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Sarah Stephan

The Åland Islands Peace Institute

Legal and Institutional Framework Analysis:
Estonian in Germany

aldia

european language
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Foreword

The **Legal and Institutional Framework Analyses** represent the collected knowledge of the ELDIA-project in the field of law, politics and policies and of their institutional representations with regard to the languages studied in this research project. Each report examines one or two languages in their wider national and international context. The **core scientific questions** in the present law and policy studies are: What role is played by law in the use or non-use of different languages in different domains? What role is played by law in promoting or inhibiting language diversity as such? Finally, which factors related to legal and institutional matters influence language use, language maintenance and language diversity? Each study consists of three main parts: a) The **overall legislative and institutional framework**; b) **Languages and minority policies in practice** (a section which covers the discussions and the implementation, or non-implementation, of constitutional provisions, language legislation, education and media legislation) and c) an identification and analysis of **the legal actors**, i.e. persons, organisations, and public authorities engaged in the development, interpretation and monitoring (judicial and other) of the relevant legal frameworks. The law researchers involved in this part of the research have benefited greatly from the input of and interactions with the broad network of researchers represented in the project, and thus we are now even more convinced that contacts across scientific disciplines is a precondition for a deeper understanding of complex societal processes. The *Legal and Institutional Framework Analyses* shall form part of the background for the development of the comparative and interdisciplinary work that is currently taking place within the ELDIA-project.

As all *Working Papers* published on the project website and within ELDIA, also these studies have been submitted to extensive project internal as well as external review under the supervision of Associate Professor, Jur. Dr., Sia Spiliopoulou Åkermark. The Åland Islands Peace Institute is responsible for this component of the ELDIA project. Any comments can be sent to sia@peace.ax

We wish to thank all those that have kindly contributed to our work with their comments and advice.

Mariehamn in November 2011

Sia Spiliopoulou Åkermark

The Åland Islands Peace Institute

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1 The overall legislative and institutional framework

1.1 The position of languages and minorities in the legal and political system of Germany

The description of the position of languages and multilingualism in the legal and political context of the Federal Republic of Germany cannot depart from one single starting point. A state can tolerate, respect, accommodate and/or promote, in different areas and to different degrees, one language, a particular group of languages or all languages spoken on its territory. And so in Germany, we find different areas of legislation with different addressees. To begin with, it should be pointed out that Germany has no official state language, although German functions widely as the administrative language.¹ Nonetheless, German is not the only language spoken on the territory of the Federal Republic of Germany.

One group of languages that has found recognition in the legal and political system of the Federal Republic of Germany is the languages spoken by minorities. The term minority appears in different contexts and so its meaning should not be considered self-evident. Stefan Oeter, one of the leading legal scholars in the area of minority rights in Germany, speaks of a “conceptual confusion” that has taken much of the attention from substantial questions.² Although his observation certainly holds true, we cannot but address these conceptual problems once more, as they are central to the present analysis. “Minority” is, among other things, a legal concept.³ It remains, however, without a fully satisfying definition.

In the attempt to define the term minority it is still regularly referred to the proposal made in 1977 by Francesco Capotorti, then Special Rapporteur of the UN Sub-Commission on the Prevention of

¹ See sub-chapter 1.9.1 below.

² Oeter, Stefan, *Überlegungen zum Minderheitenbegriff und zur Frage der neuen Minderheiten*, in: Matscher, Franz (ed.), *Wiener Internationale Begegnungen zu aktuellen Fragen Nationaler Minderheiten*, Schriften des österreichischen Instituts für Menschenrechte, Vol. 7, 1997, pp. 256 *et seqq*;

³ On the different uses of the term minority in the legal and social sciences see, Pallek, Markus, *Der Minderheitenschutz im deutschen Verfassungsrecht*, Schriften zum Staats- und Völkerrecht, Band 92, Peter Lang, Frankfurt am Main, 2001, p. 13.

Discrimination and Protection of Minorities. In his Study on the Rights of Persons belonging to Ethnic, Religious and Linguistic Minorities, Capotorti defined “minority” as

“a group numerically inferior to the rest of the population of a State, in a non-dominant position, whose members – being nationals of the State – possess ethnic, linguistic characteristics different from those of the rest of the population and show, if only implicitly, a sense of solidarity, directed towards preserving their culture, traditions, religion and language.”⁴

The understanding of the term minority as implicitly adhered to in the German legal and political system corresponds to a certain extent to Capotorti’s definition. Neither the Federal Republic of Germany nor its constituent elements, the *Bundesländer* or short *Länder*, have adopted a clear-cut definition of the term minority. In Germany a pragmatic approach has been chosen. It is defined in the respective legal instruments which groups are to benefit from minority rights. Explicit minority rights regimes exist only with regard to the national minorities of the Danes, the Sorbian (Wend) people and the German Sinti and Roma as well as the ethnic group of Frisians in Germany, altogether around 250,000 German nationals.⁵ With regard to the Framework Convention on the Protection of National Minorities (FCNM), the Federal Republic of Germany has clearly laid out the requirements for minority status and considers as national minorities within the meaning of the FCNM *“only those groups of the population who meet the following five criteria”*:

- *their members are German nationals;*⁶
- *they differ from the majority population insofar as they have their own language, culture and history - in other words, they have their own identity;*
- *they wish to maintain this identity;*
- *they are traditionally resident in Germany; and*
- *they live in the traditional settlement areas.*

⁴ Capotorti, Francesco, *Study on the Rights of Persons belonging to Ethnic, Religious and Linguistic Minorities*, United Nations Publications, 1977, Sales No. E.91.XIV.2, § 568.

⁵ Of these groups, all but the Sinti and Roma are officially recognized as national minorities, see: Paliek, *Der Minderheitenschutz im deutschen Verfassungsrecht*, 2001, pp. 50 *et seq*; Council of Europe, *First Report submitted by the Federal Republic of Germany under Article 25, paragraph 2, of the Council of Europe’s Framework Convention for the Protection of National Minorities*, received on 24 February 2000, ACFC/SR/II(2000)001, p. 4.

⁶ The notion of nationality is understood as identical with citizenship.

The final two requirements, traditional residence and territoriality, suggest an even more exclusive scope than the definition proposed by Capotorti. As regards the territoriality requirement an exception is made only with regard to the German Sinti and Roma.⁷ Thus, in Germany, only individuals who identify themselves with the Danes, the Sorbian people and the German Sinti and Roma as well as the ethnic group of Frisians can benefit directly from the specific minority rights regimes existing in Germany. National minorities are also described as autochthonous minorities, a term that should not be confused with indigenous minorities as has sometimes been done in the German context.

This “narrow” conceptualisation of the term minority is increasingly challenged by the emerging debate on “new minorities”. More recent migration has brought new groups of individuals into situations where they face challenges that are, in certain aspects, comparable to those faced by autochthonous minorities. Most commonly the term “new minorities” is used with regard to migrants and persons with migration background (*Migrationshintergrund*). Roughly 60 years of (originally labour market) migration has shifted the linguistic landscape in Germany towards greater linguistic diversity. In 2009 7,1 million foreign citizens had taken up residence in Germany, making up a share of 8,7% of the total population. 1,6 million foreigners in Germany hold Turkish citizenship and thus constitute by far the biggest group of foreign citizens resident in Germany, followed with considerable distance by Italian, Polish, Serbian, Montenegrin, Kosovar, Greek and Croatian citizens, each of these groups being represented by roughly between 500,000 and 200,000 individuals. Besides Italian, Polish and Greek nationals about 1,1 million persons holding citizenship of one of the Member States of the European Union were resident in Germany in 2009. 577,725 of EU citizens resident in Germany hold the citizenship of one of the ten “new” Member States.⁸ In addition to foreign residents, 8,8 million German citizens are considered to belong to the so-called group of persons with migration background. In sum about 19,6% of Germany’s

⁷ Council of Europe, *Second Report submitted by the Federal Republic of Germany under Article 25, paragraph 2, of the Council of Europe's Framework Convention for the Protection of National Minorities*, received on 13 April 2005, ACFC/SR/II(2005)002, p. 8.

⁸ The statistics are taken from the Federal Office for Migration and Refugees, *Ausländerzahlen 2009*, Nürnberg, 2009, available online at http://www.bamf.de/cln_111/DE/Infothek/Statistiken/Auslaenderzahlen/auslaenderzahlen-node.html, last accessed on 17.2.2011.

roughly 82 million inhabitants are migrants or their descendants.⁹ Notably, the share of the population under 25 years of age with a migration background is almost one third.¹⁰ Migrants can largely be distinguished from the majority by much the same categories as old minorities: ethnic origin, language, culture and religion. However, despite these common traits, autochthonous minorities and “new minorities” differ in that the latter are neither traditionally resident in Germany nor live in traditional settlement areas. Most importantly, many individuals who qualify as members of a “new minority” do not fulfil the nationality requirement either. Thus far, “new minority” has remained a sociological term¹¹, which has indeed been used in the German context just as in the same way as the somewhat ambiguous term “foreign minorities” (*ausländische Minderheiten*). “New minorities” is an emerging concept, however, without a clear-cut legal dimension. Migrants do not fall within the same legal category as minorities.¹² For this reason the terms *national* or *autochthonous minority* and *migrant group* shall be preferred for the purpose of this report.

The definition of minority adopted by the Federal Republic of Germany with regard to the application of the FCNM treats language as one criteria for minority status. Speaking a language different from the majority language is part of a distinct minority identity. Minorities are, among others, linguistic minorities. All autochthonous minorities in Germany are associated with

⁹ Statistisches Bundesamt, *Bevölkerung und Erwerbstätigkeit. Bevölkerung mit Migrationshintergrund. Ergebnisse des Mikrozensus 2009*, Fachserie 1 Reihe 2.2 Migration in Deutschland 2009, Wiesbaden 2010, p. 7, available on the webpage of the Federal Statistical Office, at <https://www-ec.destatis.de/csp/shop/sfg/bpm.html.cms.cBroker.cls?cmspath=struktur,vollanzeige.csp&ID=1025903>, last visited 26.02.2011; According to the Federal Statistical Office of Germany, the term population with migration background refers to “all persons who immigrated to the territory of the present-day Federal Republic of Germany after 1949, as well as all foreigners born in Germany and all German nationals born in Germany with at least one parent that has either immigrated to Germany or has been born in Germany as a foreigner”, *ibid.* p. 6; Note that this number also includes repatriates, who migrated to Germany in the aftermath of WWII and increasingly again after the collapse of the Soviet Union and their descendents. These repatriates did either hold German nationality or were considered as belonging to the ethnic group of Germans in the former Soviet Union (Eastern Europe and Central Asia) and made use of their right of return. Different rules pertaining to naturalization apply according to Art. 116 as well as the Federal Expellee Law (*Bundesvertriebenengesetz*); 2,5 million persons with migration background still hold or held the nationality of states that belonged to the former Soviet Union, how many of them are Estonian-speakers is not established.

¹⁰ Educational Reporting Consortium, *Education in Germany. An indicator-based report including an analysis of education and migration. Summary of important results*, On behalf of the Standing Conference of the Ministers of Education and Cultural Affairs of the Länder in the Federal Republic of Germany and the Federal Ministry of Education and Research, 2007, p. 28.

¹¹ Oeter, *Überlegungen zum Minderheitenbegriff und zur Frage der neuen Minderheiten*, 1997, p. 230.

¹² Shoraka, Kirsten, *Human Rights and Minority Rights in the European Union*, Routledge, New York, 2010, p. 99

languages other than German – Danish, Upper and Lower Sorbian, Romany or West Frisian and Saterland Frisian. These languages are officially recognized as minority languages in Germany. In addition, Low German is officially recognized as a regional language.¹³ Only these languages are eligible for the protection provided under the Charter of European Regional or Minority Languages (ECRML).

Migrants – and very often their descendents – also speak languages other than German. Migrant groups thus also have their own linguistic identities. They are speakers of migrant languages, which in Germany are often referred to as *Herkunftssprachen*, i.e. languages of origin or heritage language. Certainly, not all members of either category, minorities or migrants, speak their heritage language at all or as their mother tongue. Nevertheless, languages other than the majority language play a role in the lives of many persons associated with autochthonous minorities or migrant groups in Germany.

In many decisive areas distinct legal and political frameworks apply to both, autochthonous minorities and migrant groups. And indeed, needs pertaining to language use and maintenance could be inherently different depending on whether a person belongs to one of the former or one of the latter groups.¹⁴

In Germany, there is no tradition in dealing with migrant languages. This does not mean by default that migrants and migrant languages have remained outside the legal and political system of the Federal Republic of Germany. The present analysis sets out to explore the legal and political framework for language use and maintenance in Germany. The focus lies on the broad legal and political framework for linguistic diversity in Germany and in particular on the legal and political framework for the maintenance of one migrant language - Estonian. As Estonian-speakers in Germany, a group of migrants and persons with migration background, are to constitute the main case study, it would exceed the scope of the present analysis to scrutinize minority rights legislation in detail. However, the languages of autochthonous minorities are part of the linguistic

¹³ Council of Europe, *European Charter for Regional or Minority Languages. Second Periodical Report presented to the Secretary General of the Council of Europe in accordance with Article 15 of the Charter. Germany*, MIN-LANG/PR (2004) 1, Strasbourg, 14 April 2004, p. 4.

¹⁴ Oeter, *Überlegungen zum Minderheitenbegriff und zur Frage der neuen Minderheiten*, 1997, p. 245 et seq.

diversity of the Federal Republic of Germany and minority rights legislation shall serve to explain in which way the legal framework takes account of this diversity and which differences prevail with regard to minority and migrant languages. Moreover, anti-discrimination legislation and its implementation, for example, can concern members of both groups alike, so it is not viable to keep the two categories separate at all times.

Estonian-speakers, *i.e.* Estonian citizens resident in Germany as well as German citizens with Estonian migration background, are not among the autochthonous minorities in Germany. Thus, they cannot avail themselves of the protection of an explicit minority rights regime. Rather, Estonian-speakers in Germany are recent migrants or persons with migration background and could thus be classified as a “new minority” in Germany. They are speakers of a migrant language. Estonian forms part of the irrevocable linguistic diversity in Germany.

1.2 Language as an area regulated by law

Language legislation is intrinsically a concept alien to the German legal and political system as it is today. Nevertheless, the legal framework relevant for the description of the position of languages in Germany in general is broad, although fragmented, and shall be outlined in sub-chapters 1.9 and 1.10 below.

1.3 Language diversity and multilingualism

No cohesive language policy has been adopted in the Federal Republic of Germany. The approach to language diversity and multilingualism is indirect, at the most, and fragmented. Minority language policies follow the principle of territoriality and can thus not serve to appropriately cover language groups that do not live in specific settlement areas.¹⁵

¹⁵ Council of Europe, European Charter for Regional and Minority Languages, Application of the Charter in Germany, *Report of the Committee of Experts on the Charter*, 4 December 2002, ECRML(2002)1, p. 15, para. 47.

With regard to autochthonous linguistic minorities and migrant groups, political contention and legal regulation depart from two entirely different starting points. The autochthonous linguistic groups are fluent in the majority language and fully integrated.¹⁶ Legal regulation aims at protecting the “otherness” of autochthonous minorities and at preventing assimilation. Migrant groups, however, face an opposite reality. Their “otherness” is manifest and often leads to societal exclusion and economically and socially disadvantageous positions.¹⁷ Migrants face the immediate danger of exclusion, not assimilation. While, with regard to autochthonous minorities, legal regulation aims at the preservation of the minority identity, including language, with regard to migrant group its primary goal appears to be integration, not least in respect of language. Nonetheless, migrants are not one homogeneous group. Many speakers of migrant languages have achieved individual multilingualism and experience language diversity on a daily basis. Thus, the concerns of autochthonous groups and migrant groups with regard to language use and maintenance might well converge in certain aspects. Multilingualism and language diversity is experienced daily, not only by autochthonous groups but also by first, second and third generation migrants and persons with migration background, citizens and foreign residents alike. Nevertheless, multilingualism and, although to a lesser extent language diversity, continue to be dealt with in a rather one-dimensional way and mainly within the framework of integration policies. One of Germany’s integration policy’s core areas, German language learning, intrinsically aims at individual multilingualism. However, language diversity is not a primary goal of the integration policy, which is preoccupied with increasing the proficiency in the German language among migrants in order to secure the position of German as the prime vehicular language in the public sphere. Multilingualism and language diversity are not completely deprived of their value as such. Integration policies, although slowly, have started to recognize multilingualism and language diversity as values in their own right. The position of language in integration policies in Germany shall be illustrated in more detail with reference to the National Integration Plan and the Federal Integration Programme in parts 1.8.1 and 1.8.2 below.

¹⁶ In Germany’s reports under the FCNM, emphasis is put on the factual fluency of all autochthonous minorities in the German language, see e.g. Council of Europe, *Third Report of the Federal Republic of Germany under Article 25 paragraph 2 of the Council of Europe Framework Convention for the Protection of National Minorities*, ACFC/SR/III(2009)003, February 2009, p. 74, para. 10028, p.171.

¹⁷ Klein, Friedrich, *Minderheitenschutz für die “Neuen Minderheiten” in Deutschland?*, Dissertation, Osnabrück, 2003, pp. 129 et seq.; Pallek, *Der Minderheitenschutz im deutschen Verfassungsrecht*, Schriften zum Staats- und Völkerrecht, 2001, p. 295.

1.4 The languages studied by the ELDIA project in Germany

As Kristiina Praakli's Structured Context Analysis within the ELDIA project has shown, it is difficult to delimit the group of Estonian-speakers in Germany.¹⁸ A part of the Estonian nationals living in Germany could potentially speak Russian as their mother tongue and none or only little Estonian. At the same time there are Estonian-speakers from either the former Soviet Union or, after 1991, independent Estonia, who have acquired German citizenship. Between 2002 and 2009 a total of 435 Estonian nationals have been naturalized in Germany.¹⁹ Statistical data does not suggest how many descendants of Estonian nationals and naturalized Estonians might have acquired German citizenship upon birth. However, the Estonian language very likely plays a role in the lives of the descendants of Estonians in Germany. To what extent the actual number of Estonian-speakers in Germany diverges from the number of 4108 Estonian citizens currently registered as residents in Germany (according to information of the Federal Statistical Office as cited in Kristiina Praakli's structured context analysis) is hard to speculate upon.²⁰

As a consequence of the fact that the group of Estonian-speakers in Germany includes both Estonian citizens, i.e. non-nationals, as well as naturalized persons and persons born with German citizenship, different sets of legislation apply to these individuals. The possibility that Estonian-speaking individuals who are resident in Germany may hold third-country citizenship, e.g. of the Russian Federation, cannot either be excluded. All Estonian-speakers who are either German or Estonian by citizenship are citizens of the European Union and thus remain unaffected by legislation that applies to third country nationals only. Despite these differences, it shall be attempted to place the small group of Estonian-speakers within the broad category of migrants and persons with migration background in Germany. Only with such a focus can the political debates and the developments in the legislation relating to migrants and their languages be captured in a meaningful way.

¹⁸ Praakli, Kristiina, *Structured Context Analysis. Estonians in Germany*, ELDIA, 2010, pp. 20 et seqq.

¹⁹ Statistisches Bundesamt, *Bevölkerung und Erwerbstätigkeit. Einbürgerungen*, 2010, pp. 18 et seqq.

²⁰ Praakli, Kristiina, *Structured Context Analysis. Estonians in Germany*, ELDIA, 2010, pp. 20 et seqq.

It should be noted that Estonian-speakers in Germany have themselves not resorted to calling themselves a minority. To avoid terminological confusion and misperceptions it seems most accurate to refer to Estonian-speakers as a migrant group or a group of persons with migration background, a term that is understood to include German citizens.

The situation of Baltic Germans who left Estonia for Germany in 1939 and their descendants shall not be further scrutinized, although it cannot be excluded that the Estonian language played or still plays a role in the lives of these persons or their descendants. The situation of Estonians who fled to Germany during World War II shall not be scrutinized here either. It should be noted however, that the situation of exile Estonians in Germany during and after WWII has been researched more extensively than the situation of Estonians living in Germany at present.²¹ Likewise expellees and repatriates (*Aussiedler/Spätaussiedler*) are not treated as a distinct category of persons with migration background here. The term repatriates commonly refers to ethnic Germans and their families who have returned to the Federal Republic of Germany since the early 1950s, either from territories lost by the German Reich with the delimitation of the Oder-Neisse line or from Eastern European states, such as Kazakhstan or Kyrgyzstan where their families had settled, often for many generations. By virtue of the federal Expellee Law (*Bundesvertriebenengesetz*) repatriates enjoy a particular legal status in Germany. Reference to repatriates is consciously neglected, as it would exceed the scope of the present analysis.

Estonian is part of the language diversity in Germany. However, the languages of numerically big migrant groups, first and foremost Turkish, attract considerable attention, while Estonian with a comparatively small number of speakers does not usually figure in public discourse.

1.5 Political and legal tradition in dealing with minorities and languages

In the predecessor states of the Federal Republic of Germany there was no coherent system of minority protection. However, one can speak of a strong minority rights tradition, which was harshly interrupted by the Nazi regime. Three time periods shall be presented here briefly, the

²¹ *Ibid.* pp. 4 et seqq.

period following the Peace of Westphalia until 1933, the totalitarian regime of 1933-1945 and the post WW II period.

The Peace of Westphalia in 1648 consolidated the rights of certain religious minorities, which were first enacted some one hundred years earlier with the Peace of Augsburg.²² It was, however, first with the emergence of nationalism in the shadow of the French Revolution in the late 18th century that certain ethnic groups were perceived as minorities. Language was seen as the defining factor for those groups that were to enjoy protection in the areas of church, education, municipal administration and the administration of justice.²³ Minority protection was discussed as a constitutional guarantee in 1848 but, after the rejection of the *Paulskirchenverfassung*, not asserted as such until the adoption of the Weimar Constitution. Meanwhile, due to the absence of a central power, there were a variety of approaches in the sovereign states of the German Federation and so the protection of minorities essentially remained a competence of the *Länder* after the creation of the German Empire in 1871.²⁴ With the loss of considerable parts of its territory in World War I, the emerging Weimar Republic was less diverse but nevertheless home to a range of (linguistic) minorities. The protection of national minorities attained constitutional status in the Weimar Constitution of 1919. Pallek has noted that, in the parliamentary debate, the language question was in fact regarded to be of great practical relevance.²⁵ Art. 113 of the Weimar Constitution finally was the first constitutional text that referred to foreign language communities of the people of the *Reich* (“*die fremdsprachigen Volksteile des Reichs*”). Detailed provision on e.g. languages of education and official languages in the different parts of the Republic continued to exist on the *Länder* level.²⁶ To name but a few, minority rights were granted for Slavic minorities, Danes and Frisians. During the same time period, the League of Nations functioned as a guarantor for a range of international treaties and declarations with minority rights provisions, e.g. the German-Polish Accord on East Silesia of May 1922, which among others acknowledged the

²² Pallek, *Der Minderheitenschutz im deutschen Verfassungsrecht*, Schriften zum Staats- und Völkerrecht, , 2001, pp. 110 et seqq.

²³ *Ibid.* pp. 120 et seqq.

²⁴ *Ibid.* pp. 122 et seqq & pp. 510 et seqq on the minority rights traditions of the *Länder*, especially in Schleswig-Holstein.

²⁵ *Ibid.* pp. 120 et seqq.

²⁶ *Ibid.* pp. 137 et seqq.

linguistic rights of the Polish-speakers in Upper Silesia.²⁷ The League of Nations instruments however, could not prevent the dramatic retrogression of minority rights from 1933 – 1945.

“Minority protection” in Nazi Germany concentrated on the German minorities in neighbouring states. Initially, the Nazi government advocated wide autonomy for the German peoples in *e.g.* Slovakia, Croatia and Serbia. The main approach however, was the resettlement of Germans from Italy, the Soviet Union, Croatia, Hungary, Romania, Bulgaria and the Baltic States.²⁸ At the same time, on the territory of Nazi Germany, the population considered as non-German was expelled in order to create an ethnically homogeneous state. A system of racial discrimination was established and minority rights were abolished.²⁹ Discrimination, displacement and ethnic cleansing increased with an expanding totalitarian German Reich under Adolf Hitler. Minorities were not “dealt with”, they were persecuted.

After WWII, Human Rights became an important doctrine in the Western world and it was within Human Rights law that the protection of minorities was sought to be addressed. The *Grundgesetz* or Basic Law of the Federal Republic of Germany of 1949 was not equipped with an explicit minority rights provision. However, chapter I of the *Grundgesetz* is dedicated to fundamental rights and Art. 3(3) provides that “no person shall be favoured or disfavoured because of sex, parentage, race, language, homeland and origin, faith, or religious or political opinions. No person shall be disfavoured because of disability.” The principles of human dignity and non-discrimination are still seen as the backbones of minority protection in Germany.³⁰ Concrete minority rights were and still are guaranteed in the respective *Länder* constitutions.

Within the Federal Republic of Germany, minority rights have an especially long tradition in Schleswig-Holstein. The Constitution of Schleswig-Holstein of 1949 (*Landessatzung für Schleswig-Holstein*) recognized the freedom of affiliation with a national minority and at the same time

²⁷ On the minority rights regime under the League of Nations see Pircher, Erich H., *Der vertragliche Schutz ethnischer, sprachlicher und religiöser Minderheiten im Völkerrecht*, Stämpfli & Cie AG, Bern, 1979, p. 62 *et seqq.*

²⁸ Pircher, *Der vertragliche Schutz ethnischer, sprachlicher und religiöser Minderheiten im Völkerrecht*, 1979, p. 150 *et seqq.*

²⁹ Paliek, *Der Minderheitenschutz im deutschen Verfassungsrecht*, 2001, pp. 149.

³⁰ *Third Report of the Federal Republic of Germany under Article 25 paragraph 2 of the Council of Europe Framework Convention for the Protection of National Minorities*, ACFC/SR/III(2009)003, February 2009, p. 74, para. 01012, p.43.

emphasized an obligation of loyalty *vis-à-vis* the state in Art. 5(1) and 5(2) respectively. Moreover, it recognized the right of legal guardians to decide whether their children should attend a school maintained by a national minority in Art. 6 (4). These provisions applied to the Danish minority, not however, to the Frisians living in Schleswig-Holstein.³¹ First in 1990 the revised Constitution of Schleswig-Holstein (now *Verfassung des Landes Schleswig-Holstein*) explicitly referred to the Frisians as a national minority. Today, Schleswig-Holstein recognizes also the Roma and Sinti as a national minority, thereby including yet another group in the scope of Art. 5.³²

The German Democratic Republic followed a different approach and included explicit minority rights provisions in the subsequent constitutions of 1949, 1968 and 1974. Art. 11 of the 1949 Constitution provided that “*free ethnic development of foreign-language elements of the population of the Republic is to be promoted by legislative and administrative action. In particular, they must on no account be prevented from using their native language in matters of education, internal administration and administration of justice.*” In East Germany, this provision applied to the Sorbian minority and was concretised by the *Länder* Saxony and Brandenburg in legal acts on the protection of the Sorbian population and remained in force also after the abolition of the federal structure in the German Democratic Republic in 1953. Sorbian language schools, Sorbian language administration as well as financial resources for the Sorbian cultural life were major achievements. However, the political freedom of the Sorbs in a socialist surveillance state was limited.³³

After the reunification of Germany in 1990, when East Germany was reintegrated into the Federal Republic of Germany, the six *Bundesländer* in the East, including Berlin, were re-established. The *Grundgesetz* applies on the territory of now 16 federal entities. Immigration is an experience shared by all 16 states and has been an issue for policy and law makers since the 1960s, when the first wave of “*Gastarbeiter*” came to Germany to work in the industrial sector.

³¹ An abstract formulation was chosen to create a distance to the emotionally-loaded political debates concerning the Danish minority, see Pallek, *Der Minderheitenschutz im deutschen Verfassungsrecht*, 2001, p. 518.

³² Die Landessatzung für Schleswig-Holstein vom 13. Dezember 1949 (GVOBl. Schl.-H. 1950 S. 3), in der Fassung der Bekanntmachung vom 7. Februar 1984 (GVOBl. Schl.-H. S. 53); Rüdiger, Gerrit, *Kollektiver Minderheitenschutz und Gruppenschutz im Grundgesetz*, Boorberg, Stuttgart 2002, S. 130 et seqq.

³³ Rüdiger, *Kollektiver Minderheitenschutz und Gruppenschutz im Grundgesetz*, 2002, S. 133 et seqq.

1.6 Changes over time in legal and political thinking on minorities and languages

As the examples of the educational policies adopted by the Standing Conference of Ministers of Education and Cultural Affairs of the Länder in the Federal Republic of Germany (*Ständige Konferenz der Kultusminister der Länder in der Bundesrepublik Deutschland*, short *Kultusministerkonferenz* or, even shorter, *KMK*) in sub-chapter 1.9.3.1 below and the Immigration Act in sub-chapter 1.10.1 below demonstrate, the legal and political perspective on the position of migrants has shifted with the understanding that migration is a more permanent phenomenon than originally expected.

Irrespective of the factual linguistic diversity of Germany's present population, language is not dealt with in any comprehensive way. It features in the areas of minority protection and, as shall be explored below, in immigration, citizenship and education legislation. Language, or rather language learning, has evolved to be an important component of the national policy on integration. Multilingualism and language diversity, however, have remained of marginal interest to legal and political thinking.

1.7 Characteristics of the legal system

Considering how fragmented the legal regulations touching upon the use and maintenance of languages in Germany are, the legal situation can hardly be characterised by relative stability, clarity and efficiency. Taking into consideration the concerns of national minorities, the Expert Committee under the ECRML has found that *"the particular situation of Germany as a federal State and the logic of the distribution of competences have an important impact on the way the language policy and the legislation are adopted and implemented in Germany."*³⁴ This statement can be complemented by an observation made by the Advisory Committee under the FCNM which considered that *"[...]. A general debate is ongoing among representatives of the national minorities about how responsibilities for protecting national minorities should be divided amongst central, Land and local government. The current system is unclear and co-operation between the*

³⁴ Council of Europe, European Charter for Regional and Minority Languages, Application of the Charter in Germany, *Report of the Committee of Experts on the Charter*, 4 December 2002, ECRML(2002)1, p. 14, para. 42.

various levels of authority does not always seem to work effectively. One consequence, amongst others, is that procedures for funding activities designed to assist national minorities are sometimes complex.”³⁵ The formal-legal delimitation of competences between *Bund* and *Länder* is not always clear-cut. Minority rights are enshrined within the respective *Länder* constitutions and legal acts. However, the implementation of the FCNM and ECRML is a responsibility of the *Bund* and coordinated by Ministry of the Interior.³⁶ In practice it is executed by the *Länder* authorities.³⁷ Nevertheless, the protection of national minorities remains a federal responsibility by virtue of international agreements, entailing also obligations as to the financial support for minorities.³⁸ Indeed, the funding structure for national minorities is complex as public funding can be granted by different ministries responsible for different aspects of minority protection on the federal and *Land* levels. For that reason the arrangements for funding of certain activities can well be described as “especially complex and opaque.”³⁹ According to the Federal Government, existing consultation structures such as minority committees within the respective ministries constitute efficient remedies and allow minorities a necessary degree of insight into the system.⁴⁰

Whereas the overall legal situation for minorities and minority languages has remained fairly stable since the adoption of the respective *Länder* constitutions and the ratification of international agreements, immigration legislation and citizenship legislation can be perceived as being in a state of flux. The adoption of the Immigration Act in 2005 has brought about clarity and efficiency in some areas and more complicated regulations in others. Immigration legislation will be scrutinized in more detail in sub-chapter 1.10.1 below. Immigration, residence and citizenship

³⁵ Council of Europe, Advisory Committee on the Framework Convention for the Protection of National Minorities, *Third Opinion on Germany adopted on 27 May 2010*, ACFC/OP/III(2010)003, p. 7, para. 16.

³⁶ *Third Report of the Federal Republic of Germany under Article 25 paragraph 2 of the Council of Europe Framework Convention for the Protection of National Minorities*, ACFC/SR/III(2009)003, February 2009, p. 74, paras. 05023 *et seqq.*

³⁷ *Ibid.*

³⁸ The federal budget for 2011 has allocated 98,27 million euros for repatriates, minorities and displaced Germans. However, it is hard to determine the exact share allocated to national minorities, as funds are divided along the budgets of several ministries, see website of the *Bundestag*, *Mehr Geld für Minderheiten und Vertriebene*, at http://www.bundestag.de/dokumente/textarchiv/2010/31173178_kw37_sp_hh_innere/index.html, last visited 20.1.2011.

³⁹ Council of Europe, Advisory Committee on the Framework Convention for the Protection of National Minorities, *Third Opinion on Germany adopted on 27 May 2010*, ACFC/OP/III(2010)003, p. 18, para. 73.

⁴⁰ *Third Report of the Federal Republic of Germany under Article 25 paragraph 2 of the Council of Europe Framework Convention for the Protection of National Minorities*, ACFC/SR/III(2009)003, February 2009, p. 70, para. 05004.

remain issues of parliamentary debate as shall be outlined in sub-chapter 2.1 below. Indeed, single provisions can be considered as controversial as their implementation has proven problematic. The legislator has since the entry into force of both the Immigration Act and the Citizenship Act adopted revisions touching *i.a.* upon language requirements. In 2007 the Act on the Implementation of Residence and Asylum-related Directives of the European Union has brought about changes in the Residence Act. The requirement of basic knowledge of the German language, which now applies to the immigration of spouses as outlined in more detail in sub-chapters 1.10.1 and 2.3.2, is widely perceived as unclear and absurd.⁴¹ According to the current legal situation a Tunisian citizen, for example, who wants to join his or her Estonian spouse in Germany is not required to certify basic knowledge of German, whereas he/she would be required to do so if the spouse who he/she wishes to join in Germany was a German citizen. Questions with regard to the accordance of the current legal situation with European Union law are evident. Moreover, it has also been argued that the language requirements put an extreme burden on spouses who live in countries or regions where no forms of German language courses are available.⁴² As concerns the Citizenship Act, which will be discussed in sub-chapter 1.10.2 below, the *citizenship test* and dual citizenship have been sensitive topics all along. The practicability of the “*Optionspflicht*”, the obligation to choose one citizenship over the other upon entering adulthood, remains an issue of political contestation, which in turn challenges the *ius soli* principle, a principle that can still be considered new to the German legal system.⁴³ Integration courses remain the most comprehensive measure aimed at strengthening the knowledge of the German language among migrants and thus potentially affecting language use by migrants. The legislator has put effort in improving integration courses over the past years. Integration courses have been adapted to different target groups in order to achieve a yet greater degree of participation and a higher

⁴¹ Stadler, *Integration durch Recht*, 2010, pp. 353 *et seq*; A list of exceptions to the requirement of certification of basic knowledge of the German language has been composed by the Federal Office for Migration and Refugees and is available in 19 languages, the leaflet “*Evidence of basic knowledge of the German language in the event of the subsequent immigration of spouses from abroad*” on the amendment of the Residence Act can be retrieved from the website of the Federal Office at http://www.integration-in-deutschland.de/cdn_117/nn_490166/SharedDocs/Anlagen/DE/Integration/Publikationen/Sonstige/familiennachzug-flyer-de.html, last visited 20.1.2011.

⁴² Gutmann, Rolf, *Familiennachzug und Sprachkenntnisse*, ZAR 3/2010, pp. 91 *et seqq.*

⁴³ See Altmaier, Peter, *Vom nationalen Ausländerrecht zum europäischen Migrationsrecht*, ZAR 10/2010, pp. 356 *et seqq*; Deutscher Bundestag, 17. Wahlperiode, Unterrichtung durch die Beauftragte der Bundesregierung für Migration, Flüchtlinge und Integration, *Achter Bericht über die Lage der Ausländerinnen und Ausländer in Deutschland*, 7.7.2010, Drucksache 17/2400, pp. 224 *et seqq.*

number of successful completions. Generally, integration courses are presented as highly efficient, with a broad support structure for immigrants, taking account of specific life situations, such as unemployment or parenthood.⁴⁴ However, the success of this instrument for integration has also been questioned.⁴⁵ There have been voices describing the system in more radical terms as “integration control”, a term with clear negative connotations indicating a loss of personal freedom for migrants.⁴⁶

Also the General Equal Treatment Act, which will be discussed in more detail in sub-chapters 1.10.3 and 2.3.1 below, is a fairly new piece of legislation and it has been argued that public awareness about the law and its enforcement mechanisms is low, especially among its potential and most vulnerable beneficiaries such as migrants.⁴⁷ Due to the lack of awareness and the short time limit for making complaints, the General Equal Treatment Act might suffer a loss of potential efficiency.

In sum, it is rather the political environment than the legal framework as such in which certain legal provisions remain contested and appear to be renegotiated frequently, which might in turn affect the perceived legal certainty and transparency.

1.8 Languages covered by legislation

As has been indicated above and shall be outlined in more detail in sub-chapter 1.9.1 below, the German language holds a central position in the German legal system. It is the administrative language and is often considered to be the *de facto* state language. However, the languages spoken by the autochthonous minorities, i.e. Danish, Upper and Lower Sorbian, Romany, West

⁴⁴ Deutscher Bundestag, Unterrichtung durch die Bundesregierung, *Erfahrungsbericht der Bundesregierung zu Durchführung und Finanzierung der Integrationskurse nach § 43 Abs. 5 des Aufenthaltsgesetzes*, Drucksache 16/6043, 19.6.2007, pp. 31 *et seqq.*

⁴⁵ See e.g. Deutscher Bundestag, Kleine Anfrage der Abgeordneten Sevim Dağdelen *et al.*, *Schlechte Erfolgsquoten und unzumutbare Arbeitsbedingungen in Integrationskursen*, Drucksache 16/13910, 18.8.2009.

⁴⁶ See e.g., Kien, Nghi Ha, “Integration kann nicht verordnet werden”. *Ohne gleiche Rechte und Selbstbestimmung keine Integration*, Heinrich Böll Stiftung, at http://www.migration-boell.de/web/integration/47_1307.asp, last visited 21.1.2011.

⁴⁷ European Commission against racism and intolerance, *ECRI Report on Germany (fourth monitoring cycle)*, adopted on 19 december 2008, published on 26 May 2009, CRI(2009)19, p. 16, para. 29.

Frisian and Saterland Frisian, are given special status with their legal bases in the respective *Länder* legislation. Specific migrant languages do not enjoy a special legal status. The use of language by migrants, however, is a subject central to integration and education policies. The National Integration Plan and the Federal Integration Programme are the major policy instruments from which the Governments view on the use of language by migrants departs and deserve closer analysis.

1.8.1 The National Integration Plan

In Germany integration is inherently seen as a process of *“fordern und fördern”*. *Fordern und fördern* is an expression that can possibly be translated best by “demand and support”.⁴⁸ The motto has regularly been applied to language learning. The State does not only offer support in learning German but has prescribed language learning by law, in immigration and citizenship legislation as shall be outlined in sub-chapter 1.10 below. Proficiency in the German language is promoted as the ultimate path to full societal integration across all areas. The Federal Government’s integration policy, as outlined in the National Integration Plan, is divided along ten topical areas, among which topical area 1 “improvement of integration courses” and topical area 2 “Early child education: promotion of German language right from the start” have attracted by far the greatest attention in terms of legislation and resources.

Altogether, the National Integration Plan includes 400 measures aimed at fostering integration. “Integration through education” is a central statement of the National Integration Plan. Language education plays a central role. It is explicitly recognized in the National Integration Plan, a document available in full length in German, English and Turkish, that

“In the very earliest phase of children’s acquisition of their mother tongue, the immediate attachment figures, primarily the parents, play a decisive role in the linguistic development of children. Through a linguistically stimulating and intensive interaction with their child, they support natural linguistic development and help him/her to acquire language as a human form of communication. The good acquisition of the mother tongue – the language spoken between

⁴⁸ Stadler, Max, *Integration durch Recht*, ZAR 10/2010, pp. 351 et seqq.

parents and attachment figures and the child – is a fundamental requirement for the development of linguistic competence: also for the acquisition of the language of the host country, i. e. in this case, the German language. Children have no problem with growing up with more than one language as long as they have access to a sufficient degree of language input. It is vital and valuable to create structures for children who do not speak German at home to enable them to have intense interaction with the German language at a very early stage. Early contact and communication with German children and adults has great significance for the development of a subsequent competent command of the German language.”⁴⁹

As this excerpt of the National Integration Plan demonstrates, multilingualism is well recognized and seen as a prerequisite to the acquisition of German as the prime vehicular language. There is a basic understanding that a “sufficient degree of language input” is needed in order for children to grow up with more than one language. The educational system is to respond to factual linguistic diversity in Germany and the individual multilingualism of children and youth with migration background. However, this policy statement indicates a rather one-dimensional approach. Day-care facilities, schools and integration courses shall work to assist those in need of integration in the acquisition of a competent command of the German language. At the same time, the Federal Government assumes that learning, maintaining and practicing the mother tongue, a prerequisite to learning German after all, can be guaranteed in the private realm, by the family alone. The impression conveyed by the above excerpt is mitigated only partly by the commitment of the *Länder* as expressed in the National Integration Plan in these terms:

“alongside the learning of the German language, the federal states recognise the significance of multilingualism for all children and young persons. This includes the mother tongue or family language of children and young persons with a background of migration. Suitable measures for the anchoring of the principle of multilingualism within the normal school day must be identified. The

⁴⁹ Die Bauaufträge der Bundesregierung für Migration, Flüchtlinge und Integration, *Nationaler Integrationsplan. Neue Wege - Neue Chancen*, Berlin, 2007, p. 48; This is the author’s translation of the German text. It is referred here to the German language version as the English version diverges from the German text and does not use the expression mother tongue or native language; All versions can be downloaded at the website of the federal Government, <http://www.bundesregierung.de/Webs/Breg/DE/Bundesregierung/BeauftragtefuerIntegration/ThemenNeu/NationalerIntegrationsplan/nationaler-integrationsplan.html>, last visited 22.1.2011.

*federal states pledge their support for a continuous exchange of information concerning the encouragement of multilingualism on the basis of the national educational reports.*⁵⁰ As shall be shown in part 1.9.3 below, not all federal states assume responsibility for mother-tongue education. More or less appropriate measures exist in some states but are lacking in others.

A conceptual follow-up to language education for children and youth are the so-called “integration courses” for adults, which have received considerable attention since they were launched in 2005. In the National Integration Plan, the Federal Government Commissioner for Migration, Refugees and Integration, an office that exists in its current form since 2005,⁵¹ treats integration courses as the prime topical area and has described integration courses as the “core of measures to encourage integration”:

“With the adoption of the Immigration Act which came into force on 1 January 2005, integration measures for immigrants (foreign citizens, resettled ethnic Germans and members of the European Union) became consistently regulated by law for the first time. Since then, integration courses have formed the core of measures to encourage integration. These courses are a fundamental element in the invitation of foreign citizens who are lawful permanent residents in Germany to participate in integration. The aim of these courses is to acquaint immigrants with everyday life in Germany to a sufficient degree to enable them to act independently in all matters of everyday life without help or assistance from third persons. For this purpose, the integration course includes a 600-hour language course – made up of a basic course and advanced course of equal length – providing sufficient knowledge of the German language equivalent to the level B1 of the Common European Framework of Reference for Languages (CEFR)⁵² – and a 30-hour orientation course providing instruction on fundamental knowledge of the legal system, culture and history of Germany.”⁵³

⁵⁰ The Federal Government Commissioner for Migration Refugees and Integration, *National Integration Plan. New paths – new opportunities*, Berlin, 2007, p. 25

⁵¹ Today the Federal Government Commissioner for Migration, Refugees and Integration is a Minister of State, to the Chancellery. The Commissioner is a parliamentary state secretary. Since its creation in 1978 the office has been coordinated first by the Federal Ministry of Family Affairs, Senior Citizens, Women and Youth and later by the Federal Ministry of Labour and Social Affairs.

⁵² CEFR reference levels are A1 for the lowest level of language proficiency to C2 for the highest level of proficiency, see webpage of the Council of Europe, at http://www.coe.int/T/DG4/Portfolio/?M=/main_pages/levels.html, last visited 21.2.2011.

⁵³ *National Integration Plan. New paths – new opportunities*, 2007, p. 37

Integration courses have acquired a very central position in the German integration policy and will be treated in more detail in sub-chapter 1.10 below.

1.8.2 The Federal Integration Programme

The Federal Integration Programme, drafted under the auspices of the Federal Office for Migration and Refugees, can be considered as an inventory of measures adopted to implement the National Integration Plan and as an action plan in its own right.⁵⁴

Under the title “*Competences for the globalized world: support and use of multilingualism*”, the Federal Integration Programme highlights the general role of multilingualism in Germany.⁵⁵ The programme moreover addresses the status of mother tongue education in Germany and mentions some noteworthy initiatives in that respect in day-care and school.⁵⁶ Although support measures for the acquisition of the German language are undisputedly seen as the prime responsibility of the state when it comes to integration and language, the programme presents multilingualism as a resource with added value for the German society at large. One of the recommendations given is to strengthen multilingualism in day-care and school, not only by increasing the quality of mother tongue education, but also by aiming at early bilingual literacy and subject-specific teaching in the mother tongues of migrants. Teacher education is central to the implementation of these goals.⁵⁷ For less widely spoken mother tongues, the programme proposes the adoption of tutor programmes in cooperation with migrant association or other educational institutions.⁵⁸ Migrant organisations are considered to play an important role in promoting multilingualism, as support structures, channels of communication and in educating so-called “multipliers”. A high level of, not only spoken, but also written fluency in the mother tongue is considered a resource that should be

⁵⁴ The obligation of the Ministry of the Interior to devise the integration programme is laid out in § 45(2) Residence Act, according to which also provided for the involvement of *Länder*, the municipalities, the Commissioners for Foreigners on the federal, *Land* and municipality levels and the Federal Officer for Repatriates as well as religious communities, labour unions, employer’s association, public welfare organisation and other civil society groups.

⁵⁵ Bundesamt für Migration und Flüchtlinge, *Bundesweites Integrationsprogramm. Angebote der Integrationsförderung in Deutschland - Empfehlungen zu ihrer Weiterentwicklung*, Berlin, 2010, pp. 72 et seqq

⁵⁶ Bundesamt für Migration und Flüchtlinge, *Bundesweites Integrationsprogramm. Angebote der Integrationsförderung in Deutschland - Empfehlungen zu ihrer Weiterentwicklung*, Berlin, 2010, pp. 34 et seqq

⁵⁷ Bundesamt für Migration und Flüchtlinge, *Bundesweites Integrationsprogramm. Angebote der Integrationsförderung in Deutschland - Empfehlungen zu ihrer Weiterentwicklung*, Berlin, 2010, pp. 45 et seqq, pp. 60 et seqq.

⁵⁸ Bundesamt für Migration und Flüchtlinge, *Bundesweites Integrationsprogramm. Angebote der Integrationsförderung in Deutschland - Empfehlungen zu ihrer Weiterentwicklung*, Berlin, 2010, p. 37

developed so as to be fully exploitable for the benefits of the German labour market and economy.⁵⁹ Awareness-raising among employers and languages courses in profession-specific terminology are presented as measures to promote and support multilingualism on the labour market.⁶⁰

In contrast to the National Integration Plan, the Federal Integration Programme addresses multilingualism and language diversity in a much more multi-dimensional way. It moves multilingualism and therefore language diversity to the sphere of public responsibility. The education system is presented not only as responsible for reinforced teaching of the German language to migrant children and children with migration background but also for fostering “true” multilingualism. The Federal Integration Programme addresses also the need of multilingual competences in healthcare and administration,⁶¹ topics that acquire more and more attention. Professional language- and culture mediators (*Sprach- und Kulturmittler*) are presented as one approach to an intercultural opening of these areas which can be developed further.⁶²

1.9 Regulation in relation to minorities and languages

1.9.1 Constitutional provisions

The use of language as an individual choice is protected under Arts. 1(1) and 2(1) of the German Constitution, the Basic Law of 1949 (*Grundgesetz*, hereinafter *GG*), as a fundamental part of human dignity and the right to the free development of one’s own personality. The most fundamental provision pertaining to languages in the German legal order, however, is Art. 3 (3) *GG*, which provides that *no person shall be favoured or disfavoured because of sex, parentage, race, language, homeland and origin, faith, or religious or political opinions. No person shall be disfavoured because of disability.* This provision acknowledges the importance of language for the principle of equality as enshrined in Art. 3(1) *GG*. Art. 5(1) *GG* guarantees the freedom of expression and Art. 8 (2) *GG* the right of parents or guardians to the care and upbringing of

⁵⁹ Bundesamt für Migration und Flüchtlinge, *Bundesweites Integrationsprogramm. Angebote der Integrationsförderung in Deutschland - Empfehlungen zu ihrer Weiterentwicklung*, Berlin, 2010, pp. 72 et seqq

⁶⁰ Bundesamt für Migration und Flüchtlinge, *Bundesweites Integrationsprogramm. Angebote der Integrationsförderung in Deutschland - Empfehlungen zu ihrer Weiterentwicklung*, Berlin, 2010, pp. 76 et seqq.

⁶¹ *Ibid.* p. 78.

⁶² *Ibid.* p. 78.

children, two rights to which language use is central.⁶³ The fundamental freedoms of articles 1 to 6 GG apply to all persons within the jurisdiction of the Federal Republic of Germany, *i.e.* nationals and non-nationals alike. Notably, the principle of equality as stipulated in Art. 3 GG is commonly not considered to necessitate the analogous treatment of naturalized migrants and members of national minority groups.⁶⁴

The Federal Republic of Germany has no official state language by virtue of its constitution and the constitution does not make reference to minorities or minority languages. Language is mentioned exclusively in Art. 3 (3) GG, which prohibits discrimination based on language. Nevertheless, German is widely regarded as the *de facto* official state language.⁶⁵ Some authors have based this view on an inherent connection between the principles of the *Grundgesetz* and the language in which it has been pronounced. Blasius has gone as far as arguing that the *Rechtsstaatsprinzip* necessitates the presupposition that German is the official state language.⁶⁶ The majority language, German, is widely regarded as the basis of the state and the German nation, which is “constituted through linguistic homogeneity”.⁶⁷ Germany is inherently seen as a unilingual state. Autochthonous “*linguistic minorities do not shape the German language-nation*” and do not challenge the “one nation – one state” doctrine.⁶⁸ The use of the German language as the prime vehicular language between the state and its citizens is considered as self-evident.⁶⁹ However, constitutional reforms have not led to the express inclusion of German as the official state language and as it stands today, formally Germany does not have an official state language.⁷⁰

⁶³ Kirchhof, Paul, *Deutsche Sprache*, in: Isensee, Josef, Kirchhof, Paul, *Handbuch des Staatsrechts der Bundesrepublik Deutschland*, Band II Verfassungsstaat, C.F. Müller Verlag, Heidelberg, 2004, para. 18.

⁶⁴ See Pallek, *Der Minderheitenschutz im deutschen Verfassungsrecht*, 2001, pp. 292 *et seqq.*

⁶⁵ Deutscher Bundestag, Wissenschaftliche Dienste, Denkinger, Miriam, *Aktueller Begriff. Deutsch im Grundgesetz*, available at http://www.bundestag.de/dokumente/textarchiv/2011/33015544_kw02_deutsch_lammert/index.html, last visited 11.1.2011.

⁶⁶ Blasius, Hans, *Staat und Sprache*, Thüringer Verwaltungsblätter 15 (2006) 3, pp. 58 *et seqq.*

⁶⁷ Kirchhof, *Deutsche Sprache*, 2004, para. 78 *et seqq.*

⁶⁸ Kirchhof, *Deutsche Sprache*, 2004, para. 79.

⁶⁹ Lemke, Jan, *Nationale Minderheiten und Volksgruppen in Schleswig-Holstein und im übrigen deutschen Verfassungsrecht*, Arbeitspapier Nr. 48, Lorenz-von-Stein-Institut für Verwaltungswissenschaften an der Christian-Albrechts-Universität zu Kiel, Kiel, 1998, p. 39.

⁷⁰ Due to the autonomy or independence in cultural and educational matters, the so-called “*Kulturhoheit*” of the federal states, it is doubtful whether the Federal Republic has the competence to pronounce legislation on an official state language, see Lemke, Jan, *Nationale Minderheiten und Volksgruppen in Schleswig-Holstein und im übrigen deutschen Verfassungsrecht*, Arbeitspapier Nr. 48, Lorenz-von-Stein-Institut für Verwaltungswissenschaften an der Christian-Albrechts-Universität zu Kiel, Kiel, 1998, p. 40.

Legislation does not only originate on the State level but to a great extent in the *Länder*, the 16 federal entities that make up the Federal Republic of Germany. Within the limits of the *Grundgesetz*⁷¹ the federal states enjoy constitutional autonomy.⁷² The 16 *Länder* constitutions (*Landesverfassungen*) do not refer to German, or any other language for that matter, as the official *Land* language. Again, German is defined as the administrative language and the language of the courts by relevant legal acts on the *Land* level.⁷³ However, national minorities have attained special attention in the some *Länder* constitutions. These constitutional provisions shall be briefly outlined here.

Beyond the principle of equality, which is enshrined in all 16 constitutions,⁷⁴ the constitutions of Brandenburg (Art. 25), Mecklenburg-Vorpommern (Art.18), Saxony-Anhalt (Art. 37), Saxony (Arts. 5 & 6) and Schleswig-Holstein (Art. 5) include express (linguistic) minority rights and/or reference to language.⁷⁵

Art. 25 (3) of the Constitution of **Brandenburg** acknowledges the right of the Sorbian minority to the protection and promotion of the Sorbian language and culture in public life as well as the teaching of Sorbian in school and day-care. The scope of Art. 25 thus is well-defined, the provision is addressed explicitly to the Sorbian minority in Brandenburg.

Art. 18 of the constitution of **Mecklenburg-Vorpommern** is more widely formulated and stipulates that the cultural autonomy of ethnic and national minorities as well as ethnic groups of German nationality (*Volksgruppen von Bürgern deutscher Staatsangehörigkeit*) enjoy the special protection of the *Land*. The applicability of this provision to migrant linguistic groups cannot be excluded, as

⁷¹ Art. 28(1) GG, so-called *Homogenitätsgebot*.

⁷² See Art. 30 GG.

⁷³ See e.g. § 23 Administrative Procedures Act of Hessen.

⁷⁴ The *Länder* constitutions cannot diminish the protection of fundamental rights as prescribed by the *Grundgesetz*, however, they can codify a higher standard of fundamental rights protection. The Land Thüringen has included “ethnic origin” (*ethnische Zugehörigkeit*) as one factor that prohibits discriminatory treatment in Art. 2(3) of its Constitution.

⁷⁵ For an initial discussion on the protection of minority rights in the federal states in English, see Weiss, Norman, *The Protection of Minorities in a Federal State: The Case of Germany*, in: Tarr, Williams, Marko (eds.), *Federalism, Sub-national constitutions and Minority Rights*, Praeger, Westport, 2004, pp. 73-86.

the preparatory works do not define what is to be understood as an “ethnic group of German nationality”. Neither has a clarification been produced by the *Land* government at any later stage. However, in the narrow sense of the term minority on the federal levels, Art. 18 cannot be interpreted to include migrant linguistic groups.⁷⁶ In contrast, Art. 16(2) of Mecklenburg-Vorpommern’s Constitution is a straight-forward, narrowly defined language provision. Under the heading “promotion of culture and science”, it provides that the *Land* protects and promotes “fostering” the Low German language.

In **Saxony-Anhalt**, Art. 37(1) of the Constitution guarantees the protection of the cultural autonomy and the political participation of ethnic minorities by the *Land* and the municipalities. Art. 37(2) provides that the affiliation with a national minority is free but that it does not discharge the individual members of national minorities of civic responsibilities as a German citizen. With regard to the scope of this provision, the situations in Saxony-Anhalt and Mecklenburg-Vorpommern are similar. An official statement by the government of Saxony-Anhalt clarifying which groups constitute ethnic minorities within the meaning of Art. 37(1), especially in contrast to the term “national minority” as used in the second paragraph of the same provision, is lacking. Speakers of migrant languages cannot be assumed to be among the beneficiaries of Art. 37.⁷⁷

The Constitution of **Saxony** contains a widely formulated minority rights provision in Art. 5 as well as a provision addressed especially to the Sorbian minority in Art. 6. Art. 5(1) declares that the people of Saxony include citizens of German, Sorbian and other ethnicity (*Volkszugehörigkeit*) and that the *Land* recognizes the right to *Heimat*, i.a. a right to “homeland”. Art. 5(2) declares that the *Land* Saxony safeguards and protects the right of national and ethnic minorities of German nationality to the protection of their identity and to the “fostering” of their language, religion, culture and tradition. Art. 5 is complemented by paragraph 3 which states that the *Land* respects the interests of foreign minorities, whose members reside in Saxony legally. Clearly covered by the scope of Art. 5(1) and (2) as well as Art. 6 are the Sorbs,⁷⁸ whereas it is difficult to establish which

⁷⁶ Pallek, *Der Minderheitenschutz im deutschen Verfassungsrecht*, Schriften zum Staats- und Völkerrecht, 2001, p. 644.

⁷⁷ Pallek, *Der Minderheitenschutz im deutschen Verfassungsrecht*, Schriften zum Staats- und Völkerrecht, 2001, p. 639 *et seq.*

⁷⁸ On the rights of the Sorbian minority see Degenhart, Christoph, Meissner, Claus, *Handbuch der Verfassung des Freistaates Sachsen*, Boorberg, Stuttgart, 1997, pp.118 *et seq.*

groups are covered by the terms “national and ethnic minorities of German nationality”. According to some commentators this provision is meant only to put emphasis on the element of nationality.⁷⁹ It does clearly not encompass foreign minorities, as these are addressed by Art. 5(3) – a unique provision in the constitutional law of the *Länder*. Art. 5(3) calls for the state to take account of the special needs of foreigners, who constitute a minority in Saxony.

Art. 5(1) of the Constitution of **Schleswig-Holstein** is almost identical with Art. 37(2) of the Constitution of Brandenburg, it stipulates that the affiliation with a national minority is free but that it does not discharge individual members of national minorities of their civic responsibilities as German citizens. According to Art. 5(2), the cultural autonomy and the political participation of national minorities and ethnic groups is protected by the *Land*, the municipalities and the so-called associations of local authorities (*Gemeindeverbände*). According to the same constitutional provision, the Danish minority and the ethnic group of Frisians are entitled to protection and promotion. Art. 8 (4) declares that it is up to legal guardians to decide whether children shall attend minority schools.⁸⁰ Art. 9(2) relates explicitly to language, i.e. Low German, by stating that the *Land* protects and promotes “fostering” the Low German language. According to the 2007 Minority Report of Schleswig-Holstein, the national minorities in Schleswig-Holstein are the Danes, the Roma and Sinti whereas the Frisians are considered as an ethnic group.⁸¹

As these constitutional provisions use diverse terms for the groups they aim to protect, such as “ethnic minorities”, “national minorities”, “ethnic groups of German nationality” or “citizens of German, Sorbian and other ethnicity”, questions arise as to their nature (obligations of conduct or obligations of result) and, due to the lack of clear definitions, to the scope of these provisions.⁸² With the exception of Art. 5(3) of the Constitution of Saxony, the protection of minorities and

⁷⁹ Müller, Klaus, *Verfassung des Freistaats Sachsen*, Kommentar, Nomos, Baden-Baden, 1993, pp. 79 *et seq*; Degenhart, Christoph, Meissner, Claus, *Handbuch der Verfassung des Freistaates Sachsen*, 1997, p.154; According to Müller the emphasis on nationality could in turn point to the Polish, Czech and Jewish groups in Sachsen. The provision has thus far not legitimised any legal entitlement.

⁸⁰ According to the 2007 Minority Report this applies foremost to the Danes, see der Ministerpräsident des Landes Schleswig-Holstein, *Minderheiten und Volksgruppenpolitik in Schleswig-Holstein. Minderheitenbericht 2007*, Berichtszeitraum 2005 – 2010, 16. Legislaturperiode, p. 29.

⁸¹ *Minderheiten und Volksgruppenpolitik in Schleswig-Holstein. Minderheitenbericht 2007*, p. 7.

⁸² See Pallek, *Der Minderheitenschutz im deutschen Verfassungsrecht*, 2001, pp. 529 *et seq.*, 562 *et seq.*, 599 *et seq.*, 637 *et seq.*, 643 *et seq.*; Notably, in certain cases the terminology is based on the self-discription of the respective groups.

certain linguistic groups provided for in the *Länder* constitutions apply to German citizens only.⁸³ Thus far neither of the above mentioned language guaranties have been applied to any other groups than the officially recognized autochthonous linguistic minorities; i.e. speakers of Sorbian, Danish, Frisian, Romany and Low German. In sum however, language, explicitly or as part of a minority culture or tradition, is protected on the constitutional level in the *Länder*.

In addition, what should be mentioned in respect of relevant constitutional provisions are the exemptions from the so-called “5% *Klausel*” for national minority parties. Election laws on federal and *Land* levels as a rule provide for certain election thresholds, most prominently the 5% threshold, which stipulates that parties must obtain a minimum 5% of all votes cast to obtain seats in parliament. The respective exemptions for national minorities can be found in § 6(6) Federal Electoral Law (*Bundeswahlgesetz*) and, with regard to state funding for political parties, in § 18 (4) Act on Political Parties. Corresponding legislation has been adopted in Schleswig-Holstein for the Danish minority and in Brandenburg for the Sorbian minority, however not in Saxony.⁸⁴ Notably, political associations with predominantly foreign members cannot qualify as political parties.⁸⁵ Foreigners do neither hold the right to vote nor stand in elections of the *Bundestag* or the *Länder* parliaments. According to Art. 28 (1) *GG* in county and municipal elections, persons who possess citizenship in any member state of the European Community are also eligible to vote and to be elected in accordance with European Community law.

1.9.2 Language legislation

The question of whether it can be derived that German implicitly constitutes the official state language does not have any great practical relevance to date. German has been set as the administrative language in relevant legal acts, *i.e.* in § 23 (1) of the Federal Administrative Procedures Act (*Verwaltungsverfahrensgesetz des Bundes*), § 87 of the Fiscal Code (*Abgabenordnung*), § 19(1) of the Social Code X (*Sozialgesetzbuch X*). German is also the language of the federal courts according to § 184 of the Federal Judicature Act

⁸³ An exception might be the Danish-speakers with Danish nationality in Schleswig-Holstein, see Lemke, *Nationale Minderheiten und Volksgruppen in Schleswig-Holstein und im übrigen deutschen Verfassungsrecht*, 1998, pp. 169 *et seq.*

⁸⁴ See § 3(1) Electoral Law for Schleswig-Holstein & 3(1) Electoral Law for Brandenburg.

⁸⁵ § 2(3) nr. 1 Act on Political Parties (*Parteiengesetz*).

(*Gerichtsverfassungsgesetz*).⁸⁶ An exception exists with regard to the Sorbian language. § 184 recognizes the right of the Sorbs to use Sorbian in Court in their home districts. All other linguistic groups have the right to use translators and interpreters if they do not have sufficient command of the German language.⁸⁷ § 188 of the Judicature Acts provides that persons who do not have sufficient knowledge of German can pledge oaths in a language they are familiar with. However, a general right to use other languages than German alternatively, and albeit sufficient command in the German language, does not exist in these contexts. In rare cases the use of other languages than German in written or oral proceedings might be justified and consistent with the principle of “public sphere” (*Öffentlichkeitsprinzip*) of § 169 Judicature Act.⁸⁸ The Federal Constitutional Court (*Bundesverfassungsgericht*) has found that legal rules pertaining to administrative languages do not collide with the principle of equal treatment as Art.3(3) *GG* does not confer any obligation on the state to counterbalance actual linguistic obstacles faced by migrants.⁸⁹

Language legislation does certainly not occupy a prominent position in the German legal system. Language is most comprehensively dealt with in minority rights legislation and, apart from the Sinti and Roma, national minorities have the right, within certain limits, to use their languages with local authorities in their traditional settlement areas by virtue of *Land* legislation.⁹⁰ Knowledge of the minority language is generally not considered a qualification criterion for employment with public authorities as such requirements are considered as being in breach of Art. 33(2) and (3) *GG*. However, language skills can be required if they are essential to the occupation in question.⁹¹ The right to minority language toponyms is recognized by the respective legislation on the *Land* level.

⁸⁶ Public authorities and courts can demand the translation of foreign language documents or obtain translations on their own initiatives, see e.g. § 23 (2) & (4) Federal Administrative Procedures Act, § 185(1) Judicature Act, § 19(2) Social Code X.

⁸⁷ See e.g. § 23 (2) & (4) Federal Administrative Procedures Act, §§ 185 - 187 Judicature Act, § 19(2)-(4) Social Code X.

⁸⁸ See Lemke, *Nationale Minderheiten und Volksgruppen in Schleswig-Holstein und im übrigen deutschen Verfassungsrecht*, 1998, p. 41 et seqq.

⁸⁹ BVerfGE 64, 135, cited in Pallek, *Der Minderheitenschutz im deutschen Verfassungsrecht*, 2001, p. 289.

⁹⁰ See, Act on the Implementation of the Rights of Sorbs (Wends) in the *Land Brandenburg (Gesetz zur Ausgestaltung der Rechte der Sorben (Wenden) im Land Brandenburg)*, § 3 Administrative Procedure Act Brandenburg (*Verwaltungsverfahrensgesetz für das Land Brandenburg*), Act on the Right of Sorbs in the Freestate of Saxony (*Gesetz über die Rechte der Sorben im Freistaat Sachsen*).

⁹¹ *Third Report of the Federal Republic of Germany under Article 25 paragraph 2 of the Council of Europe Framework Convention for the Protection of National Minorities*, ACFC/SR/III(2009)003, February 2009, p. 174, paras. 11010 et seqq.

In the respective settlement areas topographical indications for places and institutions exist in Sorbian, Danish and Frisian.⁹²

1.9.3 Education legislation

As has been highlighted also in the National Integration Plan and the Federal Integration Programme there is an inherent connection between integration and education. Early language learning stands at the centre of attention and is taken up in the respective education policies.

In Germany school attendance is compulsory (*Schulpflicht*). Compulsory schooling is implicitly in Art. 7(1) GG and the *Länder* constitutions and clearly formulated in the respective School Acts of the *Länder*.⁹³ Today, compulsory schooling extends to all foreign children and youths resident in Germany, albeit asylum seekers continue to constitute an exception in a number of *Länder*.⁹⁴ Education in Germany is not only influenced by Art. 7 GG, which explicitly deals with schooling. The educational mandate of the State (*staatlicher Bildungs- und Erziehungsauftrag*) is coined by the fundamental right to the free development of one's personality pursuant to Art. 2 (1) GG read in conjunction with Art. 1(1) GG, the principle of equal opportunities as enshrined in Art. 3 GG and 20(1) GG, the freedom of faith and conscience pursuant to Art. 4 (1) and (2) GG as well as the protection of the family and the natural right and duty of parents to care for and bring up their children pursuant to Art. 6 (1) and (2) GG.⁹⁵ Art. 7(4) GG explicitly recognizes the right to establish private schools.⁹⁶ However, if they are to function as substitutes to state schools (*Ersatzschulen*),

⁹² *Ibid.* pp. 186 *et seqq.*, paras. 10044 *et seqq.*

⁹³ See e.g. § 72 Schulgesetz für Baden-Württemberg, § 20 Schleswig-Holsteinisches Schulgesetz; Generally, school attendance is compulsory for four years of elementary school and five years of subsequent secondary education. Compulsory schooling also includes the so-called *Berufsschulpflicht*, literally translated compulsory vocational training. Students who do not attend a post-secondary school after 9th / 10th grade on the *Hauptschule* or 10th on the *Realschule* are obliged to attend a vocational school until they have reached the age of 18. Compulsory schooling does thus generally encompass in total 12 years of schooling.

⁹⁴ Sachverständigenrat der deutschen Stiftung für Integration und Migration, *Humanität und Staatsräson auf Kollisionskurs: Der Schulzugang von Kindern irregulärer Zuwanderer. Ergebnisse einer Studie für die Stiftung Mercator*, Informationen des Sachverständigenrats deutscher Stiftungen für Integration und Migration (SVR), 2010, p. 5.

⁹⁵ Schmahl, Stefanie, *Die Beschulung von Kindern und Jugendlichen mit Migrationshintergrund: Eine Bestandsaufnahme des geltenden Rechts*, 1 Recht der Jugend und des Bildungswesens 2004, p. 26.

⁹⁶ Art. 7(4) & (5) GG read as follows: (4) The right to establish private schools shall be guaranteed. Private schools that serve as alternatives to state schools shall require the approval of the state and shall be subject to the laws of the *Länder*. Such approval shall be given when private schools are not inferior to the state schools in terms of their educational aims, their facilities, or the professional training of their teaching staff, and when segregation of pupils

they require the approval of the state and shall be subject to the laws of the *Länder*. Pursuant to Art. 6(4) GG such approval shall be given when private schools are not inferior to state schools in terms of their educational aims, their facilities, or the professional training of their teaching staff, and when segregation of pupils along social divides will not be encouraged thereby.⁹⁷

Against this background, education is a competence that rests with the German *Länder* and so there are 16 pre-school and school policies in Germany and more or less different school systems. General analysis is further complicated by the fact that all states uphold multi-track secondary school systems. Different forms of public schooling are offered, i.e. after four/six years of common elementary school, secondary education can be obtained on the *Hauptschule*, *Realschule*, *Gymnasium*, comprehensive schools (*Gesamtschule*) or schools for special educational needs (*Sonderschule/ Förderschule*).⁹⁸ Within the *Länder* there are hierarchical systems of education

according to the means of their parents will not be encouraged thereby. Approval shall be withheld if the economic and legal position of the teaching staff is not adequately assured. (5) A private elementary school shall be approved only if the educational authority finds that it serves a special pedagogical interest or if, on the application of parents or guardians, it is to be established as a denominational or interdenominational school or as a school based on a particular philosophy and no state elementary school of that type exists in the municipality.

⁹⁷ The right to establish private schools results in an entitlement to state support, also in form of financial contributions; See also Tillmanns, Reiner, *Die Freiheit der Privatschulen nach dem Grundgesetz*, Adamsverlag, Köln, 2006, pp. 7 *et seqq.*

⁹⁸ In this multi-track system intake is determined according to academic performance (generally students and their parents are free to choose an educational path but are given recommendations upon completion of primary school). The system allows for transfers but these are more often top-down than from lower to higher qualification education, especially in the West German *Länder*. Statistics show that students with migration background are at a disadvantage in such transfers and, in certain *Länder*, account for double the amount of delayed school careers as children without migration background, see Educational Reporting Consortium, *Education in Germany. An indicator-based report including an analysis of education and migration. Summary of important results*, On behalf of the Standing Conference of the Ministers of Education and Cultural Affairs of the *Länder* in the Federal Republic of Germany and the Federal Ministry of Education and Research, 2007, p. 14 *et seqq.*; In the report it has been observed also that children with and without a migration background are represented unevenly among the different types of school. It is more difficult for children with a migration background to enter advanced types of school and complete education there. Children with a migration background are given somewhat lower marks in primary school even if they perform just as well as non-migrants, and this has an unfavourable impact on their transfer to secondary school. Representative surveys have revealed that young Germans without a migration background are twice as likely to complete vocational training as young foreigners – even if their subject performance is the same, see p. 29; See also, European Commission against racism and intolerance, *ECRI Report on Germany (fourth monitoring cycle)*, adopted on 19 December 2008, published on 26 May 2009, CRI(2009)19, pp. 20 *et seqq.* Moreover, in 2006 foreigners represented an overall share of 14,5% of students in schools for special educational needs. In schools for special educational needs with a focus on learning impaired students the share was even higher and amounted to 19,4%, see Sekretariat der Ständigen Konferenz der Kultusminister der Länder in der Bundesrepublik Deutschland, *Sonderpädagogische Förderung in Schulen 1997 – 2006*, Statistische Veröffentlichungen der Kultusministerkonferenz, Dokumentation Nr. 185 – April 2008, pp. XV *et seqq.*

planning, in which the respective ministries for education occupy the coordinating position and set standards to be followed in all school districts.

Although education is a *Land* competence there is a need for inter-state coordination. With regard to day-care, youth work and family matters the *Länder* ministers responsible for these matters set joint standards in the framework of the annual Conference of Ministers of Youth and Family Affairs of the *Länder* of the Federal Republic of Germany (*Jugend- und Familienministerkonferenz*).⁹⁹ The state Ministers for Education and Cultural Affairs agree on joint policies and set common standards in the Standing Conference of Ministers of Education and Cultural Affairs of the *Länder* in the Federal Republic of Germany (*Ständige Konferenz der Kultusminister der Länder in der Bundesrepublik Deutschland*, short. Most of the Standing Conference's resolutions remain mere resolutions addressed to the *Länder* with none or limited legal effect.¹⁰⁰

1.9.3.1 Language diversity and multilingualism in the educational policy of the Standing Conference

The Standing Conference has adopted its first resolution on the education of foreign children and youths in 1964.¹⁰¹ It thought of its beneficiaries primarily as the children of so-called "Gastarbeiter", i.e. labour migrants.¹⁰² The term *Gastarbeiter* refers to foreigners who came to Germany within the framework of bilateral recruitment agreements concluded in the 1950s and

⁹⁹ The Conference has emphasized the need to provide targeted support, especially with regard to the acquisition of the German language, to children with migration background in daycare, see Umlaufbeschluss der Jugend- und Familienministerkonferenz vom 10. Januar 2009, p. 4.

¹⁰⁰ On the legal effect on the Standing Conference's resolutions see, Langenfeld, Christine, *Integration und Identität zugewanderter Minderheiten*, Mohr Siebeck, Tübingen, 2001, p. 28.

¹⁰¹ Already in 1950, the Standing Conference had adopted a resolution on the establishment of schools for ethnic groups (*fremde Volksgruppen*) and recommended the establishment, under public supervision, of foreign language-taught schools and classes, if sufficient numbers of students were available. In these schools, the teaching of German was to be reinforced. It was considered desirable to extend progressively the use of German also as a language of instructions for other subjects. In turn, for children from an ethnic group (*fremde Volksgruppe*) who attend regular schools with German instruction, mother tongue education was to be provided if practically possible. The Standing Conference explicitly recognized the possibility to establish private schools for the schooling of students belonging to ethnic groups (*fremde Volksgruppen*). Notably, this resolution referred to "ethnic groups" (*fremde Volksgruppen*) not "foreigners" who were first covered by the 1964 resolution, see Beschluss der Kultusministerkonferenz vom 27./28.10.1950 idF vom 28./29.9.1961, printed in: Langenfeld *Integration und Identität zugewanderter Minderheiten*, 2001, p. 31, fn. 11.

¹⁰² Langenfeld, *Integration und Identität zugewanderter Minderheiten*, p. 30. Notably, more substantial resolutions have been made concerning the education of repatriates see Langenfeld, Christine, *Integration und Identität zugewanderter Minderheiten*, 2001, pp. 43 et seqq.

1960s with Italy, Spain, Greece, the former Yugoslavia and Turkey in order to work in the booming industrial sector. At that point, the residence of migrant workers and, later on, their families was expected to remain of a temporary nature.¹⁰³ In 1964 the Standing Conference spoke of an “acclimatization” of foreign children to German schools, which was to be facilitated by the acquisition of “basic” German language skills through reinforced teaching. The Standing Conference recommended the creation of special preparatory classes (*Vorbereitungsunterricht*) for foreign children aimed at facilitating learning of the German language for the subsequent participation in regular classes.¹⁰⁴ Teachers were trained to teach German as a second language. The Standing Conference also recommended the *Länder* to provide additional mother tongue education (*muttersprachlicher Ergänzungsunterricht*) on a voluntary basis for foreign children in both preparatory and regular classes. The original rationale behind mother tongue education was linked to the anticipated return of migrant children to their home countries. Mother tongue education was to ensure that migrant children would achieve the educational level and maintain their linguistic capacity to be reintegrated into the school systems of their countries of origin.¹⁰⁵ The Standing Conference further developed its early policies on the education of migrant children throughout the 1960/70s.¹⁰⁶ In the beginning of the 1970s, it had become apparent that labour migration was of a more enduring nature than originally expected. Integration became the new doctrine and more emphasis was put on the importance of German as a second language. Complementary mother tongue education was no longer a tool for preparing foreign children for a possible return to their countries of origin. Although the continued value of mother tongue education was disputed, it was not abandoned but continued based on a new justification – the

¹⁰³ Herbert, Ulrich, *Geschichte der Ausländerpolitik in Deutschland. Saisonarbeiter, Zwangsarbeiter, Gastarbeiter, Flüchtlinge*, Beck, München, 2001, pp. 208 et seqq.

¹⁰⁴ Beschluss der Kultusministerkonferenz vom 14./15.5.1964, printed in: D’Amato, Gianni, *Vom Ausländer zum Bürger. Der Streit um die politische Integration von Einwanderern in Deutschland, Frankreich und der Schweiz*, 3. Auflage, LIT Verlag, Münster, 2005, p. 107. Generally these classes were to last for not more than one year.

¹⁰⁵ Baur, Rupprecht S., Ostermann, Thorsten, Chlosta, Christoph, *Der weite Weg von der Mehrsprachigkeit zur Sprachförderung*, in: Karakaşoğlu, Yasemin, Lüddecke, Julian (eds.), *Migrationsforschung und Interkulturelle Pädagogik. Aktuelle Entwicklungen in Theorie, Praxis und Empirie*, Waxmann, Münster, 2004, pp. 161 et seqq.

¹⁰⁶ Langenfeld, *Integration und Identität zugewanderter Minderheiten*, 2001, pp. 31 et seqq; Notably, in 1977 the European Economic Community adopted Council Directive 77/486 on the on the education of the children of migrant workers. The Member States undertook to take appropriate measures to ensure that free tuition to facilitate initial reception is offered in their territory of the official language or one of the official languages of the host State and promote teaching of the mother tongue and culture of the country of origin for the children referred to. The directive is formulated vaguely and is not considered to have direct effect. The directive thus leaves the practical set-up of these educational measures to the Member States; Council Directive 77/486/EEC of 25 July 1977 on the education of the children of migrant workers, *OJ L 199*, 6.8.1977, p. 32–33, Arts. 2 & 3.

maintenance of the cultural and linguistic identity of migrant children in Germany.¹⁰⁷ Thus, part of the rationale behind mother tongue education in Germany today is multilingualism in its own right.¹⁰⁸ The Standing Conference left it to the discretion of the *Länder* whether the implementation of complementary mother tongue education is organized under public responsibility or not. In many cases mother tongue instruction was and continues to be organized by the respective consulates.¹⁰⁹

The Standing Conference's Report on Immigration of 2002, as revised in 2006, is the latest resolution that addresses the question of education of students with migration background.¹¹⁰ It provides an interesting insight into the basic stance of the Standing Conference towards language diversity and multilingualism today. Multilingualism seems to be associated predominantly with low academic performance. The factual multilingualism of about 1/5 of all 15-year-old students is well recognized. At the same time, the Standing Conference also recognized the rather devastating results of the PISA studies conducted by the Organisation for Economic Co-operation and Development (OECD) and similar research.¹¹¹ Accordingly, in Germany, the economic, social and cultural statuses of students remain the most powerful factors influencing academic performance.¹¹² Foreign-born and German students with migration background rank considerably lower in academic performance than their peers without migration background.¹¹³ Strangely, its report on Immigration the Standing Conference has categorised students with migration background into three language groups – 1) German-speakers: students that speak predominantly

¹⁰⁷ Langenfeld, *Integration und Identität zugewanderter Minderheiten*, 2001, p. 34.

¹⁰⁸ Sekretariat der Ständigen Konferenz der Kultusminister der Länder in der Bundesrepublik Deutschland, *Bericht „Zuwanderung“*, Beschluss der Kultusministerkonferenz vom 24.05.2002 i.d.F. vom 16.11.2006, p. 12; see also Langenfeld, *Integration und Identität zugewanderter Minderheiten*, 2001, pp. 31 *et seq*; This, of course, suggests a wider implementation of mother tongue education, *i.e.* also for children with high proficiency in German.

¹⁰⁹ D'Amato, *Vom Ausländer zum Bürger. Der Streit um die politische Integration von Einwanderern in Deutschland, Frankreich und der Schweiz*, 2005, pp. 107 *et seq*.

¹¹⁰ Schmahl, *Die Beschulung von Kindern und Jugendlichen mit Migrationshintergrund: Eine Bestandsaufnahme des geltenden Rechts*, p. 24.

¹¹¹ OECD Programme for International Student Assessment (PISA), see webpage of the OECD at http://www.pisa.oecd.org/pages/0,3417,en_32252351_32235907_1_1_1_1_1,00.html, last visited 05.11.2010.

¹¹² On the phenomenon of "segregation" in the German school system and the impact on students with migration background see Educational Reporting Consortium, *Education in Germany. An indicator-based report including an analysis of education and migration. Summary of important results*, On behalf of the Standing Conference of the Ministers of Education and Cultural Affairs of the Länder in the Federal Republic of Germany and the Federal Ministry of Education and Research, 2007, p. 31.

¹¹³ OECD Briefing Note für Deutschland, *PISA 2006: Naturwissenschaftliche Kompetenzen für die Welt von Morgen*, 2007, pp. 8 *et seq*; *Bericht „Zuwanderung“*, 2006, pp. 5 *et seq*.

German in everyday life (ca. 50%), 2) multilinguals: students that speak another language just as frequently as German in everyday life (ca. 30%) and 3) foreign language-speakers: students that speak another language more frequently than German in everyday life (ca. 10-16%). According to the Standing Conference, students that speak predominantly German in everyday life perform better in school than “multilinguals” and “foreign-language speakers”.¹¹⁴ While the results may well be accurate, the categorisation itself indicates a rather narrow perception of multilingualism. Implicitly, this categorization suggests that a student cannot be both, German-speaking and multilingual. Whether this is the message that the Standing Conference meant to convey remains within the realm of speculation. The PISA results as such do not suggest a negative impact of multilingualism, i.e. knowledge and use of more than one language, on academic performance. Deficient knowledge of the language of instruction on the other hand has a proven negative effect on academic performance and can constitute a barrier to education.¹¹⁵ In that respect the PISA study supports the message voiced by the Standing Conference in its Report on Immigration, namely that a high command of the German language is tantamount to academic performance.¹¹⁶ Increased efforts in teaching of German as a second languages are resource-intensive. This, in turn, is seen as an argument for an increased financial responsibility of the respective foreign consulates for mother tongue education.¹¹⁷ In contrast to mother tongue education, the teaching

¹¹⁴ Bericht „Zuwanderung“, 2006, pp. 5 et seq.

¹¹⁵ See OECD Programme for International Student Assessment, *Where immigrant students succeed - A comparative review of performance and engagement in PISA 2003*, 2006, p. 46: “Immigrant students are often exposed to more than one language. Many immigrant students must learn a new language when arriving in the adopted country. Other students may have been born in the country and gained some proficiency in the language of instruction but speak a different language at home. Education research indicates that speaking a language at home other than the language of instruction may further disadvantage students. Evidence from both PISA 2000 and PISA 2003 shows that students speaking a language at home other than the test language tend to reach lower levels of performance than students who speak the test language at home. This is not to say that a multilingual environment is a hindrance to achievement. In fact, students with a high level of proficiency in both the language of instruction and the language spoken at home might benefit from a bilingual environment. In many immigrant families, however, using another language at home may indicate a situation of inadequate integration where parents do not have the skills necessary to assist with homework or students have not mastered the language of instruction because of limited exposure to it in their personal lives. These two factors may have a negative effect on students’ ability to learn in the language of instruction. Since many immigrant students may live in families where there is only limited understanding of the language of instruction at home, it is essential to explore the role that language plays in order to better understand immigrant student performance in an international context. Such analyses may help to reveal potential target points for intervention. Providing additional support to second language learners may be one approach to improving performance of immigrant students.”

¹¹⁶ Bericht „Zuwanderung“, 2006, pp. 6 et seqq.

¹¹⁷ Bericht „Zuwanderung“, 2006, p. 12.

of German as a “second language”¹¹⁸ receives a far greater share of attention and financial resources of the educational system.

Although the Standing Conference does merely indicate a broader framework for multicultural and multilingual education¹¹⁹ and so do the *Länder* policies, multilingualism increasingly informs the education policies of individual school districts. A number of schools have adopted comprehensive bilingual learning approaches. The justifications for the establishment of explicitly bilingual schools or classes are diverse. As in the case of the autochthonous Danish minority, the maintenance of the mother tongue and the protection of minority interests can be the rationale behind the creation of a private school with a particular language profile.¹²⁰ Another example for this is the European-Hungarian *Gymnasium*, a private school, originally for exile Hungarians, which existed in Kastl/Bavaria until 2006 when it had to close due to financial constraints.¹²¹ Private schools for migrant children with a common cultural and linguistic background are not explicitly prohibited.¹²² However, initiatives for such schools are few, possibly due to financial implications and a possible desire of the State and migrant parents alike to realize societal integration through the common schooling of migrant and non-migrant children. Nonetheless, there are a range of schools with explicit multilingual profiles. Often the geographical position of a school in a border region and increased social and economic contacts with the neighbouring country have motivated individual schools to adopt multi-lingual approaches. Examples of public schools with strong bilingual policies in border regions are the German-Polish *Gymnasium* in Löcknitz in the state of

¹¹⁸ In Germany the preferred expression is “*Zweitsprache*” (second language) as opposed to “*Fremdsprache*” (foreign language), see Schmahl, *Die Beschulung von Kindern und Jugendlichen mit Migrationshintergrund: Eine Bestandsaufnahme des geltenden Rechts*, 2004, p. 28; The term also indicates that a second language is not acquired as a foreign language but naturally and in a manner comparable to mother tongue acquisition. [Not only in Germany, but in applied linguistics worldwide, this distinction is made: “second language” is a language which plays an important role in the country or region at issue. This means that a second language is a language with which one will probably get confronted also in one’s everyday life outside the language class, but whether this confrontation involves a “natural acquisition” is a different question. German is the “second language” also for adult immigrants who may not have any chance of a “mother-tongue-like” acquisition of German. – JL]

¹¹⁹ “It is necessary to seize, interlink and embed the educational resource bi- and multilingualism and the linguistic education as a whole (mother tongue education, education in the language of origin and foreign language education) within the curricula of all educational tracks,” see KMK, *Bericht „Zuwanderung“*, 2006, p. 13.

¹²⁰ See webpage of the Dansk Skoleforening for Sydslesvig e.V., at www.skoleforeningen.org, last visited 19.12.2011.

¹²¹ See webpage of the alumni association of the Hungarian Gymnasium in Kastl, <http://www.kastlalumni.eu/2010/10/31/ungarisches-gymnasium-burg-kastl-zum-ungarischen-kulturgut-erkl%C3%A4rt-integration-ohne-debatte/>.

¹²² Langenfeld, *Integration und Identität zugewanderter Minderheiten*, 2001, pp. 34 et seq.

Mecklenburg-Vorpommern¹²³ or the German-French *Gymnasiums* in Saarbrücken in the state of Saarland and Freiburg in the state of Baden-Württemberg.¹²⁴ Increasingly, the multilingual backgrounds of students in a respective school district have found recognition in multilingual school policies. The City of Cologne in North Rhine-Westphalia for example, maintains six elementary schools with explicit multilingual learning policies. Teaching languages are German and either Italian, French, Spanish or Turkish. The aim is to convey not only oral but also written fluency in two languages.¹²⁵ One of the oldest examples of a school with bilingual education in a migrant language is the German-Italian Comprehensive School in Wolfsburg.¹²⁶ The fact that the intercultural competences of teachers, students and parents play a decisive role, not only in schools with explicit multilingual profiles is well recognized.¹²⁷ The Standing Conference has incorporated the demands posed on teachers by the multicultural reality into the “Standards for Teacher Education.” On the theoretical level teachers are expected to be informed about the intercultural dimensions of education processes. On the practical level, teachers are expected to be aware of the cultural and social living conditions of their students and respond to the cultural and social diversity of their student group.¹²⁸ The Standing Conference has also emphasized the need for more teachers with a migration background and urges the *Länder* to encourage migrant *Gymnasium* graduates to pursue teaching careers.¹²⁹ This point also features in the National Integration Plan and the Federal Integration Programme.¹³⁰

¹²³ See webpage of the Europaschule German-Polish Gymnasium Löcknitz at <http://www.dpg-loecknitz.de/>, last visited 15.11.2010.

¹²⁴ See webpage of the German-French Gymnasiums at <http://www.dfglfa.net/>, last visited 15.11.2010.

¹²⁵ See webpage of the City of Cologne, *Schulen, die zweisprachiges Lernen anbieten*, at <http://www.stadt-koeln.de/5/schule/integration-und-foerderung/06312/>, last visited 18.11.2010.

¹²⁶ See Hienz de Albentiis, Milena, *Die Mutter aller zweisprachigen Schulen: Die Deutsch-Italienische Gesamtschule in Wolfsburg (DIGS)*, in: Gogolin, Ingrid et al. (eds.), *Migration und sprachliche Bildung*, Waxmann, Münster, 2005, pp. 195 et seqq.

¹²⁷ *Bericht „Zuwanderung“*, 2006, pp. 12 et seqq.

¹²⁸ Kultusministerkonferenz, *Standards für die Lehrerbildung: Bildungswissenschaften*, Beschluss der Kultusministerkonferenz vom 16.12.2004, p. 9; See also Kultusministerkonferenz, *Empfehlungen zur Verbesserung der Lehrerbildung auf dem Gebiet des Ausländerunterrichts*, Beschluss der Kultusministerkonferenz vom 08.10.1981; Kultusministerkonferenz, *Interkulturelle Bildung und Erziehung in der Schule*, Beschluss der Kultusministerkonferenz vom 25.10.1996.

¹²⁹ *Bericht „Zuwanderung“*, Beschluss, 2006, p. 18.

¹³⁰ *National Integration Plan. New paths – new opportunities*, Berlin, 2007, p. 26; *Bundesweites Integrationsprogramm. Angebote der Integrationsförderung in Deutschland - Empfehlungen zu ihrer Weiterentwicklung*, Berlin, 2010, p. 83.

Considering the overall position of language, the argument, which has most prominently informed the Standing Conference's resolutions and the *Länder* policies, is the importance of learning German as the primary teaching language in Germany. Competent command of the German language is a prerequisite to equal opportunities in education and to full societal integration. Mother tongue education resides in a rather "shadowy existence".¹³¹ Multilingualism and language diversity are "profiles" chosen by individual schools and not part of the profile of the overall school system. In practice, rather scattered regulations in the *Länder* provide for complementary mother tongue education but do not result in any legal entitlement.¹³²

In many ways the position of foreign languages in education policies stands in sharp contrast to the position of migrant languages. Again, general statements cannot be made as different regulations are in place in the different *Länder* and sharp differences exist also between the educational tracks. Generally, however, with the exception of schools for special educational needs, one foreign language is to constitute an obligatory part of the school curricula for the *Sekundarstufe I* (grades 5-10). In *Gymnasium* schools (secondary schools which prepare their students for university studies), two foreign languages are obligatory whereas in other educational tracks a second foreign language may be studied on a voluntary basis. Bilingual teaching, i.e. subject-specific teaching in a foreign language, is not compulsory but has become a standard in *Gymnasium* schools.¹³³ Some private schools respond to the phenomena of globalization and internationalization by providing education entirely in English and awarding international degrees. These are mostly private *Gymnasium*-level schools.¹³⁴ Generally, foreign languages taught in

¹³¹ Gogolin, Ingrid, *Stellungnahme zum Unterricht in Migrantensprachen in Deutschen Schulen*, Hamburg, 2001, p. 3, available online at <http://www.erzwiss.uni-hamburg.de/Personal/Gogolin/web/de/all/pub/texte/index.html>, last visited 19.11.2010.

¹³² For an overview of the positions of mother tongue education see Seitz, Stefan, *Migrantenkinder und positive Schulleistungen*, Klinkhart, 2006, pp. 104 *et seqq*; see also D'Amato, Gianni, *Vom Ausländer zum Bürger. Der Streit um die politische Integration von Einwanderern in Deutschland, Frankreich und der Schweiz*, 3. Auflage, LIT Verlag, Münster, 2005, pp. 107 *et seqq*.

¹³³ Sekretariat der Ständigen Konferenz der Kultusminister der Länder in der Bundesrepublik Deutschland, *Vereinbarung über die Schularten und Bildungsgänge im Sekundarbereich I*, Beschluss der Kultusministerkonferenz vom 03.12.1993 i.d.F. vom 09.10.2009, p. 8; See also Sekretariat der Ständigen Konferenz der Kultusminister der Länder in der Bundesrepublik Deutschland, *Vereinbarung zur Gestaltung der gymnasialen Oberstufe in der Sekundarstufe II*, Beschluss der Kultusministerkonferenz vom 07.07.1972 i.d.F. vom 24.10.2008.

¹³⁴ A considerable number of international schools and schools awarding the International Baccalaureate degree have been established as publicly recognized private schools in Germany, see webpage of the International Baccalaureate Organisation at

German schools are either global vehicular languages such as English, French and Spanish or classical languages, such as Latin, classical Greek or Hebrew. However, in Baden-Württemberg for example, education policies provide guidelines for teaching additional foreign languages, namely Italian, Japanese, Portuguese, Russian and Turkish on the *Gymnasium* level.¹³⁵ The guiding idea behind foreign language learning in Baden-Württemberg is that “*the integration of Europe and the world, the immigration of persons with other cultural and linguistic backgrounds, the variety of media and modern technologies bring about social, economic and cultural challenges. The acquisition of foreign language is of particular importance because it contributes greatly to mutual understanding and peaceful coexistence and is a prerequisite for mobility and cooperation.*”¹³⁶ Immigration and the consequent language diversity are thus considered as valid incentives for providing teaching of a foreign language. To teach migrant languages to the majority population as a potential vehicular language can be seen as a step towards greater multilingualism and language diversity. The huge gap between the allocation of great financial resources to foreign language education and the neglect of mother tongue education in this respect has to be noted however.¹³⁷

The educational policies concerning language diversity and multilingualism of Schleswig-Holstein and North Rhine-Westphalia shall now serve as detailed examples. North Rhine-Westphalia has a strong immigrant population and hosts the largest group of Estonian nationals in comparison with the other *Länder*.¹³⁸ In the school year of 2004/05 122 Estonian nationals attended schools in North Rhine-Westphalia.¹³⁹ With students of more than 80 nationalities, the educational system of North Rhine-Westphalia is under strong demand for educational responses to multilingualism and language diversity. Schleswig-Holstein, in contrast, has a strong tradition in minority protection and is home to four language groups under special protection, the Danish-speakers, the Frisian-

http://www.ibo.org/school/search/index.cfm?programmes=&country=DE®ion=&find_schools=Find, last visited 15.11.2010.; The language of instructions in many of these schools is English.

¹³⁵ See Landesbildungsserver Baden-Württemberg, *Bildungsstandards*, at <http://www.bildung-staerkt-menschen.de/unterstuetzung/schularten/Gym/bildungsstandards>, last visited 08.11.2010.

¹³⁶ Landesinstitut für Schulentwicklung Baden-Württemberg, *Leitgedanken zum Kompetenzerwerb monderner Fremdsprachen. Grundschule, Hauptschule (Hauptschule und Hauptschule mit Werkrealschule), Realschule, Gymnasium*, Bildungsplan Gymnasium, 2004, S. 103.

¹³⁷ Gogolin, *Stellungnahme zum Unterricht in Migratensprachen in Deutschen Schulen*, 2001, pp. 4 et seq.

¹³⁸ See Praakli, *Structured Context Analysis. Estonians in Germany*, 2010, p.13.

¹³⁹ Elementary school: 17, *Hauptschule*: 9, *Realschule*: 11, *Gymnasium*: 29, *Gesamtschule*: 5, Waldorf school: 1, special school: 2, adult education: 8, vocational school : 40, see Ministerium für Schule und Weiterbildung des Landes Nordrhein-Westfalen, *Migranten im Schulwesen in NRW. Schuljahr 2005/06*, Düsseldorf, 2006, pp. 2 & 6.

speakers, the Low German-speakers and the Romany-speakers. By choosing these two *Länder* as examples, the accommodation of language diversity and multilingualism in connection with both minorities and migrant groups can be addressed. The following outline is not comprehensive but exemplary as policies as well as practice differ between the sixteen states in the Federal Republic of Germany.

1.9.3.2 Schleswig-Holstein

Danish, Frisian, Low-German and Romany in the educational system of Schleswig-Holstein

Pursuant to Art. 5(2) of the Constitution of Schleswig-Holstein, the Danish minority and the Frisian ethnic groups are entitled to protection and promotion. Danish minority schools have existed in Schleswig-Holstein since the demarcation of the border between Denmark and Germany through Schleswig in 1920. The right to maintain minority day-care and schools was codified in the Kiel Declaration of 1949 and in the Bonn-Declaration of 1955. According to Art. 8 (4) of the Constitution of Schleswig-Holstein parents or guardians who identify themselves with the Danish minority can choose freely whether their children shall attend a minority school. § 115(1) of the School Act of Schleswig-Holstein provides for the right to establish private schools (*Ersatzschulen*) if they fulfil certain requirements and are publicly authorized. The privileged position of private schools for the Danish minorities is emphasized by § 115(4) and § 124. According to § 115(4), a special pedagogical interest has to be proven in order to obtain an authorization for a private elementary school. However, applicants who intend to establish a Danish minority school are exempted from the obligation to prove such an interest. According to § 124 the Danish minority schools are to be granted a public subsidy of 100% of the regular allowance per student in public schools (*Schülerkostensatz*).¹⁴⁰ In the school year of 2009/2010 5636 students were enrolled in a total of 47 Danish minority schools in Schleswig-Holstein, 38 of which are elementary schools. Following the general development in Schleswig-Holstein, away from the traditional multi-track

¹⁴⁰ In other cases the amount of public subsidy for private schools is granted according to need, see § 119 School Act Schleswig-Holstein; For a detailed overview of the funding received by Danish minority school as compared to regular public schools see Königreich Dänemark & Land Schleswig-Holstein, *Bericht der dänisch - schleswig-holsteinischen Arbeitsgruppe zur Behandlung von Gleichstellungsfragen in der Finanzierung der Schulen der dänischen und deutschen Minderheiten*, Kopenhagen/Kiel, November 2010, p. 18; The *Schülerkostensatz* include material as well as staff costs according to § 48(1) and § 36(2) of the School Act of Schleswig-Holstein see *Bericht der dänisch - schleswig-holsteinischen Arbeitsgruppe zur Behandlung von Gleichstellungsfragen in der Finanzierung der Schulen der dänischen und deutschen Minderheiten*, 2010, pp. 28 et seqq.

school system, nine of the Danish minority schools are integrated comprehensive schools, two of which maintain consecutive upper secondary schools (*gymnasiale Oberstufe*). The Danish schools are maintained by the Dansk Skoleforening for Sydslesvig e.V. (Danish School Association for South Schleswig), a registered association with legal personality. The Danish Schools are committed to living up to the same standards as regular public schools and, upon their own initiative, follow the curricula set by the *Land Schleswig-Holstein*.¹⁴¹ The Danish School Association also maintains 55 day-care facilities attended by 1921 children as of 1 September 2010. The Day-Care Act of Schleswig-Holstein in §7(4) refers explicitly to the right of the national minorities and ethnic groups to maintain their own day-care facilities.¹⁴² The schools and day-care facilities of the Danish minority are administered within four districts. The language of instruction in schools and day-care facilities is Danish but special emphasis is put on the development of German language skills. The Danish-Frisian School (*Risum Skole/ Risem Schölj*) in Risum is an example for a school that accommodates speakers of two minority languages, Danish and Frisian. Languages of instruction are both Danish and Frisian.¹⁴³ In Schleswig-Holstein 27 public schools teach Frisian and a number of Kindergartens have employed Frisian-speaking nursery-school teachers.¹⁴⁴

The Act on the Promotion of Youths of Schleswig-Holstein makes explicit reference to national and ethnic minorities. § 13(2) provides that youth work with adolescents of national and ethnic minorities is to strengthen possibilities for equal opportunities and equal treatment. It furthermore stipulates that distinct approaches to youth work with these groups shall be developed and that cultural identity is to be taken account of in youth work. Notably, these are rather open-ended formulations and constitute an obligation of conduct rather than result. The South Schleswig Danish Youth Association (*Sydslesvigs danske Ungdomsforeninger*) is the umbrella

¹⁴¹ *Bericht der dänisch - schleswig-holsteinischen Arbeitsgruppe zur Behandlung von Gleichstellungsfragen in der Finanzierung der Schulen der dänischen und deutschen Minderheiten*, 2010, pp. 10 *et seqq*; See also Council of Europe, *Third Report of the Federal Republic of Germany under Article 25 paragraph 2 of the Council of Europe Framework Convention for the Protection of National Minorities*, ACFC/SR/III(2009)003, February 2009, pp. 243 *et seqq*.

¹⁴² The public authorities have to take account of this right when planning the demand for day care; According to § 12 of the Day-care Act, the admission of children to day-care facilities has to be based on non-discriminatory grounds. For minority day-care facilities the rules of admission of these institutions apply.

¹⁴³ Webpage of Risum Skole/Risum Schölj at <http://www.risumskole.de/skoleprofildansk.html>, last visited 2.11.2010.

¹⁴⁴ See webpage of the Frisian Council, at http://friesenrat.de/cms/front_content.php?idcat=67, last visited 24.11.2010.

organisation for the Danish sport and youth organisations in South Schleswig.¹⁴⁵ Just as many other areas of Danish minority life in Germany, part of the youth work is funded by the Danish State¹⁴⁶ and the *Land* Schleswig Holstein.¹⁴⁷ The *Land* Schleswig-Holstein also funds youth work organised by the Frisian Society (*Friisk Foriining*) and its youth group *Rökeflosse*.¹⁴⁸

In Schleswig-Holstein not only Danish and Frisian enjoy constitutional protection. Pursuant to Art. 9 (2) of the Constitution of Schleswig-Holstein, the *Land* protects and promotes the maintenance of the Low German language (*Plattdeutsch/Niederdeutsch*, the language variety traditionally spoken in Northern Germany). Just as Danish and Frisian, Low German is protected under the ECRML which entered into force in Germany in 1999. There are no Low German schools or kindergartens. Although schools in Schleswig-Holstein do not aim to convey literacy in Low German, *i.e.* Low German is not taught as a first or second language nor as a foreign language, individual lessons of the Low German language are integrated in the regular curricula, mainly in German and social studies (*Heimat- und Sachkunde*).¹⁴⁹ Emphasis is rather put less on raising awareness of the language as a cultural heritage than on language learning itself. Two state-funded centres for Low German in Schleswig-Holstein support organizations that work to promote Low German in Schleswig-Holstein by *i.a.* developing teaching materials and youth work.¹⁵⁰ The Institute for Quality Development of Schools in Schleswig-Holstein employs an advisor for Low German with the task to support schools in developing lessons on Low German. Low German is an integral part of the subject German language and literature studies (*Germanistik*) in various German Universities, among them the University of Kiel.

There are no Danish or Frisian universities in Germany. However, it is possible to study Danish *i.a.* at the Christian-Albrechts-University Kiel within the frameworks of Scandinavian/Nordic Studies or

¹⁴⁵ See webpage of the South Schleswig Danish Youth Association at <http://www.sdu.de/index.php?id=1>, last visited 24.11.2010.

¹⁴⁶ *Bericht der dänisch - schleswig-holsteinischen Arbeitsgruppe zur Behandlung von Gleichstellungsfragen in der Finanzierung der Schulen der dänischen und deutschen Minderheiten*, 2010, p. 25.

¹⁴⁷ *Minderheiten und Volksgruppenpolitik in Schleswig-Holstein. Minderheitenbericht 2007*, p. 57.

¹⁴⁸ See webpage of the Friisk Foriining at <http://www.friiske.de/my.php?page=2&language=ie>, last visited 26.11.2010.

¹⁴⁹ Ministerium für Bildung, Wissenschaft, Forschung und Kultur des Landes Schleswig-Holstein, *Niederdeutsch in den Lehrplänen. Anregungen für Schule und Unterricht*, Kiel, 2003.

¹⁵⁰ See webpage of the Centre for Low-German in Holstein (*Zentrum für Niederdeutsch im Landesteil Holstein*), at <http://www.zfn-ratzeburg.de/frameset.htm>, last visited 26.11.2010.

teaching degrees. Frisian can be studied at the universities of Kiel and Flensburg. Until a recent revision of the Federal Act on Educational Maintenance Allowance (*Bundesausbildungsförderungsgesetz – BAFöG*), members of the Danish minority were privileged to receive a federal maintenance allowance also for university-level degree studies in Denmark.¹⁵¹ After a decision of the European Court of Justice and a subsequent change in legislation, all German students can receive a maintenance allowance for degree studies pursued abroad and it is no longer a privilege of only the Danish minority.¹⁵²

In contrast to the speakers of Danish, Frisian and Low-German, the government reports that the Romany-speaking Sinti and Roma in Schleswig-Holstein and elsewhere largely object to the use of Romany in the public realm and the inclusion of the Romany language in school curricula.¹⁵³ Roma and Sinti children attend public schools. Romany is seen as a language exclusive to the Sinti and Roma and until today transmitted entirely within family circles. The *Land* Schleswig-Holstein offers learning support services to Roma children and provides funding for the Association of German Sinti and Roma in Schleswig-Holstein, which *i.a.* organises youth work activities for Sinti and Roma children and youths.¹⁵⁴

Migrant languages

According to the Government of Schleswig-Holstein's report on Linguistic Support in Schleswig-Holstein the percentage of children with migration background among children under six-years of age is 22,5%. The *Land* government has thus devised a policy for integrated linguistic support in pre-schools. This concept includes linguistic support for children having difficulties with German as their mother tongue or second language. The policy includes general linguistic support as part of day-care and school curricula as well as targeted linguistic support where necessary.¹⁵⁵ § 4(3) Nr.2 of the Day-Care Act of Schleswig-Holstein explicitly mentions languages as an area of education,

¹⁵¹ Former § 5(3) BaföG.

¹⁵² Joint cases C-11/06 and C-12/06, OJ C 121, 20.5.2006.

¹⁵³ Council of Europe, *Third Report submitted by the Federal Republic of Germany under Article 25, paragraph 2, of the Council of Europe's Framework Convention for the Protection of National Minorities*, received on 9 April 2009, ACFC/SR/III(2009)003, pp. 265 et seqq, paras. 14076 et seqq.

¹⁵⁴ Webpage of the *Landesregierung* Schleswig-Holstein, at http://www.schleswig-holstein.de/Portal/DE/LandLeute/Minderheiten/RomaSinti/romaSinti_node.html, last visited 26.11.2010.

¹⁵⁵ Schleswig-Holsteinischer Landtag, Bericht der Landesregierung, *Sprachförderung in Schleswig-Holstein*, Drucksache 16/1463, 26.6.2007, pp. 3 et seqq.

which is to be addressed properly by day-care facilities. Notably, “languages” is used in plural. Between 2006 and 2010 a sum of 27 million Euros was assigned to measures for the linguistic support of children on the pre-school level. The programme “SPRINT” is such a supportive measure for children that are just about to enter school and includes an intensified support in German language learning. Upon enrolment, schools in Schleswig-Holstein assess the linguistic abilities of their prospective students.¹⁵⁶ If necessary, students are obliged to participate in SPRINT measures according to § 22(2) of the School Act of Schleswig-Holstein. In the school year of 2008/2009 a total of 2939 children received SPRINT-support in their respective day-care facilities.¹⁵⁷ Two-thirds of these children had a migration background whereas the remaining one-third came from low-educated (*bildungsfern*) German families.¹⁵⁸ Since the school year of 2007/2008 the Government of Schleswig-Holstein aims to involve mothers with migration background in the pre-school linguistic education of their children. When enrolling their children in school, mothers are offered to take part in a German course of 100 hours, which aims at equipping mothers with a basic command of the German language. Such integration courses for women and parents, with childcare during course hours, are financed from the federal budget and are part of the wider federal integration policies. Linguistic support is not limited to day-care but continues in school. Within the cross-Länder initiative “FörMig” (*Förderung für Migranten*) a model approach to the linguistic support of children and youth with migration background has been designed.¹⁵⁹ The Institute for Quality Development of Schools in Schleswig-Holstein oversees and supports the implementation of the FörMig programme. In Schleswig-Holstein FörMig has concentrated on two core activities, linguistic support on the basis of the individual assessment of German language proficiency and the continued linguistic support in German, mother tongues and foreign languages¹⁶⁰. In practice, the Centres for German as a Second Language (*Deutsch als Zweitsprache/DaZ Zentren*) provide support to students with migration background if the initial

¹⁵⁶ On the assessment of proficiency in German see, *Sprachförderung in Schleswig-Holstein*, 2007, p. 22.

¹⁵⁷ In 2007, 70,8% of the SPRINT measures took place in the day-care facilities of the respective children, predominately in the mornings, see *Sprachförderung in Schleswig-Holstein*, 2007, pp. 15 & 18.

¹⁵⁸ Webpage of the *Landesregierung* Schleswig-Holstein, at http://www.schleswig-holstein.de/Bildung/DE/Kindertageseinrichtungen/Sprachfoerderung/SPRINT/SPRINT_node.html, last visited 25.11.2010.

¹⁵⁹ The project is coordinated by the University of Hamburg, see webpage of the University of Hamburg, at <http://www.blk-foermig.uni-hamburg.de/web/de/all/home/index.html>, last visited 25.11.2010.

¹⁶⁰ Based on three FörMig modules, module 1: selection and management of tools to assess language proficiency and the consequences for support, module 3: development of support networks & module 4: interrelation between the family and institutional linguistic education.

assessment shows that such support is needed.¹⁶¹ Five of altogether 11 such *DaZ* centres in Schleswig-Holstein work according to the *FörMig* approach.¹⁶² Mother tongue education is not a direct responsibility of the *DaZ* centres. Around 200 teaching positions for German as a second language are funded by the *Land* Schleswig-Holstein.¹⁶³ A 2001 report on multilingualism in German schools with a comparative *Länder* perspective mentions a pilot project on conveying literacy of in both German and Turkish at an intercultural school in Neumünster. Generally however, in Schleswig-Holstein complementary mother tongue education is entirely organized by the respective consulates. In secondary and upper-secondary schools Danish, English, French, Latin, classical Greek, Spanish and Russian are offered as foreign languages.¹⁶⁴ The School Act in § 126(5) allows for the possibility to recognize a student's mother tongue as a first or second foreign language.

1.9.3.3 North Rhine-Westphalia

Romany

The German Sinti and Roma are the only autochthonous linguistic minority which are traditionally resident in the *Land* North Rhine-Westphalia. According to the Ministry for the Interior, the German Sinti and Roma in North Rhine-Westphalia object to the use of the Romany language in the public realm.¹⁶⁵ The *Land* Association of German Sinti and Roma does not desire educational offers in Romany in day-care facilities, schools or in higher education.¹⁶⁶ The *Land* maintains an information centre for German Sinti and Roma in Düsseldorf that offers support *i.a.* on questions of education.

Migrant languages

¹⁶¹ Webpage of FörMig Schleswig-Holstein, at <http://foermig-sh.lernnetz.de/index.php>, last visited 25.11.2010.

¹⁶² Schleswig-Holsteinischer Landtag, Bericht der Landesregierung, *Sprachförderung in Schleswig-Holstein*, Drucksache 16/1463, 26.6.2007, pp. 30 *et seq.*

¹⁶³ *Sprachförderung in Schleswig-Holstein*, 2007, p. 30.

¹⁶⁴ Find the curricula on the webpage of the Government of Schleswig-Holstein, at http://www.schleswig-holstein.de/Bildung/DE/Schulen/Unterricht/Lehrplan/lehrplan_node.html, last visited 25.11.2010.

¹⁶⁵ Federal Ministry of the Interior, Fourth Report of the Federal Republic of Germany in accordance with Article 15 (1) of the European Charter for Regional or Minority Languages, 2010, pp.7 & 31 *et seqq.*; See also the webpage of the Sinti Alliance Germany on language and culture, at <http://www.sintialliance-deutschland.de/index2.html>, last visited 21.12.2011

¹⁶⁶ Federal Ministry of the Interior, Fourth Report of the Federal Republic of Germany in accordance with Article 15 (1) of the European Charter for Regional or Minority Languages, 2010, pp. 181 *et seq.*

Language education of children with migration background is dealt with by the *Land* North Rhine-Westphalia in a comprehensive manner. According to § 12(1) of the Act on the Education of Children (*Kinderbildungsgesetz*) the mother tongue of each child has to be registered by the parents upon enrolment in day-care and, pursuant to § 14(3), by the nursery school teachers in connection to the obligatory assessment of the linguistic skills of all children (*Sprachenstandsfeststellung*). The assessment takes place two years before enrolment in school in cooperation with the respective elementary schools.¹⁶⁷ According to § 36(2) of the School Act, children with insufficient command of German shall receive specific pre-school linguistic support (*vorschulischer Sprachförderkurs*), if they are not yet participating in such measures in their day-care facilities. Support in linguistic development is one of the overall objectives of day-care pursuant to § 13(5) of the Act on the Education of Children. A second obligatory assessment takes place one year prior to the enrolment of a child in elementary school, according to § 36(3) School Act. Also at that point schools can oblige children to take part in specific support measures to acquire the necessary command of the German language needed for school entry. Reinforced linguistic support, if needed, is then continued in school. The respect for the mother tongues of students with migration background in North Rhine-Westphalia finds a legal basis in §2 (10) of the School Act which states that *schools promote the integration of students whose mother tongue is not German, through offering educational activities for the acquisition of the German language. In doing this they pay regard to the ethnic, cultural and linguistic identity (mother tongue) of those students. They should be taught together with all other students and with the goal to acquire the same degrees.* In a decree of 21 December 2009, the Ministry of Education has compiled relevant information on the education of students with migration background, especially with regard to language learning. The Ministry emphasizes the core principles for the education of migrant children – the right to education, compulsory schooling and individual support. It is then specified which measures have to be adopted with regard to language learning and mother tongue education. The acquisition and the competent command of the German language is considered the prime learning objective of children who enter school with yet insufficient command of German. Integrated schooling of children with and without migration background has primacy

¹⁶⁷ Read more about the method of assessment at the webpage of the Ministry of Family, Children, Youth, Culture and Sport of North Rhine-Westphalia at <http://www.mfkjks.nrw.de/kinder-und-jugend/kinder-in-nrw/sprachfoerderung.html>, last visited 2.12.2010.

over any forms of separate schooling, as expressly stated in §2 (10) of the School Act, because it is seen to contribute to integration and mutual understanding.¹⁶⁸

In contrast to the situation in Schleswig-Holstein, the Ministry of Education in North Rhine-Westphalia assumes responsibilities for both German as a second language as well as mother tongue education. Mother tongue education forms an integral part of the comprehensive policy for language education in North Rhine-Westphalia. In the school year of 2005/06 mother tongue education was offered in 1443 schools with altogether 100.103 participating students. The languages most commonly taught as a mother tongue were Albanian, Arabic, Bosnian, Greek, Italian, Croatian, Macedonian, Polish, Portuguese, Russian, Serbian, Spanish and Turkish, the latter alone with 71.631 students.¹⁶⁹ Mother tongue education is not only offered to students who do not yet have sufficient command of the German language but to all students with a multilingual background, including those proficient in German. Whether mother tongue education in a respective language is offered depends on financial and organisational aspects. The decree of 21 December 2009 on the education of students with migration background stipulates that mother tongue education is to be offered in elementary schools if at least 15 students with the same mother tongue register. Mixed-age classes are permissible and the school authorities are obliged to investigate the possibility of cross-school mother tongue education if one school alone does not reach the required number of registered students. Mother tongue education is always complementary, *i.e.* additional, to all forms of teaching in preparatory and regular classes. If

¹⁶⁸ Preparatory classes for students with migration background with insufficient command of German can be authorized in individual cases. The language of instruction in these classes is German and even in other subjects particular attention shall be paid to the acquisition of the German language. The order mentions explicitly that physical education and fine arts shall not be dismissed. Preparatory classes shall be of a temporary nature, *i.e.* they should not last for more than a maximum of two years. A transfer into regular classes as soon as possible is recommended. Only in exceptional cases shall the school authorities authorize regular classes attended by students with a migration background only. Students with migration background, who enter the German schools system first in secondary school and do not master the German language sufficiently after a preparatory class, shall attend special learning groups, which provide targeted support for graduation corresponding to the educational track. Linguistic support shall also be provided for students with migration background in professional orientation classes of vocational schools (*ausbildungsvorbereitende Bildungsgänge eines Berufskollegs*). However, when applying for full-time academic vocational training (*vollzeitschulische Bildungsgänge des Berufskollegs*), students with migration background have to fully satisfy the admission criteria and prove proficiency in the German language, Ministerium für Schule und Weiterbildung des Landes Nordrhein-Westfalen, *Unterricht für Schülerinnen und Schüler mit Zuwanderungsgeschichte, insbesondere im Bereich Sprachen*, 321-6.08.03.10 Nr. 43300, 21 December 2009, pp. 2 *et seqq.*

¹⁶⁹ Ministerium für Schule und Weiterbildung des Landes North Rhine-Westphalia, *Migranten im Schulwesen in NRW. Schuljahr 2005/06*, Düsseldorf, 2006, p. 26.

offered the mother tongue is taught five hours a week, with the goal to maintain and develop spoken and written knowledge of the mother tongue and to convey intercultural competences. Mother tongue education is voluntary and complementary but well integrated into the school curricula as it can, under certain conditions, replace compulsory standard foreign languages. In secondary schools, mother tongue education is to be gradually transformed into foreign language education, *i.e.* into a fully integrated part of the regular curriculum. If this is not possible, complementary mother tongue education can be continued in secondary schools, if 18 students register to participate. In secondary school performance in mother tongue education is graded with standard marks and certified on the bi-annual school report (*Zeugnis*).¹⁷⁰ Upon completion of secondary school, the participants of mother tongue education are obliged to take part in a language examination with the level of difficulty corresponding to the educational track chosen. A mother tongue examination graded with “good” can replace a foreign language graded with “poor” on the graduation certificate. If the mother tongue is graded with at least “satisfactory”, it can subsequently be studied as a continued foreign language in upper secondary schools (*gymnasiale Oberstufe*).¹⁷¹ In the school year of 2009/10 a pilot project began in which mother tongue languages could be studied as a second foreign language also at the *Hauptschule*, the most vocationally oriented track of secondary schools in the multi-track system.¹⁷² Specific requirements have to be met by teachers in order to be eligible to teach mother tongue education.¹⁷³

¹⁷⁰ In elementary schools mother tongue education is not graded. The bi-annual report however, indicates the learning achievements made. For students with migration background, language difficulties shall be considered when grading performance in education.

¹⁷¹ Ministerium für Schule und Weiterbildung des Landes North Rhine-Westphalia, *Unterricht für Schülerinnen und Schüler mit Zuwanderungsgeschichte, insbesondere im Bereich Sprachen*, 321-6.08.03.10 Nr. 43300, 21 December 2009, pp. 5 *et seq*; The possibility to take a mother tongue examination is also open to students who have not participated in mother tongue education but *e.g.* have graduated secondary school in their home countries, see webpage of the district administration Cologne, at http://www.bezreg-koeln.nrw.de/brk_internet/organisation/abteilung04/dezernat_48/feststellungspruefung/index.html, last visited 2.12.2011.

¹⁷² Ministerium für Schule und Weiterbildung des Landes North Rhine-Westphalia, *Unterricht für Schülerinnen und Schüler mit Zuwanderungsgeschichte, insbesondere im Bereich Sprachen*, 321-6.08.03.10 Nr. 43300, 21 December 2009, pp. 1 *et seq*.

¹⁷³ Teachers who hold a German teaching degree in the respective mother tongue are eligible to teach mother tongue education in North Rhine-Westphalia. Teachers with a German teaching degree in other subjects, who can prove command of the language in question on the level of C1 CFLR are also eligible as mother tongue education teachers. They are required, however, to participate in the didactical and methodological training “mother tongue education teachers at elementary and secondary schools” (Herkunftssprachenlehrkräfte an Grundschulen und Schulen der Sekundarstufe I), in case they do not have a teaching degree in another foreign language. In exceptional cases, when

Although mother tongue education is largely seen as a public responsibility in North Rhine-Westphalia, mother tongue education under the responsibility of consulates can be permissible. That is in cases where an interest in a respective mother tongue arises and the state cannot provide mother tongue education for that language due to a too small number of students registered, the lack of qualified teachers or in cases where the demand for mother tongue education in a respective language exceeds the available resources of the state. If instead consulate mother tongue education follows the public school curricula, regular participants are free to participate in the final mother tongue examination upon completion of secondary school. The grade obtained can be included in the official school report. Students then have the possibility to study the mother tongue as a continued foreign language in upper secondary school. The state authorities are to investigate whether consulate mother tongue education can take place in school facilities, ideally free of charge.¹⁷⁴

In addition to the measures adopted by the Ministry for Education pursuant to the order summarized above, North Rhine-Westphalia has also implemented the *FörMig* method in a number of school districts.¹⁷⁵ The *Land*, in cooperation with a number of foundations, also provides a small number of so-called “START” scholarships for students with migration background, who have made special achievements in upper secondary school.¹⁷⁶ Regional working groups on the support of children and youth from immigrant families in a number of municipalities

no teacher with the above mentioned qualification is available, teachers with a foreign teaching degree or persons with a German or foreign degree in the respective language can be eligible to teach mother tongue education. They are obliged to participate in the above-mentioned training course. Foreign teachers have to prove proficiency in the German language, see Ministerium für Schule und Weiterbildung des Landes North Rhine-Westphalia, *Unterricht für Schülerinnen und Schüler mit Zuwanderungsgeschichte, insbesondere im Bereich Sprachen*, 321-6.08.03.10 Nr. 43300, 21 December 2009, pp. 8 *et seqq.*

¹⁷⁴ Ministerium für Schule und Weiterbildung des Landes North Rhine-Westphalia, *Unterricht für Schülerinnen und Schüler mit Zuwanderungsgeschichte, insbesondere im Bereich Sprachen*, 321-6.08.03.10 Nr. 43300, 21 December 2009, pp. 11 *et seqq.*; It should of course be mentioned, that in addition to the foreign language curricula, a multitude of schools in North Rhine-Westphalia offer bilingual subject education, e.g. in geography, biology or social studies, in a range of languages, including, English, French, Italian, Modern Greek, Dutch, Spanish and Russian, see webpage of the Ministry of Education of North Rhine-Westphalia, at <http://www.schulministerium.nrw.de/BP/Unterricht/Faecher/BilingualerUnterricht/index.html>, last visited 1.12.2010.

¹⁷⁵ See webpage of *FörMig* North Rhine-Westphalia, at <http://www.foermig-nrw.de/web/de/all/home/index.html>, last visited 1.12.2010.

¹⁷⁶ See webpage of the START foundation, at <http://www.start-stiftung.de/>, last visited 1.12.2010.

and districts in North Rhine-Westphalia have formed the state-funded network “Integration through Education” (*Integration durch Bildung*). The network works to develop concepts for the integration of children and youth with migration background for schools and teachers.¹⁷⁷ This is to mention but a few state initiatives for the development of approaches to the education of children and youth with migration background.

Youth legislation in North Rhine-Westphalia takes account of the situation of youth with migration background. Governmental youth welfare services (*öffentliche Träger der Jugendhilfe*) shall take account of the special needs of children and youths with migration background.¹⁷⁸ Not only public youth services respond to this provision but also non-governmental youth organisations (*freie Träger der Jugendhilfe*). The *Landesjugendring NRW*, an umbrella organisation for non-governmental youth organisations in North Rhine-Westphalia, for example, has published a position paper on the integration of children and youth with migration background and ran a state-funded project on the inclusion of children and youths with migration background in the activities of its member organisations. An objective of the project was to link youth organisation and migrant associations closer in order to identify the needs of youth with migration background and promote their participation in youth work.¹⁷⁹

Estonian is not taught as a foreign language in public schools in Schleswig-Holstein or North Rhine-Westphalia, or elsewhere for that matter. According to information provided by the Estonian Embassy in Germany, a playful form of Estonian mother tongue education is offered in Berlin during meetings of Estonian-speaking mothers and their children. The *Estnische Volksgemeinschaft in der Bundesrepublik e.V.*, an Estonian association in Germany, runs two Estonian schools, one in Hamburg and one in Munich, offering mother tongue education twice a month. Parents pay a participation fee of 60 euro for the first child, 40 euro for the second child. The Estonian Ministry of Education supports the schools economically in acquiring teaching material. The transport of teaching material to the schools is organized by the Estonian Foreign

¹⁷⁷ See website of the *Regionalen Arbeitsstellen zur Förderung von Kindern und Jugendlichen aus Zuwandererfamilien (RAA)*, at <http://www.raa.de/netzwerk-integration-durch-bildu.html>, last visited 2.12.2010.

¹⁷⁸ § 3(2) *Drittes Gesetz zur Ausführung des Kinder- und Jugendhilfegesetzes (Gesetz zur Förderung der Jugendarbeit, der Jugendsozialarbeit und des erzieherischen Kinder- und Jugendschutzes)*.

¹⁷⁹ See webpage of the *Landesjugendring NRW*, at <http://www.ljr-nrw.de/index.php?id=198> and <http://www.ljr-nrw.de/index.php?id=289>, last visited 2.12.2010.

Ministry and the Estonian Embassy in Germany. It is moreover possible for the schools to apply for project funding from the ministry and the Estonian Institute.¹⁸⁰ Estonian can be studied at the university level and at several community colleges in Germany.¹⁸¹ Thus the Estonian language does attract individual students; however it is not subject of any policy as such.

1.9.4 Media legislation

The National Integration Plan devotes one of ten topical areas to media and integration and acknowledges that *“media play a significant, albeit indirect, role within the integration process: on the one hand, they play an essential part in the portrayal of different ethnic and cultural groups within the framework of independent and critical reporting and entertainment and, on the other hand, they provide a public communication platform for a variety of social groups.”*¹⁸² Communication is closely connected to language use and the *“specific media possibilities for immigrant target groups, in particular multilingual programmes and integration potential for foreign language ‘ethno-media’”* was a focus area of a working group that has been established on this topical area. A study on indicators for immigration commissioned by the Commissioner for Migration, Refugees and Integration has identified three such indicators in the area of media – the use of mainstream media, the share of media professionals with migration background and the airtime devoted to intercultural contents.¹⁸³ The study indicates however, that there are obstacles as to gaining conclusive research results, foremost the wide variety of media contents. The targets as set out in the National Integration Plan, nevertheless, relate to these indicators, these are: the long-term concept of immigration and integration as a transversal topic; the involvement of immigrants in editing teams and programmes; the training of journalists and media professionals with a migration background; the intensification and extension of media research; the promotion of media competence among immigrants; the utilisation of the potential of cooperation between German and foreign language media; and finally the promotion of intercommunication and participation of immigrants in decision processes concerning media. Within the limits set for state

¹⁸⁰ Maren Iin, Secretary at the Estonian Embassy in Germany, e-mail to the author, 2.12.2010.

¹⁸¹ A list of courses offered is available on the information portal *“Eston in Deutschland”*, at <http://www.eestlased.de/deutsch/sprache1.htm#uni>, last visited 26.1.2011.

¹⁸² *National Integration Plan. New paths – new opportunities*, Berlin, 2007, p. 153;

¹⁸³ Die Beauftragte der Bundesregierung für Migration, Flüchtlinge und Integration, *Integration in Deutschland. Erster Indikatorenbericht: Erprobung des Indikatorensets und Bericht zum bundesweiten Integrationsmonitoring*, 2009, pp. 125 et seqq.

involvement by the imposed by the freedom of the press, media is essentially a *Länder* competency.

Pursuant to Art. 5(1) GG “every person shall have the right freely to express and disseminate his opinions in speech, writing and pictures, and to inform himself without hindrance from generally accessible sources. Freedom of the press and freedom of reporting by means of broadcasts and films shall be guaranteed. There shall be no censorship.” Art. 5(1) is the constitutional basis for the freedom of opinion (*Meinungsfreiheit*), the freedom to information (*Informationsfreiheit*), the freedom of press (*Pressefreiheit*), the freedom of broadcasting (*Rundfunkfreiheit*) and the freedom of film (*Filmfreiheit*). The freedoms of press and reporting by means of broadcasts and films are further developed in the respective media legislation of the *Länder*. The press acts of all 16 *Länder* stipulate in their respective second paragraphs that the establishment of press activity, meaning print media, shall not be subject to any state approval. Legislation requires the responsible editors to be permanent residents of the Federal Republic of Germany¹⁸⁴ but no requirements what so ever limit the use of minority or migrant languages in the press. Minorities and migrant groups thus, in principle, have full access to printed media, as recipients and producers. As Kristiina Praakli’s structured context analysis on Estonian in Germany has outlined, the *Eesti Rada* (‘Estonian path’) published by the Estonian Society in Germany (*Estnische Volksgemeinschaft in der BRD e.V./ Eesti Ühiskond Saksa Liitvabariigis*) six times a year is currently the only newspaper published in Estonian in Germany.¹⁸⁵ The newspaper was founded in 1944, by Estonians who had fled to Germany during the Soviet occupation. The *Eesti Rada* was one of two Estonian newspapers published in Germany at that time. The other one, *Võitleja* (‘The Fighter’) does no longer exist. The *Hürriyet*, a daily newspaper in Turkish, is the biggest newspaper published in a foreign language in Germany. Different forms of printed media are published in the languages of the autochthonous linguistic minorities in Germany with the exception of Romany.¹⁸⁶ Foreign print media products are sold in Germany but might not be available everywhere in the country. Foreign

¹⁸⁴ § 8 Press Act Schleswig Holstein & § 9 Press Act North Rhine-Westphalia.

¹⁸⁵ Praakli, *Estonian in Germany*, 2010, p. 16 & 43; See also webpage of the *Estnische Volksgemeinschaft in der BRD e.V.*, at <http://www.eüsl.de/erada.htm>, last visited 27.1.2011.

¹⁸⁶ Council of Europe, *Third Report submitted by the Federal Republic of Germany under Article 25, paragraph 2, of the Council of Europe’s Framework Convention for the Protection of National Minorities*, received on 9 April 2009, ACFC/SR/III(2009)003, pp. 151 *et seqq.*

language media are often described as “*Ethnomedien*” in Germany. Established print or broadcasting media in Germany are represented also on the internet where they compete freely with digital media originating in other countries.

With regard to broadcasting the state has a constitutional mandate to ensure basic broadcasting services.¹⁸⁷ Art. 5(1) sentence 2 confers upon the state not only the obligation to refrain from interference with the right of reporting by means of broadcasting but has a positive obligation to create a broadcasting environment that allows for the expression of a diversity of opinions. The state is responsible for creating material, organisational and procedural rules oriented towards the freedom of reporting by means of broadcasting, which ensure that the rights set out in Art. 5(1) can be fully exploited.¹⁸⁸ In Germany, public and private radio and television co-exist in a dual broadcasting system. Public broadcasting and open channels broadcasting so-called citizen broadcasting (*Bürgerfunk*) ensure the accessibility of broadcasting services for everybody including migrants. The production and access to private broadcasting however, is determined foremost by economic resources. Inter-state treaties on broadcasting lay down the minimum cross-*Länder* requirements for broadcasting to be observed by all public and private broadcasters. Without diving deeper into the legal basis for German broadcasting arrangements it should be noted that the protection of a plurality of opinions (*Sicherung der Meinungsvielfalt*) is a central programming principle for both public and private broadcasters.¹⁸⁹ More or less regularly and on small scale public broadcasters in those *Länder* which are home to autochthonous minorities, air programmes in Danish, Frisian, Low German and Sorbian. The actual extent of broadcasting in these languages differs but the inter-state broadcasting treaties of the respective *Länder* either explicitly or implicitly take account of the diversity of autochthonous languages spoken on the respective territories. The inter-state treaty for the *Mitteldeutscher Rundfunk* provides in § 6(3) that

¹⁸⁷ BVerfGE 60, 90, para 119; The state is obliged to ensure the functioning of public broadcasting also in terms of financial resources (license fees) without influencing the programming however.

¹⁸⁸ See e.g. BVerfGE 57, 295, para 104 (so-called 3. *Rundfunkentscheidung*).

¹⁸⁹ The Inter-state Treaty on Broadcasting (*Rundfunkstaatsvertrag*) lays down general principles for programming in § 3(1). Accordingly, broadcasters shall respect and protect human dignity and the moral and religious convictions of the population in all programmes. The programmes shall contribute to strengthening the respect for life, freedom, physical integrity and the convictions and opinions of others. § 11(2) lays down the principle of a plurality of opinions for public broadcasts, § 25 (1) for private broadcasts. Note that private broadcasting is subject to licensing requirements, see e.g. §§ 9-18 Broadcasting Act of Schleswig-Holstein (*Rundfunkgesetz für das Land Schleswig-Holstein*). The rationale behind the licensing of private broadcastings services is precisely the public mandate to ensure plurality and the diversity of opinions in broadcasting.

programmes have to accommodate the needs of all groups of society including minorities. The inter-state treaty for *Rundfunk Berlin-Brandenburg* provides more explicitly in § 4(2) that programmes shall take account of regional diversity and accommodate the Sorbian language and culture. In § 5(2) the inter-state treaty for the *Norddeutscher Rundfunk* confers the obligation to accommodate Northern Germany's regional cultural and linguistic diversity to the respective broadcasters. Migrant languages do not explicitly receive attention in broadcasting legislation, albeit the legislation exhibits a general understanding that minorities and migrant groups contribute to plurality and the diversity of opinions and should thus inform the policies of public and private broadcasters.¹⁹⁰ There is no legal obligation, however, to broadcast in migrant languages. There are very few examples of public and even less so of private broadcasting in migrant languages. The public *Westdeutscher Rundfunk* in Cologne maintains the radio station *Funkhaus Europa* in cooperation with *Radio Bremen* and *Rundfunk Berlin-Brandenburg*. *Funkhaus Europa* is a multilingual radio station with programmes in 15 languages.¹⁹¹ Estonian is not among these languages. Voice of America, an international multimedia broadcasting service funded by the US government, produced programmes in Estonian between 1951 and 2004, some of them produced in Munich. Also Radio Free Europe, a US Congress funded radio station, which understands itself as surrogate broadcasting for countries where a free press is banned,¹⁹² produced Estonian broadcasts between 1975 and 2004. Until 1995 its headquarters were in Munich.¹⁹³ Current President of Estonia Toomas Hendrik Ilves worked as a journalist for Radio Free Europe from 1988 – 1993.

The implementation of programming principles is monitored by the diverse supervisory boards for

¹⁹⁰ § 22(1) of the Broadcasting Act of Schleswig-Holstein (*Landesrundfunkgesetz für Schleswig-Holstein*) e.g., stipulates that the contents of private broadcasting have to reflect, in essence, a diversity of opinions. Significant political, ideological and societal forces and groups shall have an appropriate possibility to express themselves in the overall programme. Regard is to be paid to the opinion of minorities. § 24(3) further requires that broadcasting programmes shall promote togetherness in a united Germany and international understanding. Furthermore, programmes shall advocate peace and social justice, the decline of xenophobia, the social integration of foreign fellow citizens, the equal treatment of men and women, the protection of minorities and the respect for the environment and natural resources. With regard to the above, special regard shall be paid to non-violence. See also § 31(3) sentence 3 of the Media Act of North Rhine-Westphalia (*Landesmediengesetz North Rhine-Westphalia*) according to which private broadcasting shall pay regard to the objective of the integration of persons with different cultural backgrounds. Not all Länder have included the respects for minorities and migrants explicitly in the relevant programming principles provisions.

¹⁹¹ See webpage of *Funkhaus Europa*, at <http://www.funkhauseuropa.de/index.phtml>, last visited 13.12.2010.

¹⁹² See webpage of Radio Free Europe/ Radio Liberty, at <http://www.rferl.org/info/mission/169.html>, last visited 28.1.2010.

¹⁹³ Praakli, *Estonian in Germany*, 2010, p. 43.

public and private broadcasting respectively. The selection mechanisms for these supervisory boards differ across the different institutions responsible for questions concerning public or private broadcasting (*öffentlich-rechtliche Rundfunkanstalten* and *Landesmedienanstalten*) respectively. However, in the majority of *Länder* these bodies are composed of a number of members elected by the respective legislative assemblies on the one hand and representatives of a number of relevant actors in the respective societies on the other hand. § 93(3) the Media Act of North Rhine-Westphalia lists 21 relevant groups with the right to dispatch one member to the *Medienkommission*, the supervisory board for private broadcasting in North Rhine-Westphalia. Among them are religious communities, trade unions and consumer associations as well as the migrant community. One representative from the representation of foreign employees chosen by the *Land* Commissioner for Migration and one representative of the *Land* Alliance of German Sinti are dispatched to the supervisory board for private broadcasting in Rhineland-Palatinate pursuant to § 40(1) nr. 24 and nr. 25 of the Media Act of Rhineland-Palatinate. In Saxony, one member of the Sorbian Alliance is dispatched to the supervisory board for private broadcasting as prescribed by § 29 (1) nr. 17 of the Act on Private Broadcasting and New Media in Saxony. Although legislation in the other states does not exclude the membership of representatives from minority or migrant communities, the respective media and broadcasting legislation does not explicitly provide for the representation of these groups.¹⁹⁴ In Schleswig-Holstein, Saxony and Brandenburg representatives of autochthonous minority groups have held or currently hold seats in supervisory authorities for public or private broadcasting.¹⁹⁵ There is no data available indicating how many persons with migration background have held such positions. As to present knowledge, no Estonian-speaker has been member of a supervisory authority for broadcasting and no Estonian-language programmes have been produced to be broadcasted in Germany, other than those produced by Voice of America and Radio Free Europe during the period of Soviet occupation of

¹⁹⁴ In 1993 the Central Council of German Sinti and Roma appealed to the Federal Constitutional Court complaining that the non-representation of German Sinti and Roma in broadcasting supervisory boards is counter to the freedom of broadcasting and the principle of equality as anchored in Art. 5(1) sentence 2 and Art. 3(1) and (3) GG. The Federal Constitutional Court established however, that the freedom of broadcasting does not confer the subjective right to representation in the supervisory boards on any group. The court emphasized that the supervisory authorities serve to protect the common good and not the interest of certain groups. Members do not represent their dispatching organisations but civil society as a whole. The Court neither found the legislation in question discriminatory; see BVerfG 25.08.1998 - 1 BvR 2487/94

¹⁹⁵ Council of Europe, *Third Report submitted by the Federal Republic of Germany under Article 25, paragraph 2, of the Council of Europe's Framework Convention for the Protection of National Minorities*, received on 9 April 2009, ACFC/SR/III(2009)003, p. 145.

Estonia.

The Federal Republic of Germany has been criticised for the underrepresentation of autochthonous minorities and their languages in the media.¹⁹⁶ Although migrant groups have attained a much greater presence in the media,¹⁹⁷ their languages remain equally underrepresented. In response to the criticism by the Advisory Committee under the FCNM and the Committee of Experts under the ECRML the Federal Republic of Germany has repeatedly highlighted the autonomy of broadcasters as guaranteed under Art 5(1) GG. The *Länder* governments remain confined to wording programming principles as requests rather than obligations in inter-state treaties and cannot interfere actively to promote specific media contents.¹⁹⁸ The Government also reports of initiatives aimed at increasing the representation of minorities and their languages on open channels, such as training courses in broadcasting techniques for the Danish minority and the Frisian ethnic group.¹⁹⁹ Citizen broadcasting on open channels is guaranteed by the *Länder* broadcasting acts. As stated in Germany's third state report on the FCNM, no definitive findings exist as to the use of citizen broadcasting on open channels by autochthonous minorities. Germany reports the use of open channels by Danish- und Frisian speakers in their respective languages.²⁰⁰ Neither is there any comprehensive research about the use of open channels by migrants and in migrant languages. A study on open channels in North Rhine-Westphalia has found that in the period investigated only 2,2% of the programmes aired on open channels in North Rhine-Westphalia were in a foreign language (Turkish, Russian,

¹⁹⁶ Council of Europe, *Advisory Committee on the Framework Convention for the Protection of National Minorities, Second Opinion on Germany*, adopted on 1.3.2006, ACFC/OP/II(2006)001, p. 19.

¹⁹⁷ See The Federal Government, the Federal Government Commissioner for Migration, Refugees and Integration, *National Integration Plan. New paths – new opportunities*, Berlin, 2007, pp. 156 *et seqq*; one of the most extensive studies on media and integration is Geißler, Rainer, Pöttker, Horst (eds.), *Massenmedien und die Integration ethnischer Minderheiten in Deutschland*, transcript Verlag, Bielefeld, 2009.

¹⁹⁸ Council of Europe, *Third Report submitted by the Federal Republic of Germany under Article 25, paragraph 2, of the Council of Europe's Framework Convention for the Protection of National Minorities*, received on 9 April 2009, ACFC/SR/III(2009)003, p. 147.

¹⁹⁹ Council of Europe, *Third Report submitted by the Federal Republic of Germany under Article 25, paragraph 2, of the Council of Europe's Framework Convention for the Protection of National Minorities*, received on 9 April 2009, ACFC/SR/III(2009)003, p. 155.

²⁰⁰ Council of Europe, *Third Report submitted by the Federal Republic of Germany under Article 25, paragraph 2, of the Council of Europe's Framework Convention for the Protection of National Minorities*, received on 9 April 2009, ACFC/SR/III(2009)003, p. 155.

Portuguese, Spanish and Arabic) and only 0,5% were multilingual.²⁰¹

While open channels operate on a regional scale, foreign broadcasting is largely accessible through satellite and cable television. The reception of foreign channels is protected under Art. 5(1) sentence 1 GG.²⁰² As the Constitutional Court has found, the special interest of foreigners to receive foreign language broadcasting has to be taken account of in legal disputes concerning the installation of parabolic antenna.²⁰³ Of course, foreign broadcasting provides reports about German politics and culture on a limited scale only and, in most cases, is not directly addressed towards expatriate populations. Research exists concerning the use of media by migrants. A complementary use of foreign- and German-language media products has been observed, whereas radio and newspapers are media less used by persons with a migration background. A study commissioned by the Federal Office for Migration and Refugees has found that language proficiency, educational background and age are decisive for the ratio of foreign language and German television consumed.²⁰⁴ Studies suggest that the consumption of media products is less defined by migration than by socio-economic status.²⁰⁵

1.10 Other legal areas of particular importance

1.10.1 Immigration legislation

The centrality of integration policies with regard to the position of migrants has been addressed at several instances above. That the acquisition of the vehicular language of a respective country is a core factor although by no means exclusive for successful societal integration of migrants is an established consensus.²⁰⁶ In Germany this has long been neglected²⁰⁷ but has been taken up with

²⁰¹ Volpers, Helmut, Schnier, Detlef, Salwiczek, Christian, *Bürgerfunk in North Rhine-Westphalia. Eine Organisations- und Programmanalyse*, Schriftenreihe Medienforschung der LfM Landesanstalt für Medien North Rhine-Westphalia (Hrsg.), Band 51, Vistas, Düsseldorf, 2006, p. 50, cited on the webpage of the *Landesverband Bürgerfunk NRW e.V.*, at http://www.lbf-nrw.de/meldung_detail.php?id_aktuelles=123, last visited 13.12.2010.

²⁰² BVerfGE 90, 27, para. 32.

²⁰³ BVerfGE 90, 27, para. 36.

²⁰⁴ Bundesamt für Migration und Flüchtlinge, Susanne Worbs, *Mediennutzung von Migranten in Deutschland*, Working Paper 34, Integrationsreport Teil 8, 2010, p. 24.

²⁰⁵ *Achter Bericht über die Lage der Ausländerinnen und Ausländer in Deutschland*, 2010, pp. 187 et seqq.

²⁰⁶ Bommes, Michael, *Integration durch Sprache als politisches Konzept*, in: Davy, Ulrike, Weber, Albrecht (eds.), *Paradigmenwechsel in Einwanderungsfragen? Überlegungen zum neuen Zuwanderungsgesetz*, 41 Interdisziplinäre Studien zu Recht und Staat, Nomos, 2006, S. 59.

force in the political debates leading to the revisions of the legislation on immigration and citizenship in the early 1990s and, most prominently, the early 2000s. Today, proficiency in the German language is seen as the central means of economic, cultural and societal integration, a paradigm that is well visible in the national integration policy and has informed immigration and citizenship legislation.²⁰⁸

The adoption of the new Immigration Act has introduced a paradigm shift that has triggered considerable change, not only in terms of terminology. The new Immigration Act (*Gesetz zur Steuerung und Begrenzung der Zuwanderung und zur Regelung des Aufenthalts und der Integration von Unionsbürgern und Ausländern*) entered into force on 1 January 2005 after a legislative process that was coined by heated debates and procedural obstacles. The full title of the law in German indicates the underlying immigration policy of the Federal Republic of Germany – “control, restriction and integration”.²⁰⁹ The Immigration Act has a quite peculiar structure. Art. 1 contains the Residence Act (*Gesetz über den Aufenthalt, die Erwerbstätigkeit und die Integration von Ausländern im Bundesgebiet*), Art. 2 contains the Freedom of Movement Act/EU (*Gesetz über die allgemeine Freizügigkeit von Unionsbürgern - Freizügigkeitsgesetz/EU*), subsequent Arts. 3-12 contain a list of revisions in other relevant legal acts²¹⁰ and Arts. 13-15 address final provisions such as entry into force. The legal residence of citizens of one of the member states of the European Union and, in certain circumstances, third country nationals has been harmonized to a considerable degree in the European Union. The German legislator has taken account of the fundamentally different situations for EU citizens and third country nationals based on EU law. The Residence Act concerns foreigners, who are not covered by the Freedom of Movement Act/EU.²¹¹

²⁰⁷ As the main form of migration to Germany, labour migration (if the issue of late emigration and the right to return of co-called *Aussiedler* is left aside), has originally been regarded as temporary, integration has not been recognized as an imminent need, see Pallek, *Der Minderheitenschutz im deutschen Verfassungsrecht*, 2001, pp. 72 *et seqq.*

²⁰⁸ Groß, Thomas, *Integration durch Sprache*, in: in: Davy, Ulrike, Weber, Albrecht (eds.), *Paradigmenwechsel in Einwanderungsfragen? Überlegungen zum neuen Zuwanderungsgesetz*, 41 Interdisziplinäre Studien zu Recht und Staat, Nomos, 2006, S. 87; Kirchhof, *Deutsche Sprache*, 2004, para. 106 *et seqq.*

²⁰⁹ See also Sachverständigenrat für Zuwanderung und Integration, *Migration und Integration – Erfahrungen nutzen, Neues wagen*, Jahresgutachten 2004, Nürnberg, 2004, especially pp. 123 *et seqq.*

²¹⁰ E.g. § 3 concerning the Asylum Procedure Act (*Asylprozessgesetz*).

²¹¹ § 1 (1)& (2) Residence Act.

The Freedom of Movement Act /EU in turn concerns citizens of the Union and their dependents including those who are third country nationals.²¹²

The state is obliged to offer so-called “integration courses” by virtue of § 43(1) of the Residence Act. The goal of these courses is to convey to migrants the language, the legal order, the culture and the history of Germany.²¹³ In standard courses a total of 600 of altogether 645 teaching units are reserved for language teaching.²¹⁴ Depending on the demand, individual courses can be offered for certain target groups such as youth, women, parents and illiterates.²¹⁵ The aim is to offer these courses to groups consisting of no more than 20 participants with different linguistic backgrounds.²¹⁶ The courses are sought to guarantee the acquisition of the German language by foreigners who hold a residence permit (*Aufenthaltserlaubnis*).²¹⁷ Participation can either be based on an obligation, an entitlement or a voluntary commitment.²¹⁸ In cases where participation is mandatory, it can be decisive for the extension of a residence permit pursuant to § 8(3) of the Residence Act.²¹⁹ “Sufficient” command of the German language is a legal requirement for a permanent residence title (*Niederlassungserlaubnis*) according to § 9 (2) 7 of the Residence Act. The General Administrative Regulation on the Residence Act (*Allgemeine Verwaltungsvorschrift zum Aufenthaltsgesetz*) clarifies that “sufficient” is equivalent to the level of B1 of the Common

²¹² § 1 Freedom of Movement Act/EU.

²¹³ § 43(2) Residence Act.

²¹⁴ § 10 & § 11 Integration Course Regulation (*Integrationskursverordnung*).

²¹⁵ § 13 Integration Course Regulation.

²¹⁶ § 14(2) Integration Course Regulation.

²¹⁷ On the addressees of this obligation see Groß, Thomas, *Integration durch Sprache*, in: in: Davy, Ulrike, Weber, Albrecht (eds.), *Paradigmenwechsel in Einwanderungsfragen? Überlegungen zum neuen Zuwanderungsgesetz*, 41 Interdisziplinäre Studien zu Recht und Staat, Nomos, 2006, S. 87; Storr et al. *Kommentar zum Zuwanderungsgesetz. Aufenthaltsgesetz und Freizügigkeitsgesetz/EU*, Boorberg, Stuttgart, 2005, § 43 AufenthG, para. 10.

²¹⁸ According to § 44(1) Residence Act foreigners are entitled to attend an integration course after receiving 1. a residence permit for a) employment purposes, b) or the purpose of subsequent immigration by dependents c) on humanitarian grounds or 2. after receiving a residence title based on special hardship. Not entitled to participation are, according to § 44(3) Residence Act, 1) children, juveniles and young adults who take up school education or continue their previous school education in the Federal Republic of Germany, 2) when the need for integration is discernibly minimal or, 3) when the foreigner already possesses an adequate knowledge of the German language. According to Art. 44(4) Residence Act, a foreigner who does not possess or no longer possesses an attendance entitlement may be allowed to attend, depending to the available number of places on the course. § 44a(1) Residence Act confers an obligation to participate to foreigners who cannot on a basic level orally communicate in German or if the public authority for aliens requires participation, which is permissible in cases where foreigners receive certain social benefits or are considered especially in need for integration, as further defined by the Integration Course Regulation. According to § 44a(2) Residence Act, foreigners who are engaged in vocational training or other professional training in Germany or attend similar course offers or cannot be reasonably expected to participate are exempt from the obligation to participate in integration courses.

²¹⁹ See also §44a(3) Residence Act.

European Framework of Reference for Languages (CEFR).²²⁰ § 9(2)7 of the Residence Act stipulates that the successful completion of an integration course is one way to demonstrate sufficient command of the German language. Pursuant to the Act on the Implementation of Residence and Asylum-related Directives of the European Union (*Gesetz zur Umsetzung aufenthalts- und asylrechtlicher Richtlinien der Europäischen Union*) § 30(1) Nr. 2 of the Residence Act has been changed in 2007. Now, “basic” command of the German language is a requirement also for the spouses of resident foreigners or German nationals in order to receive a residence permit.²²¹ Basic command is equivalent to the level of A1 in the CEFR as clarified in the General Administrative Regulation on the Residence Act.²²² Questions pertaining to the languages requirements for spouse immigration are also addressed by sub-chapters 2.3 below.

Notably, no comparable language requirements exist with regard to EU citizens, whose right to reside freely within the territory of the European Union cannot be made subject to language requirements. Estonian citizens are thus not obliged to participate in integration courses. However, depending on the available places, citizens of the Union may participate voluntarily in integration courses.²²³ Naturalization statistics suggest that at least 3 Estonians who have been naturalized in 2009 participated in integration courses.²²⁴

The responsibility to implement integration courses rests with the Federal Office for Migration and Refugees, an office whose task it is to coordinate the linguistic, social and societal integration of migrants in Germany.²²⁵ According to § 75 (2) a & b of the Residence Act, the Office is responsible for developing and implementing integration courses, a provision which is further specified by §1 of the Integration Course Regulation (*Integrationskursverordnung*). The implementation of the

²²⁰ See para. 9.2.1.7 General Administrative Regulation on the Residence, Ministry of the Interior of 29.10.2010.

²²¹ For a discussion on the legal problems related to the language requirement for the immigration of spouses see Gutmann, Rolf, *Familiennachzug und Sprachkenntnisse*, ZAR 3/2010, pp. 90 et seqq; *Achter Bericht über die Lage der Ausländerinnen und Ausländer in Deutschland*, 2010, pp. 229 et seqq.

²²² Para. 30.1.2.1 General Administrative Regulation on the Residence Act.

²²³ [Erster] *Bericht der Beauftragten der Bundesregierung für Migration, Flüchtlinge und Integration über die Lage der Ausländerinnen und Ausländer in Deutschland*, Berlin, Juni 2005, p. 207.

²²⁴ Statistisches Bundesamt, *Bevölkerung und Erwerbstätigkeit. Einbürgerungen*. Fachserie 1, Reihe 2.1 – 2009, Wiesbaden, 2010, p. 58.

²²⁵ See webpage of the Office for Migration and Refugees, *The Federal Office and its tasks*, at http://www.bamf.de/cln_101/nn_1034446/EN/DasBAMF/Aufgaben/aufgaben-node.html?nnn=true, last visited 04.11.2010.

courses is practically realized by private or public language schools and diverse public authorities that are responsible for referring migrants to the courses and, where applicable, providing social benefits to the participants during the time of participation.²²⁶

1.10.2 Citizenship legislation

According to §10(1) of the Citizenship Act (*Staatsangehörigkeitsgesetz*), there is an eight year legal residence threshold for naturalization. German language proficiency on the level of B1 on the CEFR scale is one of the requirements for naturalization, as stipulated in §10(1) nr. 6 and (4) Citizenship Act.²²⁷ §10(3) specifies that if an applicant can provide a certificate approved by the Federal Office for Migration and Refugees, demonstrating that he has successfully participated in an integration course, the threshold will be lowered to seven years. If special achievements in integration, especially proof of proficiency in German, can be further demonstrated, the threshold can be lowered to 6 years. Moreover, pursuant to § 10(1) nr. 7 of the Citizenship Act, an applicant has to prove that he has sufficient knowledge of the German social and legal order. As a rule he is to complete a citizenship test (*Einbürgerungstest*), for which preparatory courses are offered pursuant to §10(5) Citizenship Act.

In 2000 the *ius soli* principle became part of German citizenship law, which was previously based entirely on the principle of *ius sanguinis*. The Citizenship Act applies a restrictive stance on dual citizenship. According to § 29, dual citizens have to opt for either the German citizenship or their other citizenship upon reaching the legal age of 18 and make a declaration in this respect before the age of 23 (*Optionspflicht*). German citizenship can be lost upon the acquisition of another citizenship, an exception being the citizenships of member states of the European Union and

²²⁶ Concerning the costs of the integration courses for the participants - participants are obliged to pay 1 euro per lesson of which 50% is reimbursable after a successful completion of the course no later than two years after having obtained the approval to participate, see in more detail § 13 Integration Course Regulation. Participants receive a travelling allowance and benefit from childcare provided during course hours. Repatriates and recipients of social are exempt from courses fees, exemptions may also be made with regard to immigrants with low income, see §§ 4(4), 9(2), 9(4) Integration Course Regulation.

²²⁷ What is to constitute “sufficient knowledge” is specified in the general administrative regulations to the Nationality Act. In order to summarize these regulations, sufficient knowledge can either demonstrated with the so-called “Zertifikat Deutsch” or an equal language diploma or by substantial progress in the German educational system, see: Allgemeine Verwaltungsvorschrift zum Staatsangehörigkeitsrecht (StAR-VwV) vom 13. Dezember 2000, GMBI 2001, S. 122, Nr. 8.1.2.1. & 8.1.2.2..

Switzerland. *Mutatis mutandis*, citizens of an EU member state can maintain their original citizenship pursuant to § 25(1) Citizenship Act upon naturalization in Germany.

Between 2002 and 2009 435 Estonian citizens were naturalized in Germany, 143 of those being men and 293 women. Of 52 Estonian nationals who acquired German citizenship in 2009 51 maintained also their Estonian citizenship.²²⁸ While altogether ten of them were under the age of 15 and only six above 45, 19 persons were between 25 - 35 years old and 8 persons were each between 15 and 20 and 35 and 45 respectively. Only one person fell in the age group of 20-25 year olds.²²⁹ The majority of naturalized persons from Estonia had been resident in Germany for not more than 15 years prior to naturalization.²³⁰ In 2009 there have been altogether 96 122 naturalizations in Germany, a number that is well below the average of the 1990s and 2000s.²³¹ By far the biggest group of persons naturalized were persons originally holding Turkish citizenship, 24.647 of which were naturalized in 2009.²³²

Notably, the new language-related legal rules in Immigration and Citizenship legislation inherently aim towards the same overall goal. German languages courses are offered for immigrants, immigrants in turn are expected to provide prove for their knowledge of the German language as a prerequisite for legal residence and naturalization. German can then ultimately serve as the prime vehicular language between the state and foreign as well as naturalized citizens. Immigration and citizenship legislation translate both the demand (“*fordern*”) and “*fördern*” (support) parts of the integration policy into enforceable law, by creating the legal obligation of migrants to learn German and the legal obligation of the state to create the necessary environment.

1.10.3 Anti-discrimination legislation

Anti-discrimination legislation can be considered as an important implementation of the constitutional principle of equality as enshrined in Art. 3 GG. The self-identification of individuals

²²⁸ Statistisches Bundesamt, *Bevölkerung und Erwerbstätigkeit. Einbürgerungen*. Fachserie 1, Reihe 2.1 – 2009, Wiesbaden, 2010, p. 85.

²²⁹ *Ibid.* pp. 18 *et seqq.*

²³⁰ *Ibid.* p. 44.

²³¹ *Ibid.* p. 15.

²³² *Ibid.* p. 23.

as members of specific linguistic groups coincides in most cases with the self-identification as a member of an ethnic or religious group. Limiting the vitality of one component of such an identity can have limiting effects on the other components. Thus, although language is not mentioned among the grounds for discrimination as prohibited by the General Equal Treatment Act (*Allgemeines Gleichbehandlungsgesetz*)²³³, anti-discrimination law is of relevance to speakers of minority and migrant languages. The General Equal Treatment Act of 2006 provides for equal treatment in respect of *i.a.* employment, social services and benefits, education as well as access to public goods such as housing,²³⁴ in the spheres of private employment, and in certain fields of civil law.²³⁵ It prohibits discrimination on grounds of ethnic origin, gender, religious belief, disability, age or sexual orientation.²³⁶ Victims can file a complaint with the competent court within two months and claim compensation.²³⁷ In a decision of January 2010, the Labour Court of Hamburg considered discrimination based on language as an indirect discrimination based on ethnic origin and applied the General Equal Treatment Act in a case of alleged discrimination based on language. The complainant had applied for a position as postman but was rejected after an initial phone interview on the grounds of insufficient command of German.²³⁸

1.10.4 Transitional arrangements in EU law

Another legal area certainly affecting Estonian-speakers in Germany is European Union law. EU primary and secondary law affects many spheres of life of all citizens of the Union. Estonia joined

²³³ With the General Equal Treatment Act, EC directives 2000/43/EC, 2000/78/EC, 2002/73/EC and 2004/113/EC have been transposed into German law.

²³⁴ See § 2 General Equal Treatment Act.

²³⁵ See §§ 6, 19, 24 General Equal Treatment Act; Upon entry into force of the General Equal Treatment Act in 2006, the Federal Anti-Discrimination Agency was established. The agency advises persons who consider themselves as victims of discrimination, raises public awareness about discrimination and conducts research, see § 26 General Equal Treatment Act.

²³⁶ § 1 General Equal Treatment Act.

²³⁷ § 21 General Equal Treatment Act. The ECJ has dealt with the question whether this time limit is in conformity with Council Directive 2000/78/EC Establishing a General Framework for Equal Treatment in Employment and Occupation, see C-246/09, *Susanne Bulicke v Deutsche Büro Service GmbH*, 8.7.2010.

²³⁸ ArbG Hamburg, Urteil vom 26.01.2010 - 25 Ca 282/09; Interestingly, in discussing its reasons for not considering a German with origins in the new *Bundesländer* (former German Democratic Republic) as being of a distinct ethnic origin, the Labour Court in Stuttgart argued that a distinct ethnic origin presupposes the connection to a certain territory, language, history and culture as well as a sense of solidarity among its members. The Court concluded that a "Eastern German" is not distinguishable from the German people and does not qualify as being of distinct ethnic origin, ArbG Hamburg, Urteil vom 26.01.2010 - 25 Ca 282/09; Both decisions are summarized in Antidiskriminierungsstelle des Bundes, *Ausgewählte Entscheidungen deutscher Gerichte zum Antidiskriminierungsrecht*, Berlin, 2010, p. 5.

the EU in 2004 but its citizens cannot yet fully exploit the possibilities resulting from membership. Although its effects on the Estonian language spoken in Germany are at most indirect, the development of the Estonian-speaking community as such is affected by the transitional arrangements for the free movement of workers as upheld by the Federal Republic of Germany after Estonia's accession to the European Union. According to these arrangements, Estonian citizens are inhibited for a transitional period from making use of their freedom of movement and cannot seek employment in Germany. The transitional arrangements form part of the accession treaties of the member states that have acceded to the European Union on 1 May 2004 and 1 January 2007.²³⁹ The transitional arrangements for, among others, Estonia will be lifted by Germany first on 31 December 2011.²⁴⁰ Statements about the effects of the transitional arrangements on Estonian-speakers in Germany as a group and individually can only be based on speculation. As outlined in Kristiina Praakli's Structured Context Analysis, Estonian statistics reveal that emigration from Estonia, particularly to Finland and the UK, increased immediately after Estonia's accession to the EU. The statistics presented by Praakli suggest that between 2004 and 2009 1,037 Estonian citizens immigrated to Germany.²⁴¹

1.11 The relation between national and international law in the domestic legal order

The Federal Republic of Germany follows a dualist tradition. For the purposes of international law the Federal President shall represent Germany. The President can conclude treaties with foreign states on behalf of the Federation. Pursuant to Art. 59(2) GG treaties that regulate the political relations of the Federation or relate to subjects of federal legislation shall require the consent or participation, in the form of a federal law, of the bodies responsible in such a case for the enactment of the federal law. Only general rules of international law take precedence over federal laws and directly create rights and duties for the inhabitants of the federal territory by virtue of

²³⁹ See Art. 24 *Act concerning the conditions of accession of the Czech Republic, the Republic of Estonia, the Republic of Cyprus, the Republic of Latvia, the Republic of Lithuania, the Republic of Hungary, the Republic of Malta, the Republic of Poland, the Republic of Slovenia and the Slovak Republic and the adjustments to the Treaties on which the European Union is founded* read in conjunction with Annex VI nr. 1.13.

²⁴⁰ See webpage of the Federal Ministry for Labour and Social Affairs, at <http://www.bmas.de/portal/11020/auslaenderbeschaeftigung.html>, last visited 14.12.2010.

²⁴¹ Praakli, *Estonians in Germany*, 2010, pp. 23 *et seq.*

Art. 25 GG. Legal rules in international law relating to the position of minorities and their languages emanate foremost from international treaties and thus need to be enacted by federal law in order to gain applicability in the Federal Republic of Germany.

The UN Human Rights Committee in its General Comment No. 23 to Art. 27 of the International Covenant on Civil and Political Rights (ICCPR) has recognized that migrant workers or even visitors in a State party to the ICCPR can constitute a minority within the scope of Art. 27.²⁴² In its fifth periodic report under Art. 40 ICCPR of 2002, the Federal Republic of Germany states that *“all ethnic, religious and linguistic minorities in Germany are protected by the Basic Law as to the rights named in Article 27 of the Covenant.”*²⁴³ Germany further refers to both, autochthonous minorities and immigrants, as minorities for the purposes of Art. 27 ICCPR.²⁴⁴

More detailed binding obligations on the Federal Republic of Germany under international law derive from the Framework Convention for the Protection of National Minorities and the European Charter for Regional and Minority concluded under the auspices of the Council of Europe. Germany has ratified the FCNM in 1997 and the ECRML in 1998. With regard to the ECRML, the Federal Republic of Germany has affirmed its self-executing nature. However, as the Committee of Experts under the ECRML has found, *“due to the structure and content of the Charter, its full implementation can only be guaranteed if specific legislation or administrative measures are adopted at all relevant levels and in the different fields covered by the Charter, especially administration and the judiciary.”*²⁴⁵ Practically, both legal instruments put its contracting parties under the obligation to adopt positive measures. Hence, neither the FCNM nor the ECRML is considered to have general direct effect. The periodic state reports outline the respective Federal and *Länder* legislation implementing the legal norms emanating from the FCNM

²⁴² Office of the High Commissioner for Human Rights, *General Comment No. 23: The rights of minorities (Art. 27)*, 08.04.1994, CCPR/C/21/Rev.1/Add.5, para. 5.2.

²⁴³ United Nations Human Rights Committee, Consideration of Reports Submitted by States Parties under Article 40 of the Covenant. Fifth Periodic Report Germany, 13 November 2002, CCPR/C/DEU/2002/5, para. 373.

²⁴⁴ The following formulation indicates that immigrants are subsumed under the term minority for the purposes of Art. 27: *“Over and above the rights contained in Article 27 of the Covenant for all ethnic, religious or linguistic minorities (which Germany guarantees for all minorities) Germany has additionally accepted special protection obligations for its national minorities”*, see United Nations Human Rights Committee, Consideration of Reports Submitted by States Parties under Article 40 of the Covenant. Fifth Periodic Report Germany, 13 November 2002, CCPR/C/DEU/2002/5, para. 380.

²⁴⁵ Council of Europe, European Charter for Regional and Minority Languages, Application of the Charter in Germany, *Report of the Committee of Experts on the Charter*, 4 December 2002, ECRML(2002)1, p. 15, para. 46.

and the ECRML.

In the light of a rather unambiguous statement made before the UN Human Rights Commission in 1992 concerning the definition of the term "minority"²⁴⁶ and the definite exclusion of migrants from the scope of the FCNM and the ECRML by Germany, the inclusion of migrants under the term minority with regard to Art. 27 ICCPR can be considered an exception which has not been explained by the Federal Government. With regard to migrants and their languages, thus far, international legal instruments for the protection of minorities do not, by and large, confer any obligation as regards to the protection of migrants and their languages on the Federal Republic of Germany.²⁴⁷

Instead, international legal norms pertaining explicitly to migrants can be found in international instruments on the rights of migrant workers. In 2003 the UN Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families entered into force. However, thus far it has neither been signed nor ratified by the Federal Republic of Germany.²⁴⁸ The International Labour Organisation (ILO) has adopted several conventions addressing the situation of migrant workers, most prominent are the 1949 Migration for Employment Convention and the 1975 Migrant Workers Convention. Germany has ratified the former but neither of these instruments address linguistic rights. The Federal Republic of Germany is also a party to the ILO's Discrimination (Employment and Occupation) Convention of 1958. However, although the

²⁴⁶ The German delegation interpreted the term minorities as follows: "only well-defined separate and distinct groups which had been long established in the territory of a State. In its opinion, the provisions guaranteeing the rights of minorities should not be applied in such a way as to encourage the creation of new minorities or to hamper the process of the assimilation of immigrants. In other words, they did not entitle a group of persons living in the territory of a State, such as foreign nationals benefiting from the immigration laws, to form separate communities within that State. In his delegation's understanding, only nationals of the State in question, who had always lived there, could exercise minority rights", see UN Doc.E/CN.4/1992/SR.38, 7 (summary record), cited in Langenfeld, Christine, *Völkerrechtliche Praxis der Bundesrepublik Deutschland im Jahre 1992*, 54 Zeitschrift für ausländisches öffentliches Recht und Völkerrecht (1994), p. 879.

²⁴⁷ This included soft law instruments as the Declaration on the Rights of Persons belonging to National or Ethnic, Religious and Linguistic Minorities adopted by General Assembly resolution 47/135 of 18 December 1992 and Art. 30 of the Document of the Copenhagen Meeting of the CSCE Conference on the Human Dimension of 29 June 1990. Germany does not consider its commitments in respect of minority protection to migrants.

²⁴⁸ The Convention prohibits discrimination based on *i.a.* language (Art. 1(1) & Art. 7) and provides for the right to be promptly informed about charges brought against oneself in one's own language (Art. 16(5) & Art. 18(3)a), translation and interpretation in Court (Art. 16(8) & 18(3)f) and the right to receive a decision on expulsion in one's own language (Art.22(3)), the right to receive information concerning rights and conditions of admission in one's own language (Art. 33(3)), the right for the children of migrant workers to teaching of the local language (Art. 45(2)).

Convention prohibits discrimination on the grounds of national extraction, it does not include language as one criteria covered by the prohibition of discrimination in respect of employment and occupation.

Of course, a wealth of legal norms touching upon the rights of migrant workers exists also within the framework of the European Union. The Federal Republic of Germany, by virtue of Art. 24(1) GG, may transfer sovereign powers to international organisations and has done so with regard to the European Union. Citizens of the European Union have the right to reside freely within the territory of the Member States, subject to certain limitations and conditions.²⁴⁹ European Union anti-discrimination legislation, based on what is today Art. 19 of the Treaty on the Functioning of the European Union (TFEU), is extensive and binding on the Federal Republic of Germany. Council Directive 2000/43/EC of 29 June 2000 implementing the principle of equal treatment between persons irrespective of racial or ethnic origin guarantees equal access to *i.a.* employment, social benefits and education but does not address linguistic rights as such. Within the area of education, Council Directive 77/486/EEC of 25 July 1977 on the education of the children of migrant workers stipulates that “*Member States shall, in accordance with their national circumstances and legal systems, and in cooperation with States of origin, take appropriate measures to promote, in coordination with normal education, teaching of the mother tongue and culture of the country of origin.*” This directive is not understood to have direct effect but has informed the Standing Conference’s early approaches to the education of migrant children in Germany.²⁵⁰ The European Parliament in its resolution on integrating immigrants in Europe through schools and multilingual education has expressed, although not very vigorously, the importance of mother tongue teaching.²⁵¹ The European Court of Justice has dealt with the linguistic rights of migrants in very particular circumstances, namely in situations where migrants sought to avail themselves of the linguistic rights of autochthonous minorities speaking the same language.²⁵²

²⁴⁹ See Directive 2004/38/EC of the European Parliament and of the Council of 29 April 2004 on the right of citizens of the Union and their family members to move and reside freely within the territory of the Member States, OJ L 158, 30.4.2004, p. 77–123.

²⁵⁰ See sub-chapter 1.3.3 above.

²⁵¹ European Parliament resolution on integrating immigrants in Europe through schools and multilingual education (2004/2267(INI)), para. 2.

²⁵² See cases C-274/96, *Criminal Proceedings Against Bickel and Franz*, 1998 E.C.R. I-7637, C-137/84, *Mutsch*, 1985, E.C.R. I-2681, C-281/98; See also Case 378/87 *Groener*, 1989 ECR I-3967 which dealt with the fulfilment of Irish

When it comes to autochthonous minorities and their languages the European Union does not provide a much stronger framework. Art. 2 of the Treaty of the European Union (TEU) reads “[t]he Union is founded on the values of respect for human dignity, freedom, democracy, equality, the rule of law and respect for human rights, including the rights of persons belonging to minorities. These values are common to the Member States in a society in which pluralism, non-discrimination, tolerance, justice, solidarity and equality between women and men prevail.” After the entry into force of the Treaty of Lisbon, the majority of these principles can be considered well elaborated in the thick legal *acquis* of the European Union. The European Unions’ own Charter of Fundamental Right has finally gained legal force. However, beyond the prohibition of discrimination based on *i.a.* language and membership of a national minority in Art. 21, the Charter does not address specific minority rights.²⁵³ Neither on the level of primary law, nor on the level of secondary law does European Union legislation specifically deal with the rights of minorities. Although minority rights are often invoked externally, *e.g.* as an accession criterion, they have “rarely featured on the EU’s internal agenda.”²⁵⁴ Whether the European Union should engage more with the protection of minority rights is partly a question of competence and need. European Union institutions, most actively the European Parliament, continuously refer to international instruments for the protection of minorities, not least the FCNM and the ECRML.²⁵⁵

The FCNM and ECRML thus remain the most concrete instruments under international law binding upon the Federal Republic of Germany.

1.12 Debates on language rights and ‘old’ and ‘new’ minorities

A first look at the media coverage of these issues suggests that within public debates, outside the academic realm, no connection is made between the situations of “old” and “new minorities”.

language criteria required from teachers in Ireland by foreign nationals and *Angonese v. Cassa di Risparmio di Bolzano SpA*, 2000 E.C.R. I-4139 concerning the recognition of language certificates issued in other Member States.

²⁵³ Notably, neither membership of a minority nor language is among the criteria covered by the prohibition of discrimination as laid out in Art. 19 of the Treaty on the Functioning of the European Union (TFEU).

²⁵⁴ Shoraka, *Human Rights and Minority Rights in the European Union*, 2010, p. 115.

²⁵⁵ Shoraka, *Human Rights and Minority Rights in the European Union*, 2010, pp. 134 *et seqq*; See *e.g.* European Parliament Resolution A3-0042/94 on linguistic and cultural minorities in the European Community, Official Journal of the European Communities, No C 61, 29.2.1994, pp.110-113, para 7, & European Parliament resolution on the protection of minorities and anti-discrimination policies in an enlarged Europe (2005/2008(INI)), Official Journal of the European Union, C 124 E, 25.5.2006, pp. 405-415, paras 7 & 8.

Regionally, the language rights of autochthonous groups are the subject of public debate but noticed only occasionally by a broader public, e.g. as recently in Schleswig-Holstein after the regional parliament (Landtag) cut down its funding for Danish-speaking private schools.²⁵⁶ The status and rights of autochthonous groups in Germany are not the subject of wider public debates. Migration and integration however, are constant topics of public debate and preoccupy the media. Notably, language or rather the alleged deficient command of migrants the German language is often the main issue in these debates. In August 2010 an extensive public debate on integration was triggered by the publication of the book *Deutschland schafft sich ab: Wie wir unser Land aufs Spiel setzen* ('Germany does away with itself: How we put our country at risk') in August 2010 by Thilo Sarrazin.²⁵⁷ Thilo Sarrazin, a former member of the board of directors of the German Federal Bank, a position he lost as a consequence of the radical statements made in the book, stirred up a public debate in the course of which German society has appeared to be utterly divided on the question of immigrant integration. As Jürgen Habermas has summarized in an article published in the New York Times: "[s]ince the end of August Germany has been roiled by waves of political turmoil over integration, multiculturalism and the role of the 'Leitkultur,' or guiding national culture. This discourse is in turn reinforcing trends toward increasing xenophobia among the broader population."²⁵⁸ Sarrazin received both overwhelming approval and vigorous criticism for his polarizing statements depicting Muslim immigrants as, among others, "genetically inferior". Sarrazin expressed concern that immigration is leading to a detrimental demographic development in terms of intelligence. In his speech "Valuing Diversity – Fostering Cohesion" held to mark the 20th anniversary of Germany's reunification German President Christian Wulff clearly tried to paint a different picture and move the heated debate on immigration away from the polarizing statements made by Sarrazin and his sympathizers. Although governments have thus far refused this label, Wulff explicitly defined Germany as an "immigration state" and stated unmistakably that Islam is part of Germany. Wulff outlined the achievements and challenges immigration has brought about and acknowledged not only the absolute necessity of German

²⁵⁶ Webside des Norddeutschen Rundfunks, *Dänische Minderheit wehrt sich gegen Schul-Sparpläne*, 26.06.2010, available at <http://www.ndr.de/regional/schleswig-holstein/daenen100.html>, last visited 5.1.2011; See part 2.6 below.

²⁵⁷ Sarrazin, Thilo, *Deutschland schafft sich ab: Wie wir unser Land aufs Spiel setzen*, Deutsche Verlags-Anstalt, 2010.

²⁵⁸ Habermas, Jürgen, *Leadership and Leitkultur*, 28.10.2010, New York Times, online at <http://www.nytimes.com/2010/10/29/opinion/29Habermas.html? r=1>, last visited 5.11.2011.

language proficiency but also the need to catch up on mother tongue education.²⁵⁹ Wulff's fellow CDU party member, Bavarian Minister-President Horst Seehofer, has expressed opposing views. Seehofer has declared that Germany is not open for immigrants from other culture areas (*Kulturkreisen*) such as Turkey or Arab countries and that "*multikult*" (multiculturalism) has failed and now is "dead". Seehofer demands that immigrants avow themselves to the German guiding national culture, the "*Leitkultur*".²⁶⁰ According to Seehofer 80 – 90% of immigrants resident in Germany are well integrated. "*Integrationsverweigerer*" (integration deniers) however, should be subject to tougher treatment.²⁶¹ German Chancellor Angela Merkel has expressed support for Seehofer by agreeing that the present approach to *multikulti* has absolutely failed.²⁶² Generally she has adopted a more reserved position however, reiterating only the need for immigrants to learn German.²⁶³ Many politicians across the whole spectrum of political parties, public figures and academics from the fields of politics, sociology, education, genetics and psychology have voiced their views in this debate. Given the scope of this analysis, only the proposal made in this context by the General Secretary of the liberal party FDP Christian Lindner shall be singled out here. Lindner entered the debate with a proposal to impose a duty to speak German on school yards.²⁶⁴ In 2006 a school in Berlin-Wedding was awarded the price of the German National Foundation (*Deutsche Nationalstiftung*) for the self-imposed and student-backed commitment to German as the only language spoken on the schoolyard and the positive results of this initiative, such as a

²⁵⁹ Wulff's speech can be found on his webpage, Bundespräsident Christian Wulff, Reden und Interviews, "*Valuing Diversity – Fostering Cohesion*", Speech by Christian Wulff, President of the Federal Republic of Germany, to mark the twentieth anniversary of German Unity on 3 October 2010 in Bremen, at http://www.bundespraesident.de/_11057,3/Reden-und-Interviews.htm?link=bpr_liste, last visited 5.1.2011.

²⁶⁰ "*Wir wollen nicht zum Welt-Sozialamt werden*", Süddeutsche.de, 16.10.2010, at <http://www.sueddeutsche.de/politik/integrationsdebatte-seehofer-wir-wollen-nicht-zum-welt-sozialamt-werden-1.1012708>, last visited 5.1.2011; Weiland, Severin, *Empörung in Regierung und Opposition*.

Proteststurm gegen Seehofers Ausländer-Offensive, Spiegel online, 10.10.2010, at <http://www.spiegel.de/politik/deutschland/0,1518,722308,00.html>, last visited 5.1.2011.

²⁶¹ *Seehofer gegen Zuwanderung aus "fremden Kulturkreisen"*, Zeit online, 9.10.2010, at <http://www.zeit.de/politik/deutschland/2010-10/seehofer-integration-zuwanderer?page=1>, last visited 5.1.2011.

²⁶² *Merkel erklärt Multikulti für gescheitert*, Spiegel online, 5.10.2010, at <http://www.spiegel.de/politik/deutschland/0,1518,723532,00.html>, last visited 5.1.2011.

²⁶³ *Seehofer und Merkel befeuern Leitkultur-Debatte*, Spiegel online, 15.10.2011, at <http://www.spiegel.de/politik/deutschland/0,1518,723466,00.html>, last visited 5.1.2011.

²⁶⁴ *Deutschpflicht auf Schulhöfen undenkbar*, Tagesschau.de, 15.10.2010, at <http://www.tagesschau.de/inland/integration148.html>, last visited 5.1.2011; See also Böhmers presentation of the 8th report on the situation of foreigners in Germany to the German *Bundestag*, Deutscher Bundestag, 17. Wahlperiode, Plenarprotokoll 17/65, 7.10.2010.

decrease in conflicts among students and an increased sense of unity and belonging.²⁶⁵ This example gained new force when reports about hostilities against German-speakers on German schoolyards emerged in October 2010, further fuelling the “Sarrazin debate”.²⁶⁶ Punishments for truants and students not willing to participate in German language classes have been discussed in this context as well.²⁶⁷ Although Maria Böhmer, Minister of State and Commissioner for Migration, Refugees, and Integration of the Federal Republic of Germany has described the debate on integration as “bizarre”,²⁶⁸ she supported Lindner’s idea. Lindner’s proposal was discussed and clearly rejected by the Standing Conference. Representatives of the Turkish Community in Germany have labelled the proposal to ban students from speaking their mother tongues a scandal.²⁶⁹ Interestingly, the justification for the proposed prohibition was not the need for more practice in spoken German to the benefit of students with migration background. The underlying argument was the avoidance of conflicts caused or at least expressed by the use of languages other than German on schoolyards. This discussion did thus differ conceptually from the long-term debate on integration of migrants through language acquisition. Already in 2001, the devastating results of the PISA study for Germany resulted in extensive debates in the media about immigrant integration in school. Especially with regard to language acquisition, public debates on immigration have since focused on education and the deficits of the German school system to accommodate students with a multilingual background on the one hand and the perceived attitudes of immigrants on the other. These issues have acquired an almost permanent presence in the German media.

²⁶⁵ Stolzenberg, Christopher, *Ausgezeichnete Deutschpflicht*, Spiegel online, 26.6.2006, at <http://www.spiegel.de/schulspiegel/0,1518,423873,00.html>, last visited 5.1.2011.

²⁶⁶ *Wenn Mehmet Lukas mobbt*, Süddeutsche.de, 7.10.2010, at <http://www.sueddeutsche.de/karriere/kulturelle-konflikte-an-schulen-wenn-mehmet-lukas-mobbt-1.1009219>, last visited 5.1.2011.

²⁶⁷ *Deutsch soll Pflicht auf Schulhöfen werden*, Süddeutsche.de, 13.10.2010, at <http://www.sueddeutsche.de/politik/integrationsdebatte-fdp-will-deutschpflicht-auf-allen-schulhoefen-1.1011402>, last 5.1.2011.

²⁶⁸ *FDP-General will Deutschpflicht auf Schulhöfen*, Spiegel online, 13.10.2010, at <http://www.spiegel.de/politik/deutschland/0,1518,722783,00.html>, last visited 5.11.2011.

²⁶⁹ *Deutschpflicht auf Schulhöfen undenkbar*, Tagesschau.de, 15.10.2010, at <http://www.tagesschau.de/inland/integration148.html>, last visited 5.1.2011.

2 Languages and Minority Policies in Practice

2.1 Parliamentary debates on languages and minorities

2.1.1 With respect to constitutional provisions

Immigration and integration are issues preoccupying parliamentary debates in Germany much more than minority rights, and this holds true for both the federal and regional levels. Interestingly, when the attempt was made to include a minority rights provision in the German constitution after the reunification of Germany in 1990, the main issue of political contention was whether such a provision should include migrant groups or be limited strictly to autochthonous minorities.

After the reunification of the Federal Republic of Germany, the constitutional protection of minority rights was on the agenda for the reform of the *Grundgesetz* in 1994. In 1990 the two governments signing the Unification Treaty (*Einigungsvertrag*), i.e. the governments of the German Democratic Republic and the Federal Republic of Germany, supported a revision of the *Grundgesetz* to be undertaken by legislative bodies of reunified Germany. A minority rights provision for the *Grundgesetz* was then discussed by the commission for constitutional reform of the *Bundesrat* (the federal body that represents the *Länder*) and the joint commission for constitutional reform of the *Bundesrat* and the *Bundestag* (*Gemeinsame Verfassungskommission*). Interestingly, one of the core issues discussed in connection to the diverse proposals made at that time was whether such a provision should be strictly limited to autochthonous minorities or capture the wider idea of a multicultural society. The first proposal in the *Bundesrat* as submitted by the *Länder* Niedersachsen and Schleswig-Holstein sought to include both national and cultural minorities in the obligation of the State to protect and promote minorities. Brandenburg proposed a formulation that would have included foreigners under the obligation of the state to respect minorities but would extend the obligation of the state to also promote minorities only to national minorities and ethnic groups with German nationality.²⁷⁰ An inclusive but rather thin formulation recognizing the obligation of the state to respect the identity of ethnic, cultural and linguistic minorities constituted the final, unpopular compromise proposed by the *Bundesrat* in its report.

²⁷⁰ Pallek, *Der Minderheitenschutz im deutschen Verfassungsrecht*, pp. 400 et seq.

The discussion was taken up again in the joint commission for constitutional reform of the *Länder* parliaments and the federal parliament but resulted in an identical proposal. The proponents of this proposal argued *i.a.* that such a constitutional provision could be seen as a specification of the inviolability of human dignity and that it would set a sign for cultural tolerance, especially for the permanently resident foreigners, those that contribute to the cultural diversity of Germany.²⁷¹ Although the proposal prescribed only the obligation to “respect” and not to “protect” or “promote” ethnic, cultural and linguistic minorities, as earlier proposals, it was criticised for promoting a model of “side by side existence” of independent cultures to the detriment of the integration of immigrants.²⁷² Certainly, the lack of an internal definition of the term minority in Germany²⁷³ and the fact that the protection of the autochthonous minorities had long been codified in the respective *Länder* constitutions and international instruments constituted other obstacles and decreased the perceived need for adopting a constitutional provision to that effect. In the end, the proposed minority rights provision did not receive support from a majority in the legislative process and to date, the *Grundgesetz* remains without an article on minority rights.

In the *Bundestag* an informal roundtable on national minorities (*Gesprächskreis nationaler Minderheiten beim Deutschen Bundestag*) exists since 2003, as does a cross-party initiative on regional and minority languages.²⁷⁴ There is no public output from these bodies. Individual MPs however, report on parliamentary debates concerning minority issues on their personal websites.²⁷⁵ In 2010 the allocation of financial resources for the benefit of minorities has resulted in parliamentary debates, both, on the federal and the *Land* levels. As mentioned above, the regional legislative assembly of Schleswig-Holstein has agreed to a proposal submitted by the regional government to decrease the funding for Danish private schools by 15% per student in the

²⁷¹ Pallek, *Der Minderheitenschutz im deutschen Verfassungsrecht*, 2001, p. 406, Ermisch, Harald, *Minderheitenschutz ins Grundgesetz. Die politische Diskussion über den Schutz ethnischer Minderheiten in der BRD im Rahmen der Beratungen der Gemeinsamen Verfassungskommission von Bundesrat und Bundestag*, Schriftenreihe der Stipendiantinnen und Stipendianten der Friedrich-Ebert-Stiftung, Band 6, Göttingen, 1999, pp. 33 *et seq.*

²⁷² Pallek, *Der Minderheitenschutz im deutschen Verfassungsrecht*, 2001, pp. 407 *et seq.*

²⁷³ Considerable disagreement existed with regard to the inclusion of Sinti and Roma with regard to proposals, which referred to traditional settlement areas, see Ermisch, *Minderheitenschutz ins Grundgesetz. Die politische Diskussion über den Schutz ethnischer Minderheiten in der BRD im Rahmen der Beratungen der Gemeinsamen Verfassungskommission von Bundesrat und Bundestag*, 1999, pp. 202 *et seq.*

²⁷⁴ Council of Europe, *European Charter for Regional or Minority Languages. Second Periodical Report presented to the Secretary General of the Council of Europe in accordance with Article 15 of the Charter. Germany*, MIN-LANG/PR (2004) 1, Strasbourg, 14 April 2004, p. 19, para. A.4.2.

²⁷⁵ See *e.g.* webpage of MP Sönke Rix (SPD), at <http://www.soenke-rix.de/de/minderheiten.htm>, last visited 10.1.2011.

state budget for 2011.²⁷⁶ On the federal level, this issue has been taken up for discussion with the federal government by members of the parliament in the *Bundestag*.²⁷⁷ Other than that, minority rights have only made marginal appearances in parliamentary debates in the recent years.

2.1.2 With respect to language legislation

Language legislation cannot be discerned as a distinct category of the German legal system. Questions touching upon language use are largely framed as part of the integration policy and, sporadically, as an issue of minority protection.

2.1.3 With respect to education legislation

In contrast, immigration and integration are perpetual topics for parliamentary debates. Language requirements have featured considerable, if not to say dominantly, in the parliamentary debates concerning the regulation of immigration and naturalization. As has been mentioned above, in certain cases knowledge of German is a prerequisite for entry and it is a requirement for residence and naturalization. The practical set-up of integration courses and language exams has been scrutinized by the *Bundestag* since the entry into force of the Immigration Act in 2005 and the related changes in the Nationality Act.²⁷⁸ Public debates, such as the “Sarrazin-debate” of course also find their way into parliamentary debates. Most recently, integration was broadly discussed in connection to the 8th report of the Federal Government on the situation of foreigners in Germany in October 2010.²⁷⁹ Migrant languages as such have not attracted much attention however. Mother tongue education has been mentioned sporadically in government reports in response to parliamentary inquiries during the past years.²⁸⁰ In an inquiry submitted in 2000 concerning the

²⁷⁶ See Landtag Schleswig-Holstein, 17. Wahlperiode, *Plenarprotokoll 17/20*, 20 Sitzung, 16.6.2010.

²⁷⁷ See questions 19-24 posted by MPs Thönnies, Rix and Hagedorn (SPD), *Deutscher Bundestag*, 17. Wahlperiode, *Fragen für die Fragestunde der 54. Sitzung des Deutschen Bundestages am Mittwoch, dem 7. Juli 2010*, Drucksache 17/2371.

²⁷⁸ See e.g. *Deutscher Bundestag*, Antrag der Abgeordneten Laurischk et al., *Integrationskurse qualitativ verbessern und entbürokratisieren*, 18.06.2008, Drucksache 16/9593; An overview of these issues and their discussion can be found in the 8th report of the Federal Government on the situation of foreigners in Germany, *Deutscher Bundestag*, 17. Wahlperiode, *Unterrichtung durch die Beauftragte der Bundesregierung für Migration, Flüchtlinge und Integration, Achter Bericht über die Lage der Ausländerinnen und Ausländer in Deutschland*, 7.7.2010, Drucksache 17/2400, pp. 217 et seqq.

²⁷⁹ *Deutscher Bundestag*, 17. Wahlperiode, *Plenarprotokoll 17/65*, 7.10.2010.

²⁸⁰ See e.g. *Deutscher Bundestag*, Antwort der Bundesregierung auf die Kleine Anfrage der Abgeordneten Sibylle Laurischk, Ina Lenke, Miriam Gruß, weiterer Abgeordneter und der Fraktion der FDP – Drucksache 16/8228 –, *Schulen für Schüler mit Migrationshintergrund*, 10.3.2008, Drucksache 16/8459,

situation of Kurdish migrants in Germany, for example, one question has touched upon mother tongue education for Kurdish-speaking children specifically.²⁸¹ Notably, here an initiative taken by the European Parliament calling upon the EU member states to protect their Kurdish residents had triggered the respective MPs' interest.

Interestingly, a press release by the *Bundestag* Committee for Children, a sub-committee of the Committee on Family Affairs, Senior Citizens, Women and Youth, on the occasion of the International Mother Language Day on 21 February 2010 appears to ignore the evident motto of this day. The press release does not mention either the status accorded to mother tongues or mother tongue education but emphasizes the importance of one common language for all citizens.²⁸² President of the *Bundestag* Norbert Lammert has in the beginning of 2011 reiterated his demand to equip the *Grundgesetz* with an article on an official state language. In July 2010 Lammert had received more than 70.000 signatures in support of a potential Art. 22a GG codifying German as the official state language.²⁸³ Notably, the arguments made by Lammert and others do not point to migration as a reason for the perceived deterioration of the status of the German language. Globalization and the increasing trend to use English in scientific publications are presented as a core justification as this is seen to have a negative effect on the use of German in both national and international contexts.²⁸⁴ However, arguments have been made describing a possible codification of German as the official state language as a welcome signal also towards migrants, pointing to the importance of language acquisition.²⁸⁵ Overall, parliamentary debates concerning language seem to focus on the German language, migrant languages being only marginally taken account of.

²⁸¹ Deutscher Bundestag, Antwort der Bundesregierung auf die kleine Anfrage der Abgeordneten Ulla Jelpke und der Fraktion der PDS – Drucksache 14/2580 - , *Kurdische Minderheit in der Bundesrepublik Deutschland*, 14.02.2000, Drucksache 14/2676.

²⁸² Deutscher Bundestag, Pressemitteilung Kinderkommission zum Internationalen Tag der Muttersprache am 21. Februar 2010: „Hürden nehmen und Chancen schaffen“, Berlin, 19.2.2010.

²⁸³ Deutscher Bundestag, Wissenschaftliche Dienste, Aktueller Begriff, *Sprache im Grundgesetz*, available at http://www.bundestag.de/dokumente/textarchiv/2011/33015544_kw02_deutsch_lammert/index.html, last visited 11.1.2011.

²⁸⁴ See webpage of the *Bundestag*, Lammert: *Deutsch im Grundgesetz verankern*, at http://www.bundestag.de/dokumente/textarchiv/2011/33015544_kw02_deutsch_lammert/index.html, last visited 11.1.2011; See also Guratzsch, Dankwart, *Ohne Muttersprache heimatlos. Deutsch im Grundgesetz - Anker gegen das Abheben der Eliten und Ausgrenzung der Mehrheit*, Das Parlament, Nr. 50, 13.12.2010, available online at <http://www.bundestag.de/dasparlament/2010/50/Thema/32695381.html>, last visited 11.1.2011.

²⁸⁵ Deutscher Bundestag, Wissenschaftliche Dienste, *Aktueller Begriff. Deutsch im Grundgesetz*, available at http://www.bundestag.de/dokumente/textarchiv/2011/33015544_kw02_deutsch_lammert/index.html, last visited 11.1.2011.

2.1.4 With respect to media legislation

Although the National integration Plan and the 8th Report of the Federal Government on the situation of Foreigners in Germany have dealt with questions pertaining to migration and media, this topic has not featured in parliamentary debates in recent years.

2.2 Recent legal initiatives

Currently there are no pending legal initiatives which can be expected to have noteworthy effects on language use and maintenance or language diversity in Germany. Concerning the requirements as to the German language proficiency of migrants, the Immigration Act of 2005 introduced requirements whose effective implementation has proven difficult. The problems are well-recognized and have undergone extensive parliamentary debate. Additional financial resources for integration courses have been approved for 2011 with a budget of 218 million Euros for integration courses.²⁸⁶ The legal bases for mother tongue education on the *Land* level, where such exists, are decrees, which can be revised by the respective ministries for education. Moreover, due to the legal nature of such decrees and the provisions making mother tongue education conditional to the number of students registering and the funds available, the existing regulations concerning mother tongue education do not amount in individual legal rights and thus cannot be claimed in before administrative courts.²⁸⁷

2.3 Case law on languages and minorities

Questions concerning case-law and administrative practices shall be addresses with a focus on migrant languages, as a discussion of both minority legislation and legislation concerning the use, maintenance and learning of language by migrants, would exceed the scope of the present

²⁸⁶ See webpage of the Ministry of the Interior, at http://www.bmi.bund.de/DE/Ministerium/Haushalt/haushalt_node.html, last visited 22.1.2011.

²⁸⁷ An analogy could possibly be drawn to the subject of religious education. Art. 7 (3) *GG* endorses the right of (officially recognized) religious communities to receive religious education in public schools. Whether this results in the subjective right of individual students has however, never been proven by a court but arguments in that direction have been made, see Langenfeld, Christine, *Integration und Identität zugewanderter Minderheiten*, Mohr Siebeck, Tübingen, 2001, p. 495. It remains highly doubtful whether a comparable right to mother tongue education could follow from Arts. 1(1), 2(1) and/or 3(3) *GG*.

analysis. However, anti-discrimination legislation and its implementation can concern members of both groups alike so that it is neither necessary to think in clear-cut categories at all times.

2.3.1 With respect to constitutional provisions

There is no recent case-law with respect to constitutional provisions touching directly upon language use. As the General Equal Treatment Act can be considered as an elaboration of Art. 3(1) GG, it seems fair though to make reference to case-law touching upon the General Equal Treatment Act at this point. An instructive decision of the Labour Court Hamburg has been mentioned under 1.10 above. The complainant had applied for a position as postman but was rejected after an initial phone interview on the grounds of insufficient command of German. The Court considered the practice to evaluate language proficiency by means of a telephone conversation as an indirect discrimination based on ethnic origin, as it is naturally harder for non-native speakers to express themselves in a clear and precise manner on the phone. Moreover, the Court considered the employment requirement of fluency in written and spoken German as disproportional with regard to the occupation of a postman. The complainant was awarded 5.400 € in damages.²⁸⁸ In 2009 the Labour Court of Berlin made a decision in favour of a complainant, who claimed to have been discriminated on the basis of ethnic origin/language in the employment field. The complainant had applied for a position at the information desk of an art association and was rejected as the vacancy announcement was directed only to native speakers of the German language. The Court considered this as discriminatory as only a small number of all ethnicities could fulfil this requirement. The Court did not consider the facts of the case to justify a permissible difference in treatment based on ground of occupational requirements pursuant to §8

²⁸⁸ ArbG Hamburg, Urteil vom 26.01.2010 - 25 Ca 282/09; Interestingly, in discussing its reasons for not considering a German with origins in the new *Bundesländer* (former German Democratic Republic) as being of a distinct ethnic origin, the Labour Court in Stuttgart argued that a distinct ethnic origin presupposes the connection to a certain territory, language, history and culture as well as a sense of solidarity among its members. The Court concluded that a "Eastern German" is not distinguishable from the German people and does not qualify as being of distinct ethnic origin, ArbG Hamburg, Urteil vom 26.01.2010 - 25 Ca 282/09; Both decisions are summarized in Antidiskriminierungsstelle des Bundes, *Ausgewählte Entscheidungen deutscher Gerichte zum Antidiskriminierungsrecht*, Berlin, 2010, p. 5.

General equal Treatment Act as it is possible to attain fluency in the German language also for non-native speakers.²⁸⁹

2.3.2 With respect to language legislation

Language legislation is not a distinct concept used in the legal and political framework of the Federal Republic of Germany. Case law exists however, with regard to specific provisions in immigration law requiring language acquisition. As has been indicated in sub-chapter 1.10.1 above, one of the most controversial provisions of the Residence Act is § 30(1) Nr. 2 on the immigration of spouses. The interpretation of the national legislation on language requirements for the immigration of spouses has been influenced by the European Court of Justice's (ECJ) decision in "Metock". The ECJ found Directive 2004/38/EC (on the right of citizens of the Union and their family members to move and reside freely within the territory of the Member States) applicable also to spouses who are third country nationals and who have not previously resided in the EU.²⁹⁰ The directive provides for the unrestricted entry of European Union citizens and their spouses.²⁹¹ § 30(1) nr. 2 of the Residence Act had until then been interpreted not to apply to third country nationals who want to join a spouse who is a citizen of an EU member state if that EU citizen is not also a German national. However, the ECJ clarified that the provision applies equally to third country nationals wishing to join their foreign German or foreign spouses who hold the citizenship of a member state of the EU. The Federal Administrative Court dismissed a case concerning § 30(1) Nr. 2 brought by a Turkish national and her five children who had been denied to enter the country as she could not prove basic command of the German language. The applicant claimed that § 30(1) nr. 2 of the Residence Act runs counter to Art. 6 GG on the protection of marriage, family and children. Alternatively, she claimed that a case of special hardship applied as she was illiterate, had no possibility to study German in proximity to her home and was fully occupied with the upbringing of her five children. The court could not find a violation of Art. 6 GG or Art. 8 ECHR or European Union law and no grounds for a case of special hardship, *i.a.* because, in the circumstances of the case, the applicant could well have been expected to

²⁸⁹ Arbeitsgericht Berlin, 55 Ca 16952/08, summarize in Antidiskriminierungsstelle des Bundes, *Bericht über Schwerpunkte und Arbeit der Antidiskriminierungsstelle des Bundes*, Anlage 5, Wichtige Urteile, Gesetzesinitiativen und Entwicklungen zum Diskriminierungsschutz im Jahr 2009, Berlin, 2010, pp. 9 *et seq.*

²⁹⁰ Case C-127/08, *Blaise Baheten Metock and Others v Minister for Justice, Equality and Law Reform*, 15.5.2008, para. 99.

²⁹¹ Art. 5 Directive 2004/38/EC, OJ L 158, 30.4.2004, p. 77–123.

acquire basic command of German. The Court moreover, considered the administrative regulation on the implementation of § 30(1) nr. 2 Residence Act, which requires language proficiency on the level of A1 CEFR as appropriate.²⁹² In 2009 the Higher Administrative Court of Berlin-Brandenburg (*Oberverwaltungsgericht Berlin-Brandenburg*) found that the practice of requiring exclusively Goethe Institute certified proof of knowledge of basic German is in violation of §30(1) nr. 2 Residence Act. The Court found that even oral performance could constitute appropriate proof.²⁹³ There is a wealth of case-law concerning the Immigration Act and the General Treatment Act. Language has however not been in the centre of these decisions.²⁹⁴

Another area, in which language has regularly been an issue, is the jurisprudence on doctors' duties to inform patients under medical law. Court cases have contributed considerably to clarifying how these duties have to be performed vis-à-vis patients with insufficient command of the German language. Doctors are obliged to assure themselves that their patients understand the information communicated to them, including a duty to assure themselves that the patient masters the German language.²⁹⁵ If doctors remain insecure about whether a patient in fact understands the information, they are obliged to call in an interpreter, who however, does not need to be a trained professional.²⁹⁶ Doctors themselves can only satisfy their duty to inform patients if they do not face linguistic barriers themselves.²⁹⁷ Many such court decisions have been decisive to ascertain claims made vis-à-vis insurances after medical treatment.

2.3.3 With respect to education legislation

There has been no relevant case law.

2.3.4 With respect to media legislation

²⁹² Bundesverwaltungsgericht 1 C 8.09, 30.3.2010.

²⁹³ Oberverwaltungsgericht Berlin-Brandenburg, 2 B 6.08, 28.4.2009.

²⁹⁴ The cases mention here have been summarized in: *Achter Bericht über die Lage der Ausländerinnen und Ausländer in Deutschland*, 2010, pp. 232 et seqq.

²⁹⁵ *Amtsgericht Leipzig*, 30.5.2003, MedR 2003: 582; *Oberlandesgericht Oldenburg*, 16.6.1996, VetsR 1996: 978; *Oberlandesgericht Nürnberg*, 28.6.1995, MedR 1996:213.

²⁹⁶ *Oberlandesgericht Karlsruhe*, 2.8.1985, VersR 1997, 241; These cases have been mentioned in Meyer, Bernd, *Nutzung der Mehrsprachigkeit von Menschen mit Migrationshintergrund. Berufsfelder mit besonderem Potenzial*, Expertise für das Bundesamt für Migration und Flüchtlinge, Universität Hamburg, 2008, pp. 15 et seqq.

²⁹⁷ *Oberlandesgericht Karlsruhe*, VersR 1998: 718.

The most instructive decision touching indirectly upon language use remains the *Parabolantennen-Entscheidung* of the Federal Constitutional Court mentioned in part 1.9 above.

2.4 Practice from administrative organs and other supervisory organs

Case-law serves well to cast light on those administrative practices, which are perceived to be particularly problematic. The General Equal Treatment Act has mainly triggered cases concerning discriminatory treatment by private actors. Discrimination based on language has been an issue mainly with regard to equal access to employment. The requirements as to language proof for spouse immigration as set out in the administrative regulation on the implementation of the Residence Act are one example of administrative practices which have been found to be in violation of the Residence Act.

2.4.1 With respect to constitutional provisions

The Federal Anti-Discrimination Agency is a very young institution. It was established pursuant to §25(1) General Equal Treatment Act in 2006. Beyond publicity work, awareness-raising and research on discrimination, *i.e.* activities aimed essentially at preventing discrimination, the Agency functions as an advisory organ for persons who believe that they have been discriminated against on one of the grounds laid out in § 1 General Equal Treatment Act. According to § 27(2) of the General Equal Treatment Act, the assistance offered by the Agency can involve providing information concerning claims and available legal remedies; advice to other public authorities; facilitating out-of-court settlements. The Agency has reported that it has rendered initial advice in 9300 cases between August 2006 and March 2010.²⁹⁸ The majority of the inquiries concerned discrimination in the field of employment. Out-of-court settlements initiated by the Agency are presented as common. The Agency can relegate cases to the Federal Commissioners or Parliamentary Commissioners of the *Bundestag* if an issue touches upon their specific areas of activity. Moreover, all public authorities are obliged to cooperate with the Federal Anti-Discrimination Agency pursuant to § 28(2) of the General Equal Treatment Act. Co-operation

²⁹⁸ Antidiskriminierungsstelle des Bundes, *Bericht über Schwerpunkte und der Antidiskriminierungsstelle des Bundes*, Berlin, 2010, p. 8.

structures exist also with non-governmental organisations, as e.g the Anti-Discrimination Alliance Germany (*Antidiskriminierungsverband Deutschland*). The Agency has recently published a handbook for lay-persons explaining the General Equal Treatment Act with the help of anonymized cases from the Agency's advisory practice. An example given in the field of employment is a case in which an application was not considered as the applicant did not fulfil the requirement, as laid out in the vacancy announcement, of being a native German-speaker. The applicant was no native speaker but fluent in German and saw himself as a victim of discrimination based on ethnic origin. Following their general practice, the Agency asked the employer for an explanatory statement. The Agency reports that, upon its inquiry, the employer in question changed the language requirements for such positions, from "native speaker" to "person enjoying interacting in the German language."²⁹⁹ In another case taken up in the handbook, an employee was refused promotion prospects due to allegedly insufficient command of German and his foreign accent. The employer had worked for the company in question for 6 years, without complaints from clients. Such language requirements can be permissible on grounds of occupational requirements. Case law indicated however, that requiring native German or accent-free German is permissible only rarely, as for example for radio presenters.³⁰⁰

2.4.2 With respect to language legislation

A wide spectrum of public authorities deal with persons with and without migration background on a daily basis and can be assumed to face the challenge of overcoming language barriers daily. Public authorities are not obliged to offer services in languages other than German. However, multilingualism has become an issue of interest for public authorities on the federal, *Land* and municipal levels. The Federal Integration Programme addresses the need for what is termed an "intercultural opening" of public administration.³⁰¹ The *Kommunale Gemeinschaftsstelle für Verwaltungsmanagement*, a joint structure of municipal and city administrations works to develop administrative practices. Multilingualism of internet-based services provided by public authorities

²⁹⁹ Antidiskriminierungsstelle des Bundes, *Mit Rat zur Tat. Fälle aus der Beratung der Antidiskriminierungsstelle*, Nomos, Berlin, 2010, pp. 9 *et seq.*

³⁰⁰ Antidiskriminierungsstelle des Bundes, *Mit Rat zur Tat. Fälle aus der Beratung der Antidiskriminierungsstelle*, 2010, pp. 25 *et seq.*

³⁰¹ Bundeamt für Migration und Flüchtlinge, *Bundesweites Integrationsprogramm. Angebote der Integrationsförderung in Deutschland - Empfehlungen zu ihrer Weiterentwicklung*, Berlin, 2010, p. 142.

has been an issue discussed within this framework.³⁰² To date, internet-based services, just as all other public services, are provided predominantly in German. The Federal Commissioner for Migration and Refugees commissioned an expert study on the multilingualism and the use of multiple languages by persons with a migration background. The study has explored in which professional areas there is a systematic need for communication in the mother tongues of migrants (the term used here is *Herkunftssprache*, i.e. language of origin), whether this need is currently covered and in which way professional training could be improved in that respect.³⁰³

In Germany, the debate about the utilisation of migrant multilingualism has just begun. The findings of the study conducted by the University of Hamburg are instructive. In contrast to the Federal Integration Programme, which cites a desired “multicultural opening” of public institutions and the economic benefits of multilingualism as the main justifications for the increased attention on multilingualism, the authors of the report see its justification in the concrete practical needs arising from the socio-demographic composition of the population on the one hand and legal rights arising from European and national anti-discrimination legislation on the other hand.³⁰⁴ Subject of the research were social professions, such as nursery school teacher, social worker and social pedagogue, medical professions, such as elderly care nurse, nurse or speech therapist as well as office and sales employees in private companies as well as public authorities. The results suggest that languages other than German play a considerable role in the daily activities in many areas of professional life. In day-care and in the medical field, as well as in private and public offices English and the mother tongues of the migrants serve *de facto* as vehicular languages, not rarely on a daily or weekly basis. These languages are not necessarily used alternatively to German but very much in a complementary fashion. Especially in the private field multilingual employees have been designated to work in locations where there is an actual demand for services in the respective languages. Also public officials use multiple languages on a regular basis. However, some perceive this to be in conflict with § 23 Federal Administrative Procedure Act according to

³⁰² See webpage of the Kommunale Gemeinschaftsstelle für Verwaltungsmanagement, at http://www.kgst.de/suche/?rmtparams=cm10YWM9c2VhcmNoJnJtdGF1PWVh0dHAIM0EIMkYIMkZsb2NhbGhvc3QIM0E1Nzg4MCUyRmtnc3Qt_d2ViYXBwJTJGc2hvcCUyRnNob3dEb2N1bWVudCUyRjE0MDk4NDQyMQ--, last visited 24.1.2011.

³⁰³ Meyer, Bernd, *Nutzung der Mehrsprachigkeit von Menschen mit Migrationshintergrund. Berufsfelder mit besonderem Potenzial*, Expertise für das Bundesamt für Migration und Flüchtlinge, Universität Hamburg, 2008

³⁰⁴ Meyer, Bernd, *Nutzung der Mehrsprachigkeit von Menschen mit Migrationshintergrund. Berufsfelder mit besonderem Potenzial*, Expertise für das Bundesamt für Migration und Flüchtlinge, Universität Hamburg, 2008, p. 20.

which administrative language is German. The use of a client's mother tongue has been reported to have positive effects on the client's confidence in administrative procedure. A general problem is the fact that the multilingual services offered are not embedded in any structure and interpretation is provided ad-hoc, often without sufficient knowledge of the relevant technical terms.³⁰⁵ The study thus concludes by affirming the demand for services, including public services, in migrant languages. The promotion of migrant multilingualism in technical training, university-level interpreter education and workshops on "language mediation" for bilingual hospital staff and public officials are among the recommendations made in the report. Especially "communication-intensive" professions, such as lawyers, doctors and therapists are considered to demand for possibilities to obtain and improve knowledge of technical terms in the respective migrant language. But also in other professions, migrants often act as language mediators, a task for which integrated and structured training should be offered already during vocational training. "Diversity management" is presented as a way for private businesses and public authorities to assess their multilingual resources and needs. A certificate for multilingual competence could present one useful tool. In general, a more integrated and strategic approach to the development of the resources that migrant languages present appears desirable. The report lists a number of model initiatives but emphasized the need for further research, especially on the phenomenon of ad-hoc interpretation. In the report it is also proposed to adapt § 23 Federal Administrative Procedure Act to the multilingual reality, e.g. by enacting an exemption from the duty of public officials to use German as the administrative language for oral communication.³⁰⁶

2.4.3 With respect to education legislation

Many relevant aspects have been addressed in part 1.9.3 above, such as the decrees concerning mother tongue education in North Rhine-Westphalia. Information on administrative practices in the area of education is hard to obtain. As no enforceable legal entitlement to mother tongue education exists, case-law cannot serve to indicate in which ways practical problems might have arisen.

³⁰⁵ *Ibid.* pp. 35 et seq.

³⁰⁶ Meyer, *Nutzung der Mehrsprachigkeit von Menschen mit Migrationshintergrund. Berufsfelder mit besonderem Potenzial*, 2008, p. 59 et seq.

2.4.4 With respect to media legislation

There is no practice from administrative organs and other supervisory organs with regard to media legislation.

2.5 Practice of international monitoring organs and courts with respect to language and minority issues in Germany

As a member of the Council of Europe and a party to the FCNM and the ECRML, the Federal Republic of Germany is subject to monitoring by the respective monitoring organs. Monitoring within both frameworks is largely based on periodical reports to be submitted to the Secretary General of the Council of Ministers. Thus far Germany has submitted three periodical reports under the FCNM and four periodical reports under the ECRML. The respective committees then give their opinions on the periodical reports considering information from a wide variety of sources as well as on the spot visits, before a final resolution (FCNM)/ recommendation (ECRML) is adopted by the Committee of Ministers. The opinions of the monitoring organs have proven to be particularly instructive. The Advisory Committee under the FCNM has repeatedly advised the Federal Republic of Germany to reconsider its initial approach concerning the scope of application of the FCNM. In its first opinion the Advisory Committee stated that it *"is of the opinion that it would be possible to consider the inclusion of persons belonging to other groups, including citizens and non-citizens as appropriate, in the application of the Framework Convention on an article-by-article basis. It takes the view that the German authorities should consider this issue in consultation with those concerned at some appropriate time in the future. This has particular significance in the context of the citizenship legislation"*.³⁰⁷ East Frisians and the Polish community in Germany have made more straightforward claims to inclusion than other groups.³⁰⁸ Nevertheless, the Advisory Committee has also taken up the situation of immigrants in each of the three opinions given thus far. Here emphasis has been put on the situation of recently immigrated Roma and Sinti, non-nationals who fall outside the scope of the FCNM. However, the

³⁰⁷ Council of Europe, Advisory Committee on the Framework Convention for the Protection of National Minorities, *Opinion on Germany adopted on 1 March 2002*, ACFC/IBF/OP/I(2002)008, p. 6, para. 18., see also *Second Opinion on Germany adopted on 1 March 2006*, ACFC/OP/II(2006)001, p. 8, paras. 26 & 27 and *Third Opinion on Germany adopted on 27 May 2010*, ACFC/OP/III(2010)003, p. 10, paras. 30.

³⁰⁸ *Third Opinion on Germany adopted on 27 May 2010*, ACFC/OP/III(2010)003, p. 12, para. 30.

Committee has also pointed to the lack of equal access to, first and foremost, education for immigrants and referred to Germany's factual cultural diversity in more general terms.³⁰⁹ The Council of Ministers in its third resolution on the implementation of the FCNM in Germany has noted the adoption of the Equal Treatment Act as a positive development in fighting racism and xenophobia and considered it desirable to pursue further dialogue on the possibilities to expand the scope of application of the Framework Convention in Germany. The Council of Ministers recommended the Federal Republic of Germany to address the problem of the over-representation of Roma/Sinti and migrant children in schools for special educational needs and their under-representation in secondary and university education.³¹⁰ The Expert Committee under the ECRML has focussed more strictly on the language groups falling under the scope of the Charter as determined by Germany and not ventured to propose the inclusion of migrant languages.

Another monitoring body of the Council of Europe is the European Commission against Racism and Intolerance (ECRI), which is entrusted with the task of combating racism, racial discrimination, xenophobia, anti-Semitism and intolerance from the perspective of the protection of human rights, in the light of the European Convention on Human Rights, its additional protocols and related case-law. ECRI has since 1998 published four reports on Germany. In its latest report of 2009, the Commission has, *i.a.* addressed anti-discrimination legislation and its enforcement, citizenship legislation and discrimination in the fields of education and media. The Commission has reacted positively to the General Equal Treatment Act but encouraged the German authorities to take a more proactive role in raising awareness of this legal framework and keep the impact of the Act under regular review. ECRI has moreover encouraged the authorities in Germany to ensure that information in languages other than German concerning the content and scope of the legal

³⁰⁹ See e.g. *Second Opinion on Germany adopted on 1 March 2006*, ACFC/OP/II(2006)001, p. 5, para. 15, p. 18, para. 95.

³¹⁰ Council of Europe, Committee of Ministers, Resolution CM/ResCMN(2007)4 on the implementation of the Framework Convention for the Protection of National Minorities by Germany, 7 February 2007, pp. 1 *et seqq*; Another substantial criticism voiced in the ECRI report points to the fact that § 19(3) General Equal Treatment Act expressly allows for differential treatment in access to rental housing. § 19(3) stipulates that a difference of treatment shall not be deemed to be discrimination where it serves to create and maintain stable social structures regarding inhabitants and balanced settlement structures, as well as balanced economic, social and cultural conditions. In addition § 19(5) limits the applicability of the General Equal Treatment Act to situations where the landlord lets out more than 40 apartments.

framework for combating racial discrimination is distributed as widely as possible.³¹¹ ECRI has criticized the short time limit for making complaints under the General Equal Treatment Act.³¹² Concerning the educational system in Germany, ECRI has encouraged the German authorities to continue and intensify their efforts to ensure that children do not suffer disadvantage in the school system due to differences in the level of proficiency in the German language. The Commission encouraged Germany to improve training programmes for teachers and improve their capacities to teach German as a second language and to assess the proficiency of students due to enter secondary school objectively. It is to be avoided that students are sent to schools on the lower academic levels unless strictly necessary.³¹³ The concerns about the disadvantageous effects of the German schools system as such are shared by the United Nations Committee on the Elimination of Racial Discrimination.³¹⁴

With regard to the media, ECRI has encouraged the authorities and all relevant actors to implement all measures of the National Integration Plan aimed at ensuring that the media are better equipped to deal with the diversity of present-day German society.³¹⁵

As a party to the Convention for the Protection of Fundamental Freedoms and Human Rights (ECHR), the Federal Republic of Germany is subject to the jurisdiction of the European Court of Human Rights (ECtHR). The ECtHR has found Germany in violation of her obligations arising from the ECHR in various instances, several of them concerning the discriminatory treatment of non-nationals. However, none of these cases has touched upon language use or maintenance.

2.6 Programmes and action plans on language use and language diversity

³¹¹ European Commission against racism and intolerance, *ECRI Report on Germany (fourth monitoring cycle)*, adopted on 19 December 2008, published on 26 May 2009, CRI(2009)19, p. 18, paras. 34 & 35.

³¹² European Commission against racism and intolerance, *ECRI Report on Germany (fourth monitoring cycle)*, adopted on 19 December 2008, published on 26 May 2009, CRI(2009)19, p. 15, para. 10.

³¹³ European Commission against racism and intolerance, *ECRI Report on Germany (fourth monitoring cycle)*, adopted on 19 December 2008, published on 26 May 2009, CRI(2009)19, p. 22, paras. 52-54.

³¹⁴ Committee on the Elimination of Racial Discrimination, *Consideration of the Reports Submitted by States Parties under Article 9 of the Convention. Concluding observations of the Committee on the Elimination of Racial Discrimination. Germany*, CERD/C/DEU/CO/18, 21 August 2008, p. 5, para. 23.

³¹⁵ European Commission against racism and intolerance, *ECRI Report on Germany (fourth monitoring cycle)*, adopted on 19 December 2008, published on 26 May 2009, CRI(2009)19, p. 2, para. 78.

Again, as focus lies on a migrant group, programmes and action plans concerning the autochthonous minorities and regional languages shall be largely neglected here.

A variety of state-funded campaigns on the federal and *Länder* levels are concerned with language use, again as part of the overall integration policy. As outlined above, learning German is promoted as the ultimate path to full societal integration in all areas. Integration courses constitute the key instrument of the German Government for facilitating integration. Besides the legal requirement to provide proof for the command of the German language for entry, residence and citizenship, through e.g. successful participation in an integration course, and a wide array of initiatives taken in childcare facilities and schools to improve the command of German among children with a migration background, the State has supported campaigns for the promotion of German language acquisition among migrants. One example is the campaign “*Deutsch lernen – Deutschland kennen lernen*” launched in 2009 to motivate parents with migration background to participate in integration courses for parents.³¹⁶

The Federal Government Commissioner for Migration, Refugees and Integration is a board member of the German Foundation for Integration (*Deutschlandstiftung Integration*) founded in 2008 by an association of German newspaper publishers with the goal to abolish language barriers to integration. The foundation received support from the Ministry of the Interior for the media campaign “*Raus mit der Sprache – Rein ins Leben*”. The title of this campaign is a word play indicating that language is the key to integration. The campaign is composed of advertisements featuring celebrity migrants in Germany, sticking out their tongues coloured in black, red and gold (the colours of the German national flag) to symbolise the German language. The campaign also features a webpage offering a free language school locator.³¹⁷ It does not however, bring attention to multilingualism and the linguistic identities of those celebrities presenting the campaign.

³¹⁶ See webpage of the Federal Office for Migration and Refugees, at http://www.integration-in-deutschland.de/nn_650846/SubSites/Integration/DE/00_Home/WichtigelInfosAlle/20090729_zeitbildkampagne.html?_nnn=true, last visited 12.1.2011.

³¹⁷ The campaign is presented on the webpage of the Deutschlandstiftung Integration, at <http://www.deutschlandstiftung.net/>, last visited 12.1.2011 and the webpage of the Federal Government at <http://www.bundesregierung.de/Content/DE/Artikel/IB/Artikel/Themen/Gesellschaft/2010-03-23-pm-deutschlandstiftung.html>, last visited 12.1.2011.

2.7 View on language and minority legislation in the wider public discourse and media

Again, no comprehensive media analysis has been conducted to cast light on the questions of whether minority or migrant languages and the relevant legislation are topics taken up in the wider public discourse and media. In order to take up the examples given below, legislation appeared as a relevant factor in the debates concerning the funding of Danish private schools in Schleswig-Holstein and, although less concretely, in MP Lindner's proposal to prohibit the use of other languages than German on schoolyards. According to § 124 the Danish minority schools are to be granted a public subsidy of 100% of the regular allowance per student in public schools. The consolidated state budget of Schleswig-Holstein for 2011 has been considered to be in breach of this provision by the political party representing the Danish-speakers in Schleswig-Holstein, an issue reported on in the media.³¹⁸ The cut in funding has also been discussed in the light of the Bonn-Copenhagen Declarations and the FCNM.³¹⁹ Although the proposal to prohibit the use of languages other than German on schoolyards might have been more provocative than they were intended to trigger serious parliamentary debate, it featured the idea of legal regulation concerning the use of languages.³²⁰ However, underlying questions as, e.g., the constitutionality of such a regulation, has not been taken up and the presence of Lindner's proposal in the media remained short-lived.

2.8 Perceived effect of the examined legislation on the languages and language communities studied

As has been established by Praakli and reiterated above, the language community in question, Estonian-speakers in Germany, has not been subject of any sufficiently comprehensive study to make qualified statements concerning (the use of languages by) this group. There are no

³¹⁸ *SSW will Klage prüfen*, ndr.de, 15.12.2010, at <http://www.ndr.de/regional/schleswig-holstein/ssw109.html>, last visited 13.1.2011.

³¹⁹ Höver Peter, *Sparpaket. Landtag: Kürzungen bei Dänen rechtens*, shz.de, Schleswig-Holsteinischer Zeitungsverlag, 14.10.2010, at <http://www.shz.de/nachrichten/top-thema/article//landtag-kuerzung-bei-daenen-rechtens.html>, last visited 13.1.2011.

³²⁰ *Deutschpflicht auf Schulhöfen undenkbar*, Tagesschau.de, 15.10.2010, at <http://www.tagesschau.de/inland/integration148.html>, last visited 5.1.2011.

observable or perceived effects of the above examined legislation on the Estonian-speakers in Germany. However, the fairly small number of Estonian-speakers in Germany forms part of the big group of persons with migration background in Germany. Immigration, education and media legislation certainly affect the situation of languages and language communities. Some legislation might have an empowering effect while other legislation might be perceived as limiting. As EU citizens Estonians are not entitled to participate in integration courses but might attain vacant places according to § 44(4) Residence Act. Statistical data does not indicate if and to what extent Estonian-speakers have participated in integration courses since their creation in 2005.

3 Section 3 – The Legal Actors

3.1 Minority and language group actors involved in legal and policy debates

Art. 8 and Art. 9 of the *Grundgesetz* protect the freedom of assembly and the freedom of association of all German citizens. By virtue of the Act concerning Assemblies and Processions (*Versammlungsgesetz*) and the Act on Association (*Vereinsgesetz*), everybody, *i.e.* not only citizens, have the right to organize and participate in public assemblies and demonstrations and to form associations. The autochthonous minorities in Germany are well organized, on the federal and on the *Land* levels. The political interests of the four autochthonous minorities are represented by a variety of civil society organisations on the municipal and *Land* levels as well as by umbrella organisations with a cross-regional perspective. To name but the largest (umbrella) organizations – the Federation of Lusatian Sorbs “Domowina”, the Sorbian Foundation, the Central Council of German Sinti and Roma, the Sinti Alliance Germany, the Inter-Frisian Council, the North Frisian Association and the South Schleswig Association.³²¹ Recently constituted as political parties are The Friesen (*Die Friesen/ De Freesen/Do Fräisen*) in Lower-Saxony³²² and the Wendish (Sorbian) People’s Party (*Serbska Ludowa Strona/ Wendische Volkspartei-Lausitzer Volkspartei*) in

³²¹ *Third Report of the Federal Republic of Germany under Article 25 paragraph 2 of the Council of Europe Framework Convention for the Protection of National Minorities*, ACFC/SR/III(2009)003, February 2009, *e.g.* pp. 132 *et seq.*

³²² See webpage of The Friesen, at <http://www.die-friesen.eu/>, last visited 27.1.2011.

Brandenburg³²³, which have been founded in 2005 and 2007 respectively. The South Schleswig Voter's Association (*Sydslesvigsk Vælgerforening/ Südschleswigscher Wählerverband*) represents the Danish minority and the Frisian ethnic group in Schleswig-Holstein and was founded in 1948.³²⁴ The South Schleswig Voter's Association is represented in the parliament of Schleswig-Holstein with four out of 95 seats. "Migrant parties" are not permissible as political associations with predominantly foreign members cannot qualify as political parties.³²⁵ However, individual migrants are not inhibited from joining political parties and can actively participate in party politics. As shall be seen in sub-chapter 3.5 below, migrant councils or committees play an institutionalized role in certain instances of municipal or *Land* administration.

The interests of migrants are moreover represented by a range of civil society organizations. In the German context they are referred to as migrant alliances (*Migrantenverbände* or *Migrantenselbstorganisationen*). Some migrant organisations are explicitly political. Others are party politically independent and focus on specific activity areas, such as religion, culture or language.³²⁶ Migrant parents associations often engage in questions concerning education. The first progress report on the National Integration Plan of 2008 describes the role of migrant organisation in the following terms: *"Successful integration calls for successful dialogue – and that means talking with migrants, not about them. In all areas of life the organizations representing our migrant communities have assumed new responsibility for fostering integration. Particularly in promoting education and training they play an absolutely crucial role. These organizations need to be strong not only to serve the interests of the migrant communities themselves but also as a channel of communication between policy-makers and society at large."*³²⁷

³²³ See webpage of the Wendish People's Party, at <http://www.wendische-volkspartei.de/>, last visited 27.1.2011.

³²⁴ See webpage of the South Schleswig Voters's Association, at <http://ssw.de/www/de/index.php>, last visited 27.1.2011.

³²⁵ § 2(3) nr. 1 Act on Political Parties (*Parteigesetz*).

³²⁶ See webpage of the *Bundeszentrale für politische Bildung* on the topic of migration, at <http://www.bpb.de/themen/BFIGW3,2,0,Migrantenorganisationen.html#art2>, last visited 27.1.2011.

³²⁷ Federal Commissioner for Migration, Refugees and Integration, The National Integration Plan: Driver of Integration Policy, available on the webpage of the Federal Government, at http://www.bundesregierung.de/Content/DE/Artikel/IB/Artikel/Nationaler_20Integrationsplan/2008-11-06-dritter-integrationsgipfel.html, last visited 28.1.2011.

The Estonian Society in Germany *Estnische Volksgemeinschaft in der BRD e.V. (Eesti Ühiskond Saksa Liitvabariigis)*, is a registered association with seven regional branches in Baden-Württemberg, the cities of Bocholt, Dortmund, Hamburg, Cologne, Munich and the region of Ostwestfalen.³²⁸ As has been mentioned above, it publishes the newspaper *Eesti Rada*. The society focuses on culture and language and has not published statements on political debates in Germany or has in any other way become involved in political questions. The Estonian Society maintains a webpage in Estonian with information for its members. The German-Estonian Forum (*Deutsch-Estnisches Forum e.V./Saksa-Eesti Foorum*) and a number of German-Estonian societies are actively working for the cross-cultural exchange between Germany and Estonia and organize cultural events in Germany.³²⁹ The ESTO, a worldwide cultural festival for expatriate Estonians has taken place in Münster/Germany in 2009.³³⁰ As to public knowledge, none of the Estonian organization has appeared as a political actor or been consulted by any state organs on questions concerning the Estonian-language in Germany or integration policies in general.

3.2 Other actors

Integration is a process that involves both persons with and without migration background. Civil society organisations with no explicit migrant profile are affected by migration and integration policies. As immigration to Germany has traditionally been labour market migration, labour unions have proven to be active in the political debates concerning integration. The *Deutscher Gewerkschaftsbund* for example has worked to promote the rights of migrants for decades.³³¹

Academia of course, is another important actor. Multilingualism has been in the centre of university-based research in the field of education, most prominently at the University of

³²⁸ Estonians in Germany, independent forum, at <http://www.eestlased.de/deutsch/uhingud1.htm>, last visited 27.1.2011; Praakli, *Estonians in Germany*, 2010, p. 16.

³²⁹ Estonians in Germany, independent forum, at <http://www.eestlased.de/deutsch/uhingud1.htm>, last visited 27.1.2011; see also e.g. webpage of the German-Estonian society Karlsruhe, at <http://www.degdeg.de/>, last visited 27.1.2011.

³³⁰ The webpage of the ESTO festival in Münster, at http://www.eesti.ca/esto2009/index.php?option=com_content&task=view&id=29&Itemid=38&lang=en, last visited 27.1.2011.

³³¹ DGB Bildungswerk, *Grundsatzprogramm und Positionen des DGB 1996-2005. Anforderungen an eine demokratische Gesellschaft*, Schriftenreihe Migration und Arbeitswelt 32, Düsseldorf, 2005.

Hamburg³³² and the University of Duisburg-Essen.³³³ Moreover, a number of institutes, working groups or other forms of collaborative platforms dealing with migration and integration in one way or another have been established, partly by public authorities. One example is the *Regionale Arbeitststelle zur Förderung von Kindern und Jugendlichen aus Zuwandererfamilien* in North Rhine-Westphalia, a regional working group which develops programmes, projects and products aimed towards supporting children and youths from migrant families.³³⁴

With regard to the Estonian language, the Estonian state, through *i.a.* the Estonian Embassy in Germany supports projects initiated by Estonian migrants in Germany. However, support of expatriate Estonian communities is not among the prime objectives of the Estonian State. Neither are the activities of the Estonian Institute,³³⁵ the Estonian counterpart to the German Goethe Institute, aimed primarily at expatriate communities but might of course benefit Estonian-speakers resident abroad. The objectives of the Estonian Institute are to spread information about Estonian society and culture in other countries, further cultural and educational links and organize the teaching of Estonian language and culture outside Estonia. The Institute has branches in Finland, Sweden and Hungary but also organized and co-organizes events elsewhere.

3.3 Channels of participation in language related matters

As outlined in part 3.5 below, within certain contexts migrant councils or committees have been established to consult with and provide expertise to municipal, *Land* and federal authorities. Especially the big migrant organisations appear regularly in the media and participate actively in public debates.

³³² See webpage of the University of Hamburg, educational science, at <http://www.epb.uni-hamburg.de/de/fakultaet/sektionen/fachbereich-erziehungswissenschaft-1>, last visited 30.1.2011.

³³³ See webpage of the University of Duisburg-Essen, at <http://www.uni-due.de/fue/orgunit.php?PID=11115>, last visited 30.1.2011.

³³⁴ See webpage of the Regionale Arbeitststelle zur Förderung von Kindern und Jugendlichen aus Zuwandererfamilien, at <http://www.raa.de/raa.html>, last visited 22.2.2011.

³³⁵ See webpage of the Estonian Institute, at <http://www.estinst.ee/eng/home/>, last visited 19.12.2011.

3.4 Use of channels of participation in practice

Where participation, through migrant councils or committees, is institutionalized consultation procedures are regulated by law. As shall be outlined in part 3.5 below, integration summits and more informal forums for consultations are open to civil society organisations representing the concerns of migrants and those working with questions of integration. The concrete results of such initiatives are hard to measure however.

3.5 Institutions responsible for minority and language policies

As has been indicated in part. 1.7 above, it is not always easy to identify the particular state institution responsible for a specific area of minority protection. This holds true for migrants and even more so with regard to language, which in itself is not seen as a distinct policy area. On the federal level, the Federal Ministry of the Interior plays a lead role in minority protection. The consultative committee on the Danish minority and the consultative committee on the Sorbian minority within the Ministry serve as institutionalized platforms for communication between the minorities and the Federal Government. The composition of these committees differ somewhat but include minority representatives, representatives of the Ministry of the Interior, the Federal Commissioner for National Minorities as well as MPs. Beside these committees, the Ministry of the Interior lists the following organisations and institutions as contact bodies on its webpage: *Gesprächskreis nationale Minderheiten beim Deutschen Bundestag*, *Dokumentations- und Kulturzentrum Deutscher Sinti und Roma*, *Nordfriesisches Institut/Nordfriisk Institut*, *Sorbisches Institut/Serbski Institut*, *European Bureau for Lesser Used Languages (EBLUL)/Europäisches Büro für Sprachminderheiten/EBLUL Deutschland*, *Stiftung für das sorbische Volk*, *Federal Union of European Nationalities/Föderalistische Union Europäischer Volksgruppen (FUEV)*, *European Centre for Minority Issues (ECMI)*.³³⁶ In practice it is primarily the *Länder* and the municipalities, who see to the concerns of minorities. In Lower Saxony, Schleswig-Holstein, Brandenburg, Saxony-Anhalt and Saxony the Danish, Frisian and Sorbian minorities have long been protected under *Länder*

³³⁶ See webpage of the Federal Ministry of the Interior, at http://www.bmi.bund.de/cln_156/SharedDocs/Standardartikel/DE/Themen/MigrationIntegration/ohneMarginalspalte/Vertreter_der_Bundesregierung.html?nn=103974#doc158026bodyText11, last visited 27.1.2011.

laws. In these states there are institutionalized structures for dealing with questions concerning the national minorities. The protection of the German Roma and Sinti experiences considerably less institutional backing.

The Federal Commissioner for National Minorities is a parliamentary state secretary whose main tasks are to function as a contact person for national minorities and the government and to raise awareness about the concerns of the national minorities. He holds the parallel position of Federal Commissioner for Repatriates and is not part of the Ministry of the Interior's administrative structure.³³⁷ In contrast, the Federal Commissioner for Migration, Refugees and Integration is a Minister of State to the Federal Chancellor and part of the administrative structure of the Chancellery. The tasks of the Commissioner are laid out in § 93 of the Residence Act. These include the promotion of the integration of migrants permanently resident in the Federal Republic of Germany, assistance to the Federal Government in developing its integration policy, working against inappropriate discrimination of foreigners, bringing to public attention the concerns of foreigners, safeguarding the freedom of movement of citizens of the European Union and providing inform about naturalization requirements to foreigners and finally the monitoring of immigration processes in Germany. The National Integration Plan has been drafted under the auspices of the Commissioner for Migration, Refugees and Integration. The National Integration Plan is presented as the product of constructive and close cooperation with migrant organisations. To enhance cooperation between public authorities and migrant organisation across a broad spectrum of tasks is repeatedly mentioned as the objective of public integration efforts.³³⁸ The internet platform www.forumintegration.de, shall serve as a networking tool for the Commissioner and institutions and organisations working with integration. The Federal Commissioner cooperates with the respective commissioners on the *Land* level.³³⁹

³³⁷ See webpage of the Federal Ministry of the Interior, at http://www.bmi.bund.de/cln_156/DE/Ministerium/Beauftragte/BeaufAussiedNatMinder/beaufaussiednatminder_node.html, last visited 27.1.2011.

³³⁸ *Nationaler Integrationsplan. Neue Wege - Neue Chancen*, 2007, p. 13 & e.g. p. 71.

³³⁹ A list of the commissioners can be found on the webpage of the *Land* Rhinland-Palatinate, at <http://integration.rlp.de/beauftragte-der-landesregierung-fuer-migration-und-integration/ansprechpartner/ausserhalb-von-rheinland-pfalz/auslaender-und-integrationsbeauftragte-der-bundeslaender/>, last visited 30.1.2011.

Another state structure dealing with migrants is the Federal Office for Migration and Refugees. The office understands itself as a centre of competence for migration, integration and asylum. It is the Federal Office for Migration and Refugees that is responsible for the implementation of the integration courses pursuant to § 43(3) Residence Act. The Federal Commissioner and the Federal Office cooperate with the *Länder* and the municipalities in implementing their diverse tasks. Since 2006 the Federal Chancellor has organized four integration summits. The integration summits constitute a regular forum for discussions between the Chancellor, the Minister of the Interior, the Federal Commissioner for Migration, Integration and Refugees and representatives of the *Länder* as well as migrant organisations, religious communities, labour unions and sport associations. The fourth integration summit took place on 3 November 2010.³⁴⁰ Interestingly, the “classic topics”, such as language learning, education, vocational training, the labour market, sports and media occupied a less dominant position during the past two integration summits than the National Integration Plan would suggest.³⁴¹ Instead the Federal Commissioner spoke about an action plan for integration which shall be developed in 2011. The action plan shall put more emphasis on the areas of health care and the care of the elderly and public administration as well as the recognition of foreign degrees, topics that had been addressed already in 2008. It remains to be seen which position multilingualism will occupy in future policies. As the study presented in part 2.4.2 above has shown, multilingual services in health care and care for the elderly as well as in public services have become an increasingly pressing need, a fact that is hard to ignore and demands for pro-active policy responses.

Structures for consultation with migrant representatives differ across the *Länder*. North Rhine-Westphalia shall serve as an example of how the representation of foreign migrants is institutionalised on the municipal level. In North Rhine-Westphalia, integration is dealt with primarily under the auspices of the Ministry for Labour, Integration and Social Affairs.

³⁴⁰ Two youth integration summits have taken place in 2007/2008.

³⁴¹ The press conferences on the 3rd and 4th integration summits are available as video streams online on the webpages of the Federal Government and the Federal Chancellor, at http://www.bundesregierung.de/Content/DE/Artikel/IB/Artikel/Nationaler_20Integrationsplan/2008-11-06-dritter-integrationsgipfel.html, and http://www.bundestkanzlerin.de/nn_707282/Content/DE/AudioVideo/2010/Video/2010-11-03-Streaming-Vierter-Integrationsgipfel/2010-11-03-streaming-vierter-integrationsgipfel.html, last visited 28.1.2011;

On the basis of § 27 of the Municipal Code (*Gemeindeordnung*) of North Rhine-Westphalia integration councils may be created within all municipalities.³⁴² Municipalities with at least 5000 residents of non-German nationality are obliged to do so. In municipalities with at least 2000 residents of non-German nationality the establishment of a council for integration is obligatory only if so requested by at least 200 persons holding the right to vote and be elected to the integration council, including nationals and non-nationals. The municipal council can decide to establish an integration committee as an alternative to an integration council. In that case the legal rules pertaining to municipal committees apply. Altogether 98 integration councils/committees are members of the *Landesintegrationsrat North Rhine-Westphalia* (earlier *Landesarbeitsgemeinschaft der kommunalen Migrantenvertretungen*), an advisory bodies active in all of North Rhine-Westphalia.³⁴³ The *Landesintegrationsrat* supports its member migrant councils and committees, through *i.a.* seminars and publications, and represents their interests, in practice often vis-à-vis public authorities on the *Land* level.³⁴⁴ The migrant councils and committees receive funding through the municipality councils. The *Landesintegrationsrat* receives public funding from the Ministry for Labour, Integration and Social Affairs of the *Land* North Rhine-Westphalia.³⁴⁵ Multilingualism and mother tongue education are issues that have featured regularly on the agenda of the *Landesintegrationsrat*. When North Rhine-Westphalia's legislative assembly in December 2002 decided to cut the teaching positions for mother tongue education by one-third, the *Landesintegrationsrat* organised a petition and symbolically invited parents of migrant children to submit registration forms for mother tongue education to the *Landesintegrationsrat* in order to show that there is in fact a vast demand for mother tongue education in North Rhine-Westphalia.³⁴⁶ This initiative was one of the triggers for a hearing of

³⁴² It should be noted that the entities responsible for implementing the principal of local self-government as enshrined in Art. 28(2) of the *Grundgesetz*, can have different titles and the overall system of local self-government within the *Länder* is not always symmetrical. With regard to North Rhine-Westphalia the term municipality shall refer to the *Städte* and *Gemeinden*, all together 396 politically independent entities.

³⁴³ See webpage of the *Landesintegrationsrat*, at <http://www.laga-nrw.de/xd/public/content/index.html?pid=174>, last visited 19.1.2011.

³⁴⁴ See Statute of the *Landesintegrationsrat* on its webpage, at <http://www.laga-nrw.de/xd/public/content/index.html?pid=37>, last visited 29.1.2011.

³⁴⁵ See *e.g.* *Landesarbeitsgemeinschaft der kommunalen Migrantenvertretungen, Migration Nr. 19*, 2004, p. 1, available on the webpage of the *Landesintegrationsrat*, at <http://www.laga-nrw.de/xd/public/content/index.html?pid=31>, last visited 30.1.2011.

³⁴⁶ *Landesarbeitsgemeinschaft der kommunalen Migrantenvertretungen, Migration Nr. 18*, 2003, p. 1, available on the webpage of the *Landesintegrationsrat*, at <http://www.laga-nrw.de/xd/public/content/index.html?pid=31>, last visited 30.1.2011.

experts in the Committee for Migration of the parliament in North Rhine-Westphalia on the question of how the multilingualism of migrant children can be fostered in North Rhine-Westphalia. The *Landesintegrationsrat* published the expert statements and the minutes of the hearing, a publication addressed to the broad public and especially to parent and teacher associations. The expert scholars and the integration council criticize the cuts in funding for mother tongue education and point to a range of model projects in day-care and schools on multilingual education, including initiative promoting bilingual literacy of children with and without migration background.³⁴⁷ The experts presented a sound academic basis for integrated approaches to multilingual learning and the overwhelming demand for such measures. Notably, the recommendations made by the experts and the integration council during the hearing in 2003 do not differ substantially from measures proposed by the council in a subsequent publication of 2010. In 2010, the *Landesintegrationsrat* made straightforward demands for intercultural approaches to education, in which the languages of migrant children shall occupy a more prominent and most of all more integrated position. The council proposed a range of measures which would allow for an upgraded position of migrant languages in schools, such as mixed classes with an equal number of German-speaking students and students with the same migrant mother tongue, mother tongue education in cooperation with subject-specific teaching (*bilingualer Unterricht*), schools which focus on less common migrant languages, transitional cooperation with other learning institutions to guarantee mother tongue education on a wider scale albeit the present lack of qualified teaching staff.³⁴⁸ In sum, the *Landesintegrationsrat* advocates a more systematic and integrated approach to multilingualism. Evidently, progress in education policies is slow. Nonetheless, the efforts of the *Landesintegrationsrat* and the municipal migrant councils appear to be well-received among government officials in North Rhine-Westphalia. High-level politicians have participated in the meetings of the *Landesintegrationsrat* and the council's 10-

³⁴⁷ Landesarbeitsgemeinschaft der kommunalen Migrantenvertretungen, *Natürliche Mehrsprachigkeit und Schulerfolge. Jetzt handeln!*, Dokumentation der Anhörung des Ausschusses für Migrationsangelegenheiten im Landtag Nordrhein-Westfalen, 2003, available on the webpage of the *Landesintegrationsrat*, at <http://www.laga-nrw.de/xd/public/content/index.html?pid=31>, last visited 30.1.2011.

³⁴⁸ Landesarbeitsgemeinschaft der kommunalen Migrantenvertretungen, *Die interkulturelle Schule als Regelschule durchsetzen. Vorschläge der Laga Nordrhein-Westfalen für eine interkulturelle Reform der Schule*, Düsseldorf 2010, pp. 9 et seq.

year anniversary was celebrated in the *Landtag*.³⁴⁹ The *Landesintegrationsrat* is part of the political landscape in matters concerning integrations in North Rhine-Westphalia. Nevertheless, the *Landesintegrationsrat* itself has emphasized that migrant councils are no substitute for the right to participate in municipal elections for foreigners, which remains a core demand of many foreign migrants.³⁵⁰ In a comparative *Länder* perspective it should be noted however, that North Rhine-Westphalia appears rather “strong” when it comes to integration and especially with regard to migrant representation and mother tongue education, which has to be considered as much less developed in the majority of the *Länder*. Migrant organisations exist in all *Länder* and all governments cooperate with migrant representatives in certain matters and to a certain extent. Legal provisions on institutionalised migrant councils do not exist in all *Länder* however.

3.6 The role of the kin-state or country of origin in language maintenance

In the case of Estonian-speakers in Germany, the kin-state as such plays a rather marginal role. Although the Estonian state, especially the Ministry of Education as it appears, makes financial contributions, it does not on its own effort promote or foster the use or maintenance of the Estonian language in Germany. Neither do Estonian consulates in Germany offer mother-tongue education. However, for Estonian-speakers in Germany the home country as such can be expected to play an important role. Modern mass communication and mobility across borders as foreseen by European Union law allow for contacts between and within linguistic groups, of which Estonian-speakers in Germany can be assumed to make use.

³⁴⁹ See e.g. Landesarbeitsgemeinschaft der kommunalen Migrantenvertretungen, *Migration Nr. 19*, 2004, p. 1 & *Migration Nr. 27*, p. 1, available on the webpage of the *Landesintegrationsrat*, at <http://www.laga-nrw.de/xd/public/content/index.html?pid=31>, last visited 30.1.2011.

³⁵⁰ Landesarbeitsgemeinschaft der kommunalen Migrantenvertretungen, *Der kürzeste Weg zur Integration. Politische Partizipation!*, Dokumentation der LAGA-Tagung Bilanz und Ausblick der kommunalen Migrantenvertretungen in Nordrhein-Westfalen, Düsseldorf, 2001, pp. 19 *et seq.*

4 Concluding remarks

4.1 Regulation of the languages and language communities in the legal and institutional system

Language legislation as a category in its own right is not part of the German legal system. Based on the above inquiry it can be argued that language rights feature in the existing minority rights regimes. Beyond that however, legal regulation pertaining to language is rather scattered and hard to identify.

The situation of migrants is primarily seen from an integration perspective. The majority language traditionally spoken on the territory of the Federal Republic of Germany, *i.e.* German, is presented as the decisive tool for successful integration. The legal system institutes the German language as the prime vehicular language between the state, its citizens and non-nationals residents alike. Deficient command of the German language is the point of departure for a range of legal regulations, which aim at improving the command of the German language among the migrant population. The central position occupied by integration courses in immigration legislation demonstrates this well. Education legislation has also served to illustrate this point. During the preceding decade integration legislation has been evolving at the costs of coherency and stability. The same holds true for discrimination legislation, which cannot be deemed sufficiently accessible for the speakers of migrant languages.

The position of migrant languages is hard to describe with reference to the legal system. Multilingualism features strongest in education legislation and is increasingly, although far from widely, discussed with regard to public services such as health care. Beyond the right to use translators and interpreters in administrative procedures and court proceedings, migrants have no entitlements as to the use of their mother tongues in the public realm. The accessibility and availability of the legal system with regard to the linguistic rights of speakers of migrant languages, including Estonian-speakers, can be considered low. The legal system has responded to the linguistic needs of its migrant population in a very one-dimensional way and has not exhibited a

high degree of adaptability. The Estonian language can be assumed to occupy an important position in the private life of individual Estonian-speakers resident in Germany but it does not occupy any position in the legal and political framework of the Federal Republic of Germany.

4.2 Attitudes towards the legal and institutional regulation of the languages and language communities

The existing regimes for the protection of national minorities and their languages guarantee a certain degree of protection and promotion for these languages. Minority and migrant languages are not treated within the same categories of political or legal discourse. Despite the factual linguistic diversity in Germany, approaches to multilingualism continue to be one-dimensional. Notably, media reporting on questions relating to migrant languages has contributed to the creation of a rather one-dimensional picture of the position of migrant languages. Legal regulation appears to be preoccupied with ensuring that German can continue to serve as the prime vehicular language in Germany. Multilingualism “proper”, however, is not framed in legal terms. Although mother tongue education is considered a state responsibility in several *Länder*, such as North Rhine-Westphalia, and cuts in funding for mother tongue education have triggered protests by migrant communities, it receives very little public attention. Humble advances for a deeper public and political discourse on multilingualism and the potential benefits for Germany of multilingual resources represented by migrants have been made, not least in the Federal Integration Programme. It remains to be seen whether migrant languages will play an institutionalized role in the future. Thus far however, the impression is that the state, especially in the area of education, is so “overwhelmed” by the perceived deficient command of German of the migrant population, that there simply are no (intellectual) capacities to develop approaches to multilingualism and language diversity. This of course is a very one-dimensional perspective and its accuracy can be questioned. Certainly, the German legal framework has proven not to be particularly adaptable or efficient when it comes to the recognition of linguistic needs and resources.

4.3 The position of language diversity in the legal and political system

Language diversity is not an explicit goal of the legal or political system of the Federal Republic of Germany. Neither does it feature substantively in the educational system. Language diversity and individual multilingualism occupy central positions in a few individual schools but it is far from being a comprehensive element of the educational system. From an institutional perspective Germany is largely seen as a unilingual state, an idea that is emphasized by the legal regulation on administrative language. In contrast to migrant groups, national minorities live in traditional settlement areas and encompass relatively small numbers of exclusively German nationals. They have been resident on these territories for long periods of time and historical experience suggests no threat to the overall linguistic homogeneity of the state. With regard to the German Sinti and Roma, Germany struggles to provide for an accurate regime of protection, as the territoriality principle does not apply. The large number of relatively recent migrants, resident in all parts of the country seems to be perceived as a threat to Germany's linguistic homogeneity however. Thus far the legal and political system has not opened up towards linguistic diversity encompassing the languages of migrants and such would seem less acceptable as in comparison with national minorities. The accommodation of languages spoken by big groups of migrants, first and foremost Turkish, possibly in the provision of public services such as health care is certainly perceived as a more pressing need than the accommodation of the smallest migrant languages, such as Estonian.

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