

REVIEWS AND ANNOTATIONS

Sujit Choudhry, Erin C. Houlihan: *Official Language Designation: Constitution-Building Primer 20*. Strömborg, Stockholm: International IDEA, 2021, 49 pp.

If I should name one area that, despite its importance, is given very little space in law, politics, culture, and language, it would be the area of official language designation. A step towards positive change happened in 2021 when a primer devoted specifically to this area was published by authors Sujit Choudhry and Erin C. Houlihan. The primer itself is part of a series of Constitution-Building Primers that have been created to support constitution-building and reform processes within a country while being addressed to a broad audience too. It is therefore no coincidence that this primer is led by S. Choudry, a prominent figure in comparative constitutional law with years of experience in democracy promotion and peace processes in several countries, and E. Houlihan, a researcher working in the field of democracy and conflict transition. Despite the length of the text, it is a substantial work in this area, because it is the first to name the phenomenon of official language designation, but also, by its existence within the series, gives a designation of enshrined languages in constitutions a place in the world of (comparative) constitutional law.

Thus, the publication is so important to deserve our attention because very little literature has been devoted to this area and there is not as much interest among the authors. The problem is that this area has hardly any theoretical background from a legal point of view. It is possible to look into related scientific fields, such as sociolinguistics (here it is worth mentioning, for example, I. Bogoczová, who deals with the statuses that languages can acquire in constitutions),¹ in law, especially constitutional law, it is still an open and unresolved topic. This is the publication that brings us closer to the process of enshrining privileged, minority, and indigenous languages conceived from a unified perspective, namely from the point of view of official language designation. Thus, even before analysing the work, it must be acknowledged that this publication can be considered a stepping stone to official language designation.

As far as the review itself is concerned, from a methodological point of view, the questions are appropriately chosen. The chosen nature of the primer, which combines doctrinal (work with theory and its enrichment, especially at the beginning of the work), and normative (analysis of valid and effective legislation or international treaties) process, corresponds to the set aims. What could be a burden is the number of sources. However, I must state again here that this cannot be a burden to the authors because this field is facing a lack of literature. However, the used references cannot be faulted, since the authors worked with proper, thematically wide range of sources: from monographs to specific legal regulations.

To evaluate the content side, the following section is divided exactly as chapters of the primer. In the first chapter, the authors state what official language designation is about, and define the basic terms of the work, which are official and national languages and their mutual relation. As for those basic terms, this is precisely a manifestation of the lack of clearly defined, or at least somehow indicated, differences at the legal level that could help distinguish the statuses of languages in the constitution. Later in the chapter authors look at the benefits and risks of official language designation and outline in which countries language could represent a constitutional issue. However, one

¹ BOGOCZOVA, I. Jazykové plánování a situace spisovného jazyka. In: SVOBODOVÁ, J. et al. *Fenoméni spisovnosti v současné české jazykové situaci*. Ostrava: Universitas Ostraviensis, 2011, p. 58.

cannot agree with the statement that language is a problem only in countries with heteronomous linguistic demography. Certainly, that conflict is not that significant, but still, the desire to enshrine the language in the constitution of practically homogeneous countries is used as a tool of the extreme right or extreme left for populist decisions under the guise of supporting national identity, and patriotism. That is exactly what happened in the Czech Republic when the Communist party introduced a law, which was called the Law Against the Desecration of the Language (ironically, it was full of linguistic mistakes), which was intended to present officially the Czech language as a state language. Another example is the situation in Montenegro, where Montenegrin was included in the Constitution as an official language of this heteronomous country when its codification had not even been completed.

In the second chapter, the authors attempt to relate the phenomenon of official language designation to the historical development of the constitutions. Here it needs to be stated that the trend of enshrining privileged languages is truly connected with modern constitutions as the authors pointed out. On the other hand, the period when languages were not included in the constitutions cannot be linked only to the old constitutions. It is possible to find this situation in the newer constitutions too, for example in the Constitution of the Czech Republic, in which is, the is no provision about the official language of the country. This also correlates with another point the authors make about the official language *de facto*. The authors correctly interpret that when it comes to the language in which the constitution is written, the official language of the country is thus designated *de facto*. Applying this to the abovementioned example of the Czech Constitution, the official language is thus Czech, because the Constitution was written in the Czech language. I believe this point in the primer would benefit from mentioning the counterpart, which is the official language *de jure* (i.e. the language is designated as official by mentioning it in the constitution), because the whole primer works with written provisions on official languages, thus with *de jure* designation. The authors also state in the second chapter that it is necessary to resolve in which language the country will communicate with its population in terms of transparency and clarity or economic opportunity. At the same time, this selection is influenced by the organization of the country and the rights the country wants to associate with the specific languages. It is impossible to disagree with this statement, but it should be added that the official language designation also has other economic impacts. We know from the practice of the European Union that multilingualism is expensive and significantly increases operating costs.² This is not different in the case of individual countries.

It is also necessary to state the importance the second chapter has for language planning. This chapter can be seen as a link between the issues of (comparative) constitutional law and sociolinguistics, as it brings together these disciplines, which are most intensely manifested in language planning, without in any way contradicting existing knowledge. On the contrary, it helps to specify the legal conception of the status planning dimension and thus complements it. In doing so, it also adds to the general knowledge of language planning. The authors thus enhance the function of official language designation not only as a mean of communication in the country but as a subject and an instrument of the language policy of the country.

In the third chapter, after the authors introduce three main functions for enshrining one official language, they also define based on Kymlicka, three main groups, which play a role in official language policy in the country. We learn that the main three minority groups are minorities with self-determined claims (language rights manifest their language rights as group rights), minorities with no self-determination claims (language rights manifest as individual rights overlapping basic

² KŘEPELKA, F. *Mnohojazyčnost Evropské unie a její důsledky pro českou právní praxi*. Brno: Masarykova univerzita, 2007. p. 49.

human rights), and Indigenous people (language rights primary manifest as a group, but also in lesser extend as individual rights). Authors also state that the official language designation has often overlapping implications such as unequal distribution of **political** power for minorities, lesser **economic** opportunities due to the language of communication, and the threat of losing their **cultural** identity with forced language assimilation. However, it is worth adding here that this is certainly not an exhaustive list of implications. As a reader, I can also think of **social** exclusion.

In chapter four the authors introduce a functional and spatial disaggregation of official languages. At the same time, they add the main factors, which legislators must as financial and logistical practicality, determine whether the language will have only symbolic value in the constitution or whether its use will be precisely defined. The authors take us further in the chapter to develop the disaggregation through the separate powers and whether it is possible to officially designate language for them. As for governance, they introduce the possibilities of how to choose the official language in the case of multi-state governance especially in subnational units. They also connect official language designation in public service with its manifestation in national and subnational units and public education, In the context of judiciary, they distinguish approaches to minority language rights that manifest during the process, and how official language can affect the issuance of judgment while showing how these rights are enshrined in the constitution. Finally, they discuss the practice of choosing the languages in the legislature and the possibility of choosing a separate language for issuing the laws, as is the case in some African countries.

The fifth chapter introduces us to the possibilities of setting language rights in both the public and private sectors. In the case of the public sector, the authors argue that countries can consider allowing education in another, usually minority language. It should be added here, however, that within the public sector, this is not the only exception when countries allow the use of other languages other than the official one. We can also, for example, talk about the administrative language when selected minorities are granted the right to communicate with the authorities and submit various submissions in their language.³ In the case of the private sector, the authors deal with the possibilities of constituting language rights and their occupation in the country's bill of rights for all three identified minority groups in Chapter 3. The authors thus state that not only in education, but it is to encounter the issue of minority language rights also within the framework of religious ceremonies or various cultural activities.

To this chapter as a reader, I must add that we can see the reflection of R. Schmidt's theory on models of language policy, which are based on the relation of the dominant language to other minority languages in a given country. Based on that, we can encounter four basic scenarios to resolve conflicts between these languages. These are models of plurality, dominance, assimilation, and linguistic confederation.⁴ This explains the differences in examples where constitutions are more restrictive towards minority languages even in the private sector.

Next, the sixth, chapter discusses international law and its relation to official language designation. This chapter is relatively short, which is understandable, as the authors themselves state, due to the limited role of international law. The authors thus perceive international law as more as an auxiliary tool for official language designation, while determining the languages of legislation or the judiciary, are not even within the scope of these treaties.

³ ECKHARD, S. et al. A taxonomy of administrative language in public service encounters. *International Public Management Journal*. 2022, Vol. 0, latest publications, p. 1. In: *International Public Management Journal* [online]. [2024-09-06]. Available at: <<https://www.tandfonline.com/doi/epdf/10.1080/10967494.2022.2075062?needAccess=true&role=button>>.

⁴ SCHMIDT, R. The politics of language in Canada and the United States: explaining the differences. In: Thomas Ricento – Barbara Burnaby (eds.). *Language and Politics in the United States and Canada: Myths and Realities*. London: Routledge, 1998, pp. 38-39.

The penultimate chapter, the seventh, offers a list of questions associated with official language designation. It does not seem beneficial that the whole chapter consists only of questions without supplementary or accompanying text. The reader is thus not sure whether this is an exhaustive list of everything that the legislator should consider whether it is the simple minimum that the legislator must answer to succeed in a problem-free official language designation in own country, or whether the questions are set only to correlate with the content of the primer. Despite this, the questions can also offer the reader a look into the act of official language designation to realize what problems the legislator has to deal with.

The last, eighth, chapter is very beneficial because it contains examples of situations and provisions. On the other hand, it would also be beneficial if the given examples were also directly in the text. This way, the reader has to jump between chapters to see the example the authors are talking about, which has a rather distracting effect.

In conclusion, it must be said that the primer, thanks to its unique focus and the combination of several disciplines, is a work that should not be missed by those interested in the area of language enshrining in terms of comparative constitutional law.

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