 17 of the Constitution in mainland Finland (for the Åland Islands, see below, section 4 of this article). The Language Act mainly focuses on the vertical dimension of language use, but Section 24 on linguistic services of a public enterprise and of a company owned by the state or a municipality may also have a bearing on the area of horizontal relationships. According to Section 24(1), a public enterprise or a service-producing company in which the State or one or more bilingual municipalities,

42 1 § on the duty to impart information on life insurance: 'In addition to what is prescribed in Section 5-8 in the Act on Insurance Agreements (543/1994), the insurer shall impart in writing such information to the insured that is specified in this Decree. The information shall be clear and understandable and written in Finnish or Swedish according to the own choice of the insured. On the request of the insured, the information may be imparted also in some other language.' (translation by MS)

43 Examples include, Act on the Implementation of the Council Regulation on Maintenance Obligations (1077/2010), Act on Products and Equipment for Health Care (629/2010), Act on Payment Services (290/2010), Act on Insurance Companies (521/2008), Decree of the Ministry of Justice on Information about Life Insurance (177/2011), the Fodder Act (86/2008), Act on Financial Institutes (121/2007), etc.

or municipalities using different languages, exert authority shall provide services and information in Finnish and Swedish to the extent and manner required by the nature of the activity and its substantive connections and which in view of the totality cannot be deemed unreasonable from the point of view of the company. As can be seen, the provision is very conditional and does not place any firm obligations on publicly owned companies. However, Sub-section (2) may give some clout to the public owner in the area of public enterprises and companies, because the provision states that they shall comply with what is provided separately on the linguistic services that are to be given in their activity. The owner may therefore establish, and perhaps even should establish, norms in relation to the publicly owned company concerning how that company should deal with the (national) languages in their relationships with customers. There is also a provision in Section 34 of the Language Act on product information in relation to consumer goods, according to which the text on a product to be sold in a unilingual municipality shall be at least in the language of that municipality, and the text on a product to be sold in a bilingual municipality shall be at least in Finnish and Swedish, provided that the law requires the product being sold to be labelled, in accordance with commercial practice, with a name, a description of the product, instructions or warnings. In providing such information, Finnish and Swedish shall be treated on an equal basis.

The Constitution of Finland explicitly deals with a problematic area of language use in the vertical and horizontal sphere, recognising that there are areas where 'privatisation' of public authority and public tasks might dilute the linguistic protection afforded under Section 17 of the Constitution. For that reason, Section 124 of the Constitution, on the delegation of administrative tasks to parties other than the authorities, provides that a public administrative task may be delegated to parties other than public authorities only by an Act or by virtue of an Act, if this is necessary for the appropriate performance of the task and if basic rights and liberties, legal remedies and other requirements of good government are not endangered. The endangerment of basic rights would also cover linguistic rights guaranteed in Section 17 of the Constitution, so the Constitutional Law Committee is placed in a position to oversee how the linguistic rights are observed when governmental drafts are turned into Acts of Parliament. This has taken place several times during the past ten years, for instance, in the Opinion of the Committee concerning the Bill (215/2000) on export guarantees of the state (Opinion No. 2/2001), which emphasised that in addition to other administrative legislation of a general nature, rules about language use by public authorities should also be applied by the semi-public agency in charge of the export guarantees. Therefore, the Bill had to be complemented with, *inter alia*, linguistic provisions before the Act could be passed by a simple majority (otherwise, the qualified majority of two-thirds would have been required). However, under Section 124 of the Constitution, a task involving significant exercise of public powers can only be delegated to public authorities and cannot be given as a task to private or semi-public entities.

In the same vein, the three rules in Section 25 of the Language Act on the obligation of a private entity (that could also be an individual) to provide linguistic services makes this more specific. Firstly, if a public administrative task has been assigned by or under law to a private entity, the provisions of the Language Act on a public authority also apply to the said private entity in attending to this task. Hence statutory delegation of public authority to entities outside of the public authorities should always mean that the linguistic rules become applicable to the exercise of the public task. Secondly, if the recipient of the task is selected on the basis of a decision or other action of an authority or on the basis of an agreement between an authority and the recipient, the authority shall ensure that linguistic services are provided in accordance with the Language Act in the performance of the task. This means that delegation of tasks to entities outside of the public administration by administrative decisions of public authorities, or by means of contracts, should lead to a situation in which the public authority inserts the requisite linguistic provisions in the decision or the contract. Thirdly, linguistic services in accordance with the Language Act shall also be guaranteed when an authority assigns tasks other than a public administrative task to a private entity, if the maintenance of the level of service required by the Language Act so demands. Although an implicit possibility for limitation is contained in the third rule, Section 25 should in principle cover all corners of public services including when the provider is a private entity and not a part of the regular public administration.

4.2 Example of the vertical effect: linguistic rights in municipalities and in the process of municipal mergers

As is evident on the basis of the Language Act, a municipality is the basic administrative unit in the public administration of Finland. Unilingual municipalities function in the one language they have, either Finnish or Swedish, which means that the number of speakers of the other national language does not exceed 8% or 3,000 people. In such situations, the linguistic rights of the inhabitants and linguistic duties of the municipalities in the other national language are very limited. However, in bilingual municipalities, the linguistic rights should be 100% effective in both national languages. In order to facilitate this, the Act on Municipalities (410/2015) contains three provisions on language. In Section 90(2), a bilingual municipality is required to use its normative powers to pass an internal administration code with linguistic content: 'The administrative regulations shall contain the necessary provisions to ensure that the linguistic rights provided in the Language Act (423/2003) and elsewhere in the law are in place in the municipality's administration.' Already by means of this provision, a bilingual municipality should be able to meet the linguistic needs of its two language groups. However, in order to cater for the linguistic needs in the area of education (see above), there is a mandatory provision in Section 30(4) that goes on to require that bilingual municipalities 'set up a separate decision-making body for the administration of education for each language group, or a joint decision-making body divided into sub-committees for the language groups. The members of the decision-making body or sub-committee must be elected from among persons who are part of the language group in question.' While each of the bilingual municipalities must have such linguistically diversified bodies for the administration of education, there is an option for such municipalities to extend the same model to other areas of municipal administration in Section 31(1, para. 5), according to which 'for a decision-making body other than that referred to in section 30(4) in a bilingual municipality, a sub-committee will be set up for each language group and the members of the sub-committee elected from among persons who are part of the language group in question'. Such voluntary committees that are linguistically determined are not frequently found in bilingual municipalities, which means that in such municipalities, there is, for each municipal function, a joint committee which may have members from both linguistic groups, depending on the political strength of the Swedish speakers in that municipality.

However, the territoriality principle can be bypassed and a more generous treatment can be acceptable, if the aim is to guarantee the fulfilment of linguistic rights *de facto*. In the Supreme Administrative Court case no. 2004:107, the municipal council of a bilingual municipality with Finnish as the language of the majority had decided to withdraw from the membership of the Health Care District of Helsinki and instead to join another health care district to the north of the municipality. By joining the previously unilingual Finnish-speaking health care district, that district became bilingual under the Language Act, because the new municipality was bilingual. However, the municipal council had decided to buy the so-called special health care services for the Swedish-speaking population of the municipality from the Health Care District of Helsinki. The Court held that nothing else had affected the decision of the municipal council than the aim to guarantee Swedish-language service in special health care for the Swedish-speaking population. According to the Supreme Administrative Court, linguistic equality is best fulfilled with the provision that the Swedish speakers, if they so want, get their special health care services from the Health Care District of Helsinki, which has hospitals where Swedish-speaking patients have always been treated and cared for. Therefore, the decision of the municipal council, which does not guarantee the Finnish-speaking population of the municipality the same freedom of choice concerning the place of treatment, was not in breach of the equality principle in Section 6 of the Constitution, because there was an acceptable reason for different treatment, namely the achievement of linguistic equality. The municipal council had not deviated from the equality principle in terms of the quality of the health care. Hence it was possible for a bilingual municipality to deviate from the regular structure for the provision of linguistic rights and to grant a special treatment for the Swedish speakers.

According to Section 10(1) of the Basic Education Act (628/1998) the language of instruction of a comprehensive school (grades 1–10) is either Finnish or Swedish.[44] The same applies to high schools according to Section 6(1) the Act on General Upper Secondary Education (629/1998). This means that the

44 According to the provision, the language of instruction can also be Sami, Roma or sign language, and also some other language of the pupil (provided it does not prevent the pupil from following the instruction). For information concerning education in the minority languages, *see Report of the Government on the Application of Language Legislation 2013*, pp. 23-33.

public schools, run by the municipalities,[45] are either unilingual Finnish-speaking or unilingual Swedish-speaking not only in unilingual municipalities but also in bilingual municipalities. In bilingual municipalities with Finnish as the majority language, separate schools would also normally exist for the Swedish-language minority, and in bilingual municipalities with Swedish as the majority language, there would normally also be separate schools for the Finnish-language minority.[46] This linguistic 'segregation' is further supported by the language requirements for teachers, for instance, in primary and secondary schools and in high schools, established in the Decree on Competence Requirements for Personnel in the Field of Education (986/1998), which in Section 9(1) requires that a primary- and secondary-school teacher shall have excellent proficiency of speech and writing in the language of instruction of the school and which in Section 12 requires that a high-school teacher shall have a command of the language used in the instruction, except for teachers of mother tongue and literature, who should have excellent proficiency of speech and writing in this language.[47] Nothing is said about proficiency in the other national language.

The linguistic division of the schools, however, also has implications at the administration level. As pointed out above, under the Municipalities Act, a bilingual municipality must have two separate school boards, one for the linguistic majority with members drawn from that linguistic group and another for the linguistic minority with members drawn from that linguistic group, for the general management of the schools. Or, alternatively, one school board divided into two sections, one for the majority and one for the minority, with the members drawn from the respective linguistic group.[48] Also the civil servants in the administration of education tend to be appointed on a linguistic basis. This same internal administrative division is also implemented in the administration of education at the regional level, where the regional administrative authority in a region with both Finnish and Swedish speakers must have separate sections for school administration of the Finnish-speaking schools and the Swedish-speaking schools.[49] Finally, this linguistic division is also implemented at the central-government level, where the National Board of Education has a bureau of Swedish-speaking education.[50]

This means in practice that there is a full educational system in place in Finland in the Swedish language, from day care and pre-schools through elementary and secondary schools to high schools and vocational schools and up to universities.[51] At the university level, according to Section 4(3) of the Universities Act (645/1997), Åbo Akademi University and the Swedish School of Economics and Business Administration in Helsinki are unilingual Swedish-speaking, but the University of Helsinki, and Aalto University are bilingual and thus deviate from the ordinary pattern of unilingual organisation of educational establishments. At least Åbo Akademi University and the Swedish School of Economics and Business Administration could be regarded as entities of functional autonomy. However, because the universities have the right to self-government (or

45 It should be noted that the educational system in Finland from elementary school to high school is almost completely run by the municipalities and that there are very few private schools.

46 It is, however, also possible that municipalities organise educational services in co-operation with other municipalities so that the municipality, for instance, buys the educational service for its minority population from another municipality and the pupils from the first municipality belonging to a linguistic minority attend schools in the second municipality. It should also be noted that a Swedish-speaking child has the right to choose to attend a Finnish-speaking school and *vice versa*. At the moment it seems that it is more popular among the Finnish-speaking families to send their children to Swedish-speaking schools.

47 These linguistic requirements for teachers are fulfilled by attending the Swedish-speaking teacher training at Åbo Akademi University and at the University of Helsinki.

48 The alternative with two sections means that there is a main school board for general matters that would also include members of the minority population, but under the main school board, the two sections would act for the administration of the schools operating in the two different languages.

49 Decree on Provincial Government (120/1997), Section 13: 'At the provincial governments in the provinces of Southern Finland and Western Finland, the department of education has a special Swedish-language unit for the administration of education to which those educational institutions belong where the language of instruction is Swedish.' Consequently, the civil servants of the Swedish-language unit should be Swedish speakers.

50 Act on the National Board of Education (182/1991), Section 4(1): 'The National Board of Education may have departments for specific areas of duties. A government decree gives provisions on the departments. However, there is always one department for duties related to education in Swedish.

51 For instance, in the bilingual town of Turku (in Swedish: Åbo), where the majority language is Finnish and where Swedish is the language of some five per cent or 9,000 inhabitants, Swedish-speaking children attend Swedish-speaking day care and schools. At such a Swedish-speaking school, the pupils are taught Finnish as the second national language, but the curriculum (that is, all the subjects, such as mathematics, history, biology and music) is taught in Swedish. After completing their high school and taking the national matriculation examination in the Swedish language, they can apply for admission at, for instance, Åbo Akademi University, where the language of instruction and the degree language is Swedish, or at the bilingual University of Helsinki, or at any university operating in the Finnish language, provided that the student can demonstrate proficiency in Finnish.

autonomy) as institutions, they are not administered from the linguistically determined units at the local government, provincial or national level in the same way as the regular schools.

Despite the negative connotations from a US context, it is not entirely wrong to characterise this arrangement dividing the instruction and also the administration of education into a Finnish-speaking and a Swedish-speaking branch as an arrangement of 'separate but equal'.[52] In addition, this incorporation of the two languages in the line-administration of education could also be termed functional autonomy, because people belonging to the two linguistic groups take care of the administration of their respective educational branches which, however, constitute one system with a similar educational content. From the point of view of division of administrative competence, the territorial competence is clear-cut at the national, provincial and municipal level and so too is the hierarchical competence, with a regular administrative 'sub-ordination' between the various levels of administration. However, as far as the material competence is concerned, there is a division of competence on linguistic grounds that results in a separate administrative structure at all levels of government. Therefore, it is possible to say that the area of education is an example of an exception to the regular linguistic system established under the Language Act.

Amendments to the Language Act made in 2013 in conjunction with the amendments to the Act on Municipal Mergers (1698/2009; hereinafter: MMA) were minor in comparison with the MMA and designed mainly to facilitate the new municipal structure of the territory of Finland within the framework of the linguistic provisions in sections 17 and 122, sub-section 1, of the Constitution of Finland. The main point of the amendments to the Language Act is to deal with the principle, established in the praxis of the Constitutional Law Committee of the Parliament, that municipal mergers must not weaken the linguistic rights of the inhabitants.[53] This is mainly a concern for Swedish speakers, in particular in new municipalities in which the linguistic minority might become relatively small.

The Constitutional Law Committee reiterated its interpretations concerning Section 122, sub-section 1, and Section 17 of the Constitution.[54] In the former provision, it is established that when the administration is organised, the objective shall be suitable territorial divisions, so that the Finnish-speaking and Swedish-speaking populations have an opportunity to receive services in their own language on equal terms. The Committee concluded that when the Constitution was adopted, there was the explicit wish to withdraw from the previous constitutional aim to create monolingual administrative areas. At the same time, moreover, putting an emphasis on the guarantee of linguistic rights on the basis of Section 17 of the Constitution when the administration is organised so that the Finnish-speaking and the Swedish-speaking population are given equal opportunities to receive services in their language. Section 17 of the Constitution does not only require that the two languages are formally treated equally, but that also the *de facto* equality between the Finnish-speaking and Swedish-speaking people is guaranteed when public services are organised. The Constitutional Law Committee has held that linguistic circumstances may constitute special reasons for making possible such deviations as may be suitable from the jurisdictional divisions. This means that if a jurisdictional division that is administratively functional can be defined in several alternative ways, the duty to guarantee the fundamental rights requires the choice of that alternative which best guarantees those

52 *See Brown* v. *Board of Education*, 347 U.S. 483, which dealt with racial segregation and ruled unconstitutional the racially motivated doctrine of 'separate but equal'. However, in the field of education, the principle of 'separate but equal' is acceptable, because the medium of instruction is a language, provided that certain conditions are fulfilled. According to Article 2(b) of the UNESCO Convention against Discrimination in Education of 1960, it shall not be understood as discrimination if in a state, for religious or linguistic reasons, there are 'separate educational systems or institutions offering an education which is in keeping with the wishes of the pupil's parents or legal guardians, if participation in such systems or attendance at such institutions is optional and if the education provided conforms to such standards as may be laid down or approved by the competent authorities, in particular for education of the same level'. *See also* F. de Varennes, *Language, Minorities and Human Rights*. The Hague: Martinus Nijhoff Publishers, 1996, pp. 70–71.

53 See, e.g., Opinion No. 21/2009 and Opinion No. 33/2009 of the Constitutional Law Committee. The amendments to the Language Act dealt with the maintenance of the new municipality as bilingual under the Act after a merger involving a bilingual one even in the case the number of speakers of the minority language, Finnish or Swedish, drops below the threshold established in the Act so as not to worsen the linguistic rights of the linguistic minority, the wish that bilingual municipalities would extend the bilingualism of minutes from the Council also to lower municipal organs, the requirement that the State addresses itself in written communication to bilingual municipalities in both languages, and an option not to use bilingual municipal road-signs in such parts of a new municipality that used to be a monolingual municipality, while the practice with bilingual municipal road-signs would, of course, continue in the area of the former bilingual municipality.

54 Opinion No. 20/2013 of the Constitutional Law Committee. See also a reiteration in Opinion No. 67/2014.

fundamental linguistic rights. The Committee has also emphasised that reapportionment decisions concerning municipalities must not impinge on the linguistic status of the municipality or worsen the possibilities of the linguistic groups to exist in their own language. As a consequence, these linguistic concerns are reflected in the MMA in a multitude of ways. For instance, the municipalities that wish to merge must produce a merger agreement outlining the details of how the new municipality will deal with different issues after the merger has entered into force. According to Section 8(2) of the MMA, a merger agreement concerning a merger that results in a bilingual municipality must contain the principles according to which public services and the administration in the new municipality will be organised so that the linguistic rights of the Finnish-speaking and the Swedish-speaking inhabitants are guaranteed.[55]

5 *De jure* or *de facto* variations in the official status of languages and of the recognition of the official usage of English or other languages that are not recognised by the Constitution

5.1 Swedish as the official language of the Åland Islands

According to Section 36 of the Self-Government Act for the Åland Islands (1144/1991), the official language of the Åland Islands is Swedish and the administration is unilingual Swedish-speaking. As a consequence, the legislation within the competence of the Legislative Assembly of the Åland Islands is adopted in Swedish, and the individual administrative decisions of the administrative bodies of the autonomous entity are made in Swedish only. This provision and the entire Act is of a constitutional nature and introduces therefore an exception to the principle of two national languages in Section 17(1) of the Constitution of Finland. Although the Self-Government Act contains a number of provisions on the use of the Swedish language (Sections 36 through 42), they are not being properly implemented. Swedish language skills among central government officials are in decline and increasingly government documents, especially related to the EU, are only provided in Finnish. This has become a source of irritation in the relationship between the Åland Islands and mainland Finland. This criticism is valid at a general level, concerning the control of competences at the Ministry of Justice as well as the Ålandic financial matters dealt with at the Ministry of Finance. There are, however, specific provisions in Section 34 of the Self-Government Act that guarantee materially and, as a consequence, also linguistically, a good level of knowledge of the Swedish language within the central government of Finland, because for the presentation of decision-proposals within those functions for the President, the Council of State must appoint civil servants with a good knowledge of the autonomy of the Åland Islands.

The aim of the Åland Islands Settlement in 1921 was, according to the Council of the League of Nations, to maintain the Swedish character of the Åland Islands. There are several mechanisms to that effect in the Settlement, but only one, the language of instruction in para. 2, is specifically focused on the maintenance of the Swedish language. Hence most of the linguistic provisions in the Self-Government Act are of domestic provenance and have no direct link to the 1921 Åland Islands Settlement. Although the provision in Section 40 of the Self-Government Act is worded in a manner different from the original text of the Settlement, the material content is more or less the same: the language of education in schools maintained by public funds or subsidised from such funds shall be Swedish, unless otherwise provided by an act of Åland. If need be, it should therefore be possible to establish a school operating in Finnish, provided that it is entirely funded from private sources. Although the Act of Åland on Comprehensive Schools also allows for schools other than public schools, the provisions of the Act are written in a way that they would not actually apply if, for instance, an association of parents filed an application for a license to establish a private school that follows the Ålandic curriculum, but that operates in the Finnish language.

The monopoly of the Swedish language on the Åland Islands may, however, create a so-called 'minority within a minority' problem with respect to Finnish-speaking people (about 1,100 or 4.5 per cent of the population) residing there.[56] The population of Finnish speakers in the Åland Islands appears to be relatively

55 For an analysis of a number of merger agreements before 2012, see Markku Suksi, *Yhdistymissopimus osana kielellisten perusoikeuksien turvaamisjärjestelmää kuntaliitoksissa*. Oikeusministeriö, Selvityksiä ja ohjeita 28/2012. Helsinki: Oikeusministeriö, 2012.

56 The relationship between the autonomy arrangement in Åland and the various human rights conventions binding on Finland has been the subject of some debate. It has been suggested that the 1921 Åland Islands Settlement, decided by the League of Nations, should be

stable, as the ratio of Finnish speakers today is more or less at the same level as in 1920. The Ålandic language provisions would appear to be in conflict with the provisions of the 1960 UNESCO Convention Against Discrimination in Education.[57] However, following the logic of the European Court of Human Rights Belgian Linguistics Case,[58] there is no such discrimination against Finnish-speaking pupils in the Åland Islands that would be prohibited under the European Convention on Human Rights; there would seem to exist 'legitimate and objective grounds to keep the schools of the Åland Islands monolingually Swedish' at the same time as the present system would not seem to 'involve disproportionality between the means employed and the aim sought'.[59]

After the completion of school in the Åland Islands, the person's proficiency in Finnish would normally not be at a very high level. Yet at the same time, young people from the Åland Islands might want to continue their studies in mainland Finland,[60] where some measure of Finnish is required by the educational institutions at admission and also as a practical matter during their studies. Therefore, Section 41 of the Self-Government Act prescribes that a graduate of an educational institution in the Åland Islands may, as further provided by a decree, be admitted to a state-maintained or state-subsidised Swedish-language or bilingual educational institution and graduate from there, even if he or she does not have the proficiency in Finnish required for admittance and graduation.

The Self-Government Act, however, contains additional provisions concerning the Swedish language and also concerning the use of the Finnish language in the Åland Islands and in relation to the authorities of the Åland Islands. It is clear under Section 36(1) of the Self-Government Act as a point of departure that the language used in the state administration, within the administrative structures of the Government of the Åland Islands and within local government in municipalities is Swedish.[61] In addition, a private party in Åland has the right under Section 39(3) to receive an enclosed Swedish translation with his copy of the document in matters that are considered by a state authority in mainland Finland, such as the Council of State, the central state agencies and such superior courts and other state authorities whose jurisdictions include the Åland Islands or a part thereof, and within which the document shall, according to general language legislation, be written in Finnish.

However, there is an exception to this main rule in Section 37 of the Self-Government Act: a Finnish citizen has the right to use the Finnish language in his or her own case before courts of law and before other state authorities in the Åland Islands. This right to use Finnish in the unilingually Swedish jurisdiction in contacts with state authorities is not as specific as it may seem, because the same would apply in mainland Finland under the Language Act[62] in case of the existence of unilingually Swedish-speaking administrative districts of state authorities, which is not the case in mainland Finland. Also, under Section 39, the courts and the State Agency in the Åland Islands shall, on the request of a party, enclose a translation into Finnish in their documents. Furthermore, if a document submitted to a court or another state official is written in Finnish, the official shall see to its translation into Swedish, if necessary.

The language in institutional relations is dealt with in Section 38 of the Self-Government Act. Letters and other documents between authorities of the Åland Islands and the state authorities in the Åland Islands shall

considered a *lex specialis*, but most legal experts give precedence to Finland's obligations under human rights conventions according to the principle of *lex posterior*. Lauri Hannikainen, *Cultural, linguistic and educational rights in the Åland Islands*. Helsinki: Ministry of Foreign Affairs, 1993, p. 53 f.

57 Hannikainen 1993, pp. 22 f., 41-49.

58 ECtHR, judgment of 9 February 1967, Ser. A, No. 6.

59 Hannikainen 1993, p. 38 f.

60 However, a clear majority of the Ålandic students continue their studies in Sweden. This is facilitated under Section 64 of the Self-Government Act, according to which a decree may be issued to the effect that a degree required for a state office in Åland may be substituted with a comparable degree earned in Iceland, Norway, Sweden or Denmark. For positions in the Government of the Åland Islands and the municipalities of Åland, this applies on the basis of Ålandic legislation.

61 Actually, this was already the point of departure in Sections 29-31 of the 1920 Self-Government Act, and as a consequence of para. 1 of the 1921 Åland Islands Settlement, it can be argued that this was confirmed as one part of the autonomy of the Åland Islands. In addition, Section 36(3) of the current Self-Government Act provides that the provisions of the Act on the language used in state administration shall also apply, where appropriate, to the officials of the Evangelical Lutheran Church, unless otherwise provided by the Church Code.

62 The Language Act applies only in mainland Finland, not in the Åland Islands.

be written in Swedish. The same applies also to the correspondence between the authorities of the Åland Islands and the Åland Delegation, and between the authorities of the Åland Islands and the Council of State, the authorities in the central government of Finland and the superior courts and other state authorities to whose jurisdiction Åland or a part thereof belongs. The same rules concerning correspondence between the different authorities also apply to municipal authorities in the Åland Islands.[63] The main principle is thus that the institutional contacts between the governmental entities of the Åland Islands, on the one hand, and the various state authorities and courts, on the other, take place in the Swedish language. For that reason, Section 42 stipulates that provisions on the linguistic proficiency of a state official in the Åland Islands shall be issued by decree with the consent of the Government of the Åland Islands. The point of departure is that any person employed in the service of the state in the Åland Islands has to be proficient in the Swedish language. For that reason, the Self-Government Act also stipulates that the state shall organise training in Swedish for the people in its service in the Åland Islands.

Normally, the linguistic rules apply in the vertical dimension between the public authorities of all sorts and an individual. However, Section 43 of the Self-Government Act also contains a platform for horizontal rules, but in a particular context. The provision requires the Council of State to take suitable measures to have the necessary product and service information distributed to the consumers in the Åland Islands in Swedish. The Council of State shall also ensure that the rules and instructions to be followed in the Åland Islands are available in the Swedish language.

5.2 The position of other languages

Section 17(3) of the Constitution recognises the existence in Finland of groups other than those speaking the two national languages: 'The Sami, as an indigenous people, as well as the Roma and other groups, have the right to maintain and develop their own language and culture. Provisions on the right of the Sami to use the Sami language before the authorities are laid down by an Act. The rights of persons using sign language and of persons in need of interpretation or translation aid owing to disability shall be guaranteed by an Act.'

In contrast to the national languages, the Sami language is mentioned in 84 norms, which more or less all deal with language use in the vertical dimension, the most important of them being the Sami Language Act (1086/2003). The Sami Language Act is in principle modelled against the background of the Language Act as concerns the linguistic rights of individuals and linguistic duties of public authorities functioning in the Sami homeland area, except that the Sami Language Act does not affect the linguistic denomination of municipalities in the manner the Language Act does. For that reason, it is possible to say that Sami is an official language within the Sami homeland area. However, other Acts and Decrees also exist that contain references to Sami. For instance, there were concerns reflected in the drafting documents and in the MMA, including the Opinion of the Constitutional Law Committee, about the indigenous Sami population in the northernmost part of Finland, and the point of departure is that municipal mergers should be carried out in a manner that also caters to the linguistic needs of the Sami. However, as mentioned above, on the basis of the Language Act, the municipalities in the northernmost part of Finland, in the homeland area of the Sami, are unilingually Finnish-speaking. The Sami Language Act does not affect the linguistic categorisation of the municipalities in which the Sami live, but places certain linguistic obligations on those municipalities. The Sami language or languages are not regulated in Finland in the horizontal dimension, only in the vertical dimension.

Also the rules concerning the use of sign language focus on the vertical dimension, that is, on the relationship between public authorities and individuals. The Sign Language Act (359/2015) does not create any rights for those who use sign language, but entails instead a duty on the part of public authorities to promote the use of sign languages, the Finnish and the Swedish sign-language. In addition, it lists a number of other Acts where those who use sign language are given some entitlements to use their language, such as in the area of education, general administrative law and law related to social matters.

63 However, in some situations, treaties that are to be submitted for approval by the Legislative Assembly under Section 59 of the Self-Government Act may be sent to Åland in the original language, if the treaty by law is not to be published in Swedish. Also, a position document relating to EU matters that is notified to Åland on the basis of Section 59a may be sent to the Government of the Åland Islands in the original language, if it has not yet been translated into Swedish.

In addition, there are references to the Roma language mainly in the context of education, but no specific Act has been enacted about the Roma language as of yet.

It does not seem that the use of any language, such as English, Russian or Arabic, is explicitly prohibited, but the prescription of mandatory use of some languages, mainly Finnish and Swedish, may, of course, produce by default a situation where the use of other languages is not feasible.

6 Policies aimed at ensuring the use of official or national languages or those recognised with other statuses

In spite of the comprehensive regulation of the two national languages in Finland, it is well known that the actual implementation of the linguistic rights of the Swedish speakers is inadequate, at least in some respects. While some sectors of public administration, such as the tax authorities, succeed in providing services in both national languages at a level of almost 100%, the provision of services in other areas, such as health care, may have a much lower success rate, perhaps as low as 60%. The regular legal remedies are not always able to pinpoint the needs of individuals to protect their linguistic rights. In particular, the regular administrative complaint procedure on the basis of the Act on Administrative Judicial Procedure (586/1996) is constructed so as to require a clear connection *ratione personae* to the decision of the governmental authority, which in effect means that decisions by state authorities on, for instance, reorganisation of public authorities, often made by means of government decrees or internal administrative decisions, become non-appealable. The situation is different for so-called municipal complaints on the basis of the Municipalities Act, where a so-called *actio popularis* is created as the basis of the right to complain, facilitating the possibility of everyone to react against a municipal decision that affects linguistic rights even when the decision does not directly concern any particular person (the cases referenced above are all due to municipal complaints). There is thus a certain *lacuna* in the appealability of decisions made by state authorities that affect linguistic rights. For that reason, it is of utmost importance that the Parliamentary Ombudsman and the Chancellor of Justice are designated by Sections 108 and 109 as the supervisors of legality, including of constitutional rights such as the linguistic rights in Section 17 of the Constitution. The Parliamentary Ombudsman receives the majority of complaints made on linguistic grounds, but the Chancellor of Justice is important in this respect, too (for examples of decisions, see below), and both can oversee the fulfilment of linguistic rights both by state and by municipal authorities.

As one way of promoting linguistic rights, Section 35(3) of the Language Act mentions that 'in their activity, authorities shall protect the linguistic cultural tradition of the nation and promote the use of both national languages. If required by the circumstances, the Government shall undertake special measures in order to secure cultural or societal needs related to the national languages'. It is possible to think that the Council of State acted in this manner in adopting a General Resolution entailing a Strategy for the National Languages of Finland[64] with a long-term language strategy and concrete measures for the promotion of the use of the two national languages. It aims to safeguard a future Finland with two viable national languages and remedy the shortcomings in the practical implementation of this legislation, in particular concerning the Swedish language. The promotional activities concerning the Strategy for the National Languages were continued by the government elected in 2015, a move that resulted in the adoption, in 2017, of an action plan for the strategy.[65] Similar activities entailing the adoption of governmental strategies also exist for other languages. In 2012, the Ministry of Education adopted a revitalisation strategy for the Sami language,[66] and in 2009, the Institute for the Languages of Finland adopted a linguistic policy programme for the Roma language.[67]

64 http://www.oikeusministerio.fi/material/attachments/om/toiminta/perusoikeudetjademokratia/6F3CYgZBf/Kansalliskielistrategia_engl.pdf (accessed on 10 November 2016).

65 *Kansalliskielistrategian toimintasuunnitelma – Handlingsplan för nationalspråksstrategin*. Oikeusministeriö. Selvityksiä ja ohjeita 13/2017. Helsinki: Oikeusministeriö, 2017. The action plan contains focus areas such as increasing the visibility of and awareness of national languages; use of both languages in the planning for the future; ICT systems; culture: audiovisual services; good language skills; security and health; health care; recruitment to state offices.

66 *Toimenpideohjelma saamen kielen elvyttämiseksi*. Opetus- ja kulttuuriministeriön työryhmämuistioita ja selvityksiä 2012:7. Helsingfors: Statsrådet, 2012.

67 *Språkpolitiskt program för romani*. Helsingfors: Institutet för de inhemska språken, 2009.

Although each public authority has, on the basis of Section 36 of the Language Act, the primary duty to supervise the application of the Language Act within its own area of operation, the Ministry of Justice is given the task of monitoring the enforcement and application of the Language Act. In part, that monitoring has resulted in the understanding that the language legislation is not very well implemented, which may have led to the above-mentioned Strategy for the National Language. On the basis of the monitoring, the Government issues a report based on Section 37 of the Language Act to the Parliament of Finland every four years concerning the application of language legislation, the securing of linguistic rights, and other linguistic conditions.[68] The report deals not only with the two national languages, but also considers other languages, at least the Sami, Roma and Sign languages. The Ministry of Justice is also authorised on the basis of Section 36 to issue recommendations in questions related to legislation on national languages.

There is also a Swedish Assembly of Finland, a statutory body which according to Section 1 of the Act on State Subsidies to the Swedish Assembly of Finland (1331/2003) has the task of promoting the fulfilment of the rights of the Swedish-speaking population in Finland and to work for progress in the conditions of this population. The Assembly does not actually have any tasks that involve the exercise of public powers and it is therefore mainly an interest organisation and an informative body. However, as a part of its task to oversee the compliance with linguistic rights by courts of law and public authorities, it receives complaints from citizens concerning breaches in the services in Swedish that the Swedish-speaking people are entitled to and carries out an investigation into such complaints, the results of which it communicates to the court or public authority which is in breach of its linguistic duties. It may also forward its observations to the Chancellor of Justice or the Parliamentary Ombudsman for an official inquiry. The Assembly is elected in a complex indirect manner in conjunction with local government elections on the basis of the electoral support that different Swedish-speaking candidates receive for the parties for which they are candidates. This means that virtually all political parties are represented in the Swedish Assembly of Finland.

Our focus on the two national languages and the observations concerning the minority languages in Finland should not obscure the fact that English is gaining ever stronger prominence in Finland. English was made a compulsory subject in comprehensive schools in 1968 with the rationale that it is the language of global interaction (while Swedish was made a compulsory subject with reference to its historical role in Finland and its Nordic dimension; the status of Swedish as a compulsory subject in schools is currently under discussion).[69] In the above mentioned Strategy for the National Languages of Finland, the increasing importance of English was noted. For instance, English is, according to inquiries in the business community, the second most important language in Finland, while Swedish is in third place. In fact, a prominent business person has made the bold proposal that English be designated as the third official language in Finland, but no action has been taken on the issue. However, the prominence of English has become a legal issue when public authorities in several instances have used English to the detriment of one or both national languages.

The Parliamentary Ombudsman has resolved several cases involving English and has presented a number of opinions from the point of view of the national languages. The national languages must be used in the names of public authorities. An English name alone ('Stroke Unit') is not enough,[70] and 'Stroke Unit' and other foreign or artificially constructed foreign sounding names of public authorities (Trafi, Carea) should not be used by public authorities.[71] At least Finnish and Swedish should be used in the automatic out-of-office messages sent by e-mail systems,[72] and at least Finnish and Swedish should be used in the e-mail contact details of public servants.[73] The Finnish Embassy to Israel had used only Finnish and English in its

68 See Report of the Government on the Application of Language Legislation 2013, at http://www.oikeusministerio.fi/material/attachments/om/julkaisut/6K2MUGLwd/language-legislation-2013.pdf (accessed on 10 November 2016).

69 The obligatory Swedish for Finnish-speaking pupils has been controversial, less so the corresponding requirement of obligatory Finnish for Swedish-speaking pupils in mainland Finland. On 24 April 2017, the Government of Finland made the decision of aiming at commencing an experiment where around 2,200 pupils could be exempted from the requirement of learning Swedish by replacing that language with some other language other than English. This move was part of the platform of the nationalistic party of the True Finns that the party, while in government, wants to promote. It remains to be seen what the impact is for the overall language curriculum in comprehensive schools, provided that it is passed after the experiment.

70 Parliamentary Ombudsman, decision no. 4032/4/08.

71 Parliamentary Ombudsman, decision nos. 2745/4/10, 2995/4/10, 3581/4/10 and 3706/4/10.

72 Parliamentary Ombudsman, decisions no. 2575/4/06, 63/4/07, 2809/2/08.

73 Parliamentary Ombudsman, decision no. 3010/4/11.

recorded telephone message, which was not in accordance with the Language Act, because an embassy is a public authority of the central government with Finnish as the language of the majority and Swedish as the language of the minority. Consequently, both national languages should have been used in the recording, but the Ombudsman recognised it was also important that English was used,[74] which in effect meant that the recording was to be trilingual. A Norwegian person who was fined for a parking violation should have been informed earlier about the possibility to use Swedish in the proceedings in a bilingual municipality and in a bilingual administrative court instead of using Finnish on the part of the authorities and English on the part of the Norwegian person.[75] A housing project subsidised by public funds should use at least Finnish and Swedish in bilingual municipalities, not only Finnish and English, when providing information about housing opportunities and when making electronic application services available.[76]

In the Strategy for the National Languages of Finland, concerns were raised with a view to the fact that English has replaced both Finnish and Swedish in research, perhaps mainly in mathematics and natural sciences, but also in other academic disciplines. Attempts by universities to increase the role of instruction in English has resulted in petitions to the Chancellor of Justice, who has concluded that English cannot become the sole language of university instruction at a university so as to produce the result that the use of Finnish (and also Swedish, if degrees can be taken in that language) is replaced by other languages, such as English. According to the Chancellor of Justice, a university must guarantee the possibility to complete basic degrees and take exams in the legally established degree languages, that is, in Finnish or Swedish.[77]

7 Concluding Remarks: Does official status matter?

The status as a national language matters a lot for Finnish and Swedish, because if Finland had been constituted as a unilingual state under the pure principle of the nation state (‘one language, one state, one people’), the Swedish speakers would, at best, have a status that would place Finland among states in category II, potentially even in category III. At the same time, the fact that the state was, from the beginning, constructed in a manner that is different from the regular construction of a state, means it is likely that the legislators have grown used to dealing with languages. This may explain a certain generosity towards other languages in Finland (although a lot remains to be done in that field).

As explained by the Constitutional Law Committee of the Parliament of Finland in Opinion No. 33/2009, Sections 17 and 122 contain various requirements concerning the national languages that need to be fulfilled in conjunction with municipal mergers (and arguably also in other contexts where language becomes relevant): the possibility for the two population groups to receive public services in their own languages must be guaranteed in an equal fashion; it must be taken into account that Finnish and Swedish are the national languages of Finland; everyone has the right to use their own language before public authorities, either Finnish or Swedish; everyone has the right to receive decisions issued in their own language, either Finnish or Swedish; and public authorities shall provide for the cultural and societal needs of the Finnish-speaking and Swedish-speaking populations of the country on an equal basis. It is clear that equality between the two national languages is emphasised and, as a consequence, symmetry in the treatment of the two languages is the starting point. However, this main rule has not prevented special linguistic arrangements and some special treatment that results in a certain measure of asymmetry in the guarantee of linguistic rights for the speakers of the two national languages.

74 Parliamentary Ombudsman, decision no. 1891/4/10.

75 Parliamentary Ombudsman, decision no. 4155/4/11.

76 Parliamentary Ombudsman, decision no. 1930/2/13. There are several EU dimensions to English becoming the dominant language, one of which is standardisation of construction products according to Regulation (EU) No 305/2011 of the European Parliament and of the Council of 9 March 2011, laying down harmonised conditions for the marketing of construction products may imply at the national level that English will be the predominant language in standards applicable to construction activities. Article 17, para. 1, of the regulation makes reference to European organs of standardisation listed in Appendix I of Directive 98/34/EC and concludes that these organs shall adopt harmonised standards. This means that private organisations are delegated norm-making competence of some kind which will, in effect, be exercised in English and result in the adoption of standards in English. The Parliamentary Ombudsman forwarded the matter to the appropriate ministry for appropriate measures as well as to the EU Ombudsman for possible measures. Parliamentary Ombudsman, decision nos. 962/4/12 and 4779/4/12. For the EU standards, see https://ec.europa.eu/growth/single-market/european-standards/harmonised-standards/construction-products_en

77 See decision nos OKV/712/1/2013, OKV/136/1/2012, OKV/603/1/2013.

In spite of the elaborate formal features of the arrangement with two national languages that are in place, the practical implementation is not always entirely successful and must undergo improvements. In fact, the arrangement with two national languages is so old, 100 years in 2019, that it has become clear it needs to be actively nurtured and tended to, something that for instance the Strategy for the National Languages of Finland is doing. Both individuals in Finland, in particular Finnish speakers without active links to the Swedish-speaking community, and also politicians tend to be increasingly ignorant of the arrangement. With the rising populism and nationalism in Europe, Finland has also experienced the emergence of a populist party, currently one of the coalition partners in the national government. It remains to be seen what the impact of this political party and its more nationalistic platform is on the system with two national languages. However, there are independent countries in the world that operate in languages which are not dominant world-languages, such as Iceland, where a complete legislative, executive and judicial system is in place in the local language. With regard to the fact that the population of Iceland is of a similar size to the population of the Swedish speakers in Finland, there is no reason why it would not be equally feasible to continue running a bilingual system in Finland: the needs for linguistic services of Swedish speakers in their own language in Finland are comparable to the needs of linguistic services in Icelandic, and the needs of linguistic services in Swedish in Finland will remain at the same level in the future as they are at the moment and were 100 years ago.

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