

# LINGUISTIC RIGHTS IN GERMANY

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“Language has never been nor is it,  
at any time or any place, an  
unpolitical territory”  
( Herta Müller, Nobel-Prize Winner  
for Literature 2009 )<sup>1</sup>

## Introduction

The German Language is currently used as mother-tongue by about 100 million people. Today "High German" is the official language in Germany, in Austria, Lichtenstein, and most of Switzerland.<sup>2</sup> In addition, it is one of the official languages in Luxemburg and parts of Denmark, Belgium and Italy.

"High German," developed in the centre of Europe towards the end of the 6<sup>th</sup> century and the beginning of the 7<sup>th</sup> century A.D. The differentiation of the "High German Sound Shift" separated "Low German" and "High German." Languages, such as Dutch and Flemish developed from "Low German," while the different (High) German dialects<sup>3</sup> have the same root in the High German language.

The development of "High German" as we know it today followed different phases up to the middle of the 17<sup>th</sup> century. Of importance for the unification and a common understanding of the German Language are Martin Luther's translations of the Bible in 1521 and 1534. In the 19<sup>th</sup> century, the language developed so far that first steps in the direction of standardisation could be fixed.<sup>4</sup>

The common language in Germany became a symbol of identity and an important condition for the development of German culture. The expression of "Germany as a Cultural Nation", as it was used since the early 19<sup>th</sup> century, had already demonstrated two sides of the same coin: the cultural and the political. The language was the basis for the political unification of Germany in the 19<sup>th</sup> century, but also the basis for the clashes in the 19<sup>th</sup> and 20<sup>th</sup> century, where the dispute was, for example, whether the Alsace or the Saarland belonged to Germany or to France.<sup>5</sup>

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<sup>1</sup> Müller, H., In jeder Sprache sitzen andere Augen, in: Der König verneigt sich und tötet, 4. Edit. München 2009. p.7.

<sup>2</sup> In 17 of the 26 "Kantone".

<sup>3</sup> Like the ( again different ) Bavarian, Swabian/Alemannian, Franconian, Saxonian, dialect.

<sup>4</sup> By the dictionary of the German Language by Konrad Duden.

<sup>5</sup> One may also think about the clashes in South-Tyrolia, as a part of Italy or not, also happening in the 1960's.

## 1. Minority Rights in Education

Minority languages have always been part of German history. Not only was the influence of French speaking refugees in Prussia, the Huegenots, remarkable, but the integration of workers coming from Poland to the Prussian Rhine-Provinces in the 19<sup>th</sup> century took a long time. Even at an early stage in German Constitutional History, the linguistic and cultural rights of non-German speaking people had been recognised by the law;

"The traditional development is guaranteed also to the non German speaking tribes in Germany, especially the equality of their languages inside of their territories, in church affairs, in education, in the interior administration and in the juridical system" –

from Art.188 of the Constitution of the Reich of 1849<sup>6</sup>; a similar clause can also be found in Art.113 of the German Constitution of 1919<sup>7</sup>.

The actual German Constitution, the Basic Law of 1949, does not allow any discrimination on the grounds of "language, homeland or origin", Art.3 Para.3. This had to be understood as a special expression of the general non-discrimination-clause of the Basic-Law, as it had been guaranteed in Art.3 Para.1.

Moreover, there is also a German constitutional understanding of ensuring the use of other languages<sup>8</sup> as well as the cultural and personal importance of these languages for individuals.<sup>9</sup> In the past, the Danish Minority was mainly in the very north of Schleswig-Holstein, near the border to Denmark,<sup>10</sup> and the immigrant workers were also mentioned.<sup>11</sup> But only since the treaty on the German unification of 1990 have the Sorbian been mentioned expressly.<sup>12</sup> Now clauses of protection of the Sorbian identity, language and culture can be found in the constitutions of the Land Brandenburg<sup>13</sup> and the Land Saxonia.<sup>14</sup> In the laws of the Länder, the general right of protection of especially the mentioned minority languages is demonstrated in a more concrete way, in the Educations Acts<sup>15</sup>. The right of parents, of the minority, to choose the language of their children's

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<sup>6</sup> So called "Paulskirchen"-Constitution, named after the Paulskirche in Frankfurt/Main, where the assembly for preparing this constitution was seated .

<sup>7</sup> The so called Constitution from Weimar.

<sup>8</sup> See Gubelt, in : v.Münch/Gubelt (Eds.), Grundgesetz-Kommentar, 5.Ed. Munich 2000, Art.3, No.98.

<sup>9</sup> Osterloh, in : Sachs ( Ed. ), Grundgesetz Kommentar, 3.Ed. Munich 2003, Art.3, No. 298.

<sup>10</sup> The Danish Minority is also mentioned in Art.5 of the Constitution of the Land Schleswig-Holstein of 13 June 1990.

<sup>11</sup> See Gubelt, op.cit.

<sup>12</sup> Art.35, Notice 14 of the Unification-Treaty between the Federal republic of Germany and the German Democratic Republic from August 31, 1990.

<sup>13</sup> Art.25 of the Constitution of the Land Brandenburg of August 20, 2002.

<sup>14</sup> Art. 6 of the Constitution of the Land Saxonia of May 27, 2002.

<sup>15</sup> See f.e. § 5 Sentence 1 of the School Act of Brandenburg ( for the Sorbian People ).

schools is guaranteed.<sup>16</sup> In addition, there is also the right of acceptance of these minority languages in Kindergartens and other schools.

As the Federal Law of Germany does not expressly protect the duty of the Länder to do so, Germany has signed and ratified the "European Charter of Regional and Minority Languages" of 1992, decided by the Council of Europe, which came into force as German Federal Law by 1999<sup>17</sup>. Since the German Declaration of 1998,<sup>18</sup> Germany now protects one Regional Language and four Minority Languages, as a Regional Language the "Lower German" is accepted and protected in the northern part of Germany;<sup>19</sup> and as Minority Languages, Frisian, Sorbian, Danish, and Romanes<sup>20</sup> are accepted and protected.

In fulfilling the obligations of protecting minority languages Germany has also founded, in cooperation with Denmark and the Land Schleswig-Holstein a research-institute, the "European Center for Minority Issue" ( ECMI ) in Flensburg, in 1996.

## **2. Language-rights of Migrants**

As mentioned above, some minority languages in Germany are protected by federal law and by the law of the Länder. However, these minority languages are not the main problem of Educational system in Germany. The educational system is confronted, to a greater extent, with problems that arise from pupils coming from different parts of the world without sufficient knowledge of the German language.

These pupils, in some cases, may also have German citizenship by law . Under the constitutional rule of Art.116 Para.1 of the Basic Law, a person who has German Citizenship, is a person,

"who has been admitted to the territory of the German Reich within the boundaries of December 31, 1937 as a refugee or expellee of German ethnic origin or as the spouse or descendant of such a person".

This clause includes those persons from the territory of the former Soviet Union whose ancestors moved from Germany to Russia, for example, the so called "Wolga-Germans," who came to Russia in the late 18<sup>th</sup> century following a call of Katharine II. These persons are Germans by law, even if their

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<sup>16</sup> See f.e. § 2 Section 1 of the Saxonian School-Act ( for the Sorbian People ).

<sup>17</sup> German Federal Law from July 22, 1997, BGBl. II, p.1406.

<sup>18</sup> Declarations from June 23, 1998, BGBl.II 1998, p.1315, and from September 11, 2002, BGBl.II, p.2450.

<sup>19</sup> In the Land Schleswig-Holstein, Hamburg, Bremen, Lower Saxonia, Mecklenburg-Vorpommern.

<sup>20</sup> The language of the Roma and Sinti in Germany.

knowledge of the German language is sometimes very poor, they still have the right to come and settle in Germany.

People of Non-German citizenship who are citizens of an EU-Member-State have, under European Law, the same rights as Germans. The European Regulation No.1612/68 on Freedom of Movement for Workers<sup>21</sup> became of importance also in German educational institutions, especially Art.12 of this law<sup>22</sup>. German educational policy followed the obligations contained in the European Regulation, for example, by offering special courses in the schools. The main group of pupils that came under this European Regulation in the 1970's came from Italy or Greece, and in some parts of Germany, there were also pupils coming from Portugal.

The most important non-German speaking community in Germany is the Turkish. German Policy for Foreigners in the 1970's and also the 1980's followed the model of "guest-workers", i.e. an understanding that people coming to Germany will spend a period of time in the country and will return to their home state afterwards.<sup>23</sup> For such a model, adequate instruction in the German language was not a main topic; whereas, to keep the links to the home-country of the children – by special instruction in their language and culture – was one of the offers made for children with a foreign background.

The acceptance of Germany as a country with immigrants who will stay and spend there future life there is a newer development in the official government policy<sup>24</sup>. This has also now become part of the new "Act on Residence, Employment and Integration of Foreigners in the Federal Territory" (in force from 2005)<sup>25</sup>. Following § 43 (1) of this new Act, supporting integration is now an official goal. Special language-courses help to reach a sufficient knowledge of German language and the understanding of culture is now an obligation for foreigners ( § 44 a )<sup>26</sup>.

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<sup>21</sup> Regulation (EEC) No.1612/68 of the Council of 15 October 1968 on Freedom of Movement for Workers within the EU.

<sup>18</sup> "The children of a national of a Member State who is, or has been, employed in the territory of another Member State shall be admitted to that State's general educational, apprenticeship and vocational training courses under the same conditions as the nationals of that State, if such children are residing in its territory. Member States shall encourage all efforts to enable such children to attend these courses under the best possible conditions."

<sup>23</sup> More than 2,5 million came to Germany as so called "guest-workers", now 20,6 million of the population in Germany ( 26,3 % ), has a migrant background ( Authoring Group Educational Reporting, Report on Education in Germany 2012, Gütersloh 2012, p. 18); this number will grow up to estimated 36 % by 2035 ( op. cit ).

<sup>24</sup> See also Baumert/Maaz, Migration und Bildung in Deutschland, in : Die Deutsche Schule 2012, p. 280 f., 297 f.

<sup>25</sup> Gesetz über Aufenthalt, Erwerbstätigkeit und Integration von Ausländern im Bundesgebiet from May 25, 2008 ( BGBl.I, p.162 ), last amendment from June 1, 2012 ( BGBl. I p. 1224 ).

<sup>26</sup> See also Verordnung über die Durchführung von Integrationskursen für Ausländer und Spätaussiedler from December 13, 2004 (BGBl.I., p.337 ), last amendment from February 20, 2012 ( BGBl. I p. 295 ).

This Act is of importance only for future immigrants, not for people who already live in Germany as foreigners with an accepted legal status; such as migrant workers and their families, refugees, and persons applying for asylum in Germany for political reasons. For some of them, lack of knowledge of German is a problem they sometimes try to avoid. They try to avoid contact with the majority language by trying to stay within their own community. Problems of communication in Germany are of special importance for the educational system as German is the language of instruction<sup>27</sup>.

All PISA-results<sup>28</sup> have shown that around 20 % of the students tested come from a migrant background<sup>29</sup>. Children without a migrant background have reached much better results in the PISA-tests, the difference of results between pupils with and pupils without a migration-background in Germany are amongst the highest in all PISA-states<sup>30</sup>; differences like these can be found only in Switzerland and Belgium<sup>31</sup>. The difference between these two groups of pupils is equivalent to the development gained from one to two years of instruction in school<sup>32</sup>. This result becomes even more important if one takes into account that children with a migrant background, where the parents immigrated to Germany, and where the children were born in Germany and have visited only German schools performed to a poorer level in the PISA-tests<sup>33</sup>.

One of the main problems (and also an explanation for the bad results in the PISA-tests) for the pupils with a migration-background is language; if they have learned another language at home they must learn a second language in school because the German is still the language of instruction in education.<sup>34</sup> Schools are not yet prepared for diversity of languages.<sup>35</sup>

This situation is intensified by the socio-cultural situation of children with a migrant background. They generally belong to a lower social class. Due to the strong relationship between socio-cultural

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<sup>27</sup> To add only one figure : 39 % of all children where at home German is not the language of communication need special promotion in learning the German language (Authoring Group Educational Reporting, Report on Education in Germany 2012, p.62 ); Baumert/Maaz ( op.cit., p.298 ): „To support social integration in Germany in a long run, an early and systematic promotion of the German language-competences will be the silver bullet.“

<sup>28</sup> From the first results presented in Germany, see PISA-Konsortium Deutschland ( Eds. ), PISA 2003 – Der Bildungsstand der Jugendlichen in Deutschland – Ergebnisse des zweiten internationalen Vergleichs, Münster-New York-Munich-Berlin 2004., p.271; in reading f.e. the rate of worse readers is still double as high in the group of pupils with migrant background (Authoring Group Educational Reporting, Report on Education in Germany 2012, p.91 ).

<sup>29</sup> Migration-background refers to the following factors of the history of a family : which generation migrated and where the child tested by PISA is born,, what is the socio-cultural background of the family, which is the language used for communication within the family and whether this language the same like the language used for communication in school ( PISA-Konsortium, op.cit., p. 255 f. ).

<sup>30</sup> PISA-Konsortium, op.cit., p.257.

<sup>31</sup> PISA-Konsortium, op.cit., p.257.

<sup>32</sup> PISA-Konsortium, op.cit., p.271.

<sup>33</sup> PISA-Konsortium, op.cit., p.271.

<sup>34</sup> PISA-Konsortium, op.cit., p.260.

<sup>35</sup> Gogolin, Kinder und Jugendliche mit Migrationshintergrund : Herausforderungen für Schule und außerschulische Bildungsinstanzen, in : Grunert/Helsper et. al., Kometpenzerwerb von Kindern und Jugendlichen im Schulalter, Munic 2005, p.373; also Baumert/Maaz ( op.cit. ), p. 288.

background and attendance of schools with higher expectations, these pupils have therefore been handicapped in a dual way, both by their language and by their socio-cultural background.<sup>36</sup>

Discrimination on grounds of language is therefore a problem for migrant pupils in schools. The constitutional question arising from this is how far such an indirect form of discrimination is also unlawful following the case law of the German Constitutional Court<sup>37</sup>. The first steps towards an understanding of indirect discriminations as unconstitutional had been done by the German Federal Constitutional Court<sup>38</sup>. But this may become of more importance, in Germany, after the implementation of the "EC-Directive implementing the principle of equal treatment irrespective of racial or ethnic origin"<sup>39</sup> because Art.2 Para.2 (b) of this Directive states that indirect discrimination is unlawful.

### **3. The problem remains**

Germany must solve all the problems caused by discrimination on the grounds of language, in the interests of a generation of pupils leaving school with insufficient results. In general, pupils with a migrant background are not adequately prepared for the conditions of the labour markets. Knowledge of the majority language is the key-issue in the solution and therefore efforts have to be made to reach that aim. In a time where a political slogan of a "growing parallel society" tries to use differences as criteria for separation, an imbalance of the minorities and majorities in German society is indicated. Schools and other educational institutions are important instruments for integration and politicians should focus on them much more than they do. If these problems are not adequately dealt with, the best foundations of society may collapse and the importance of one common language for nation-building may be lost.

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<sup>36</sup> PISA-Konsortium, op.cit., p.272.

<sup>37</sup> The European Court of Justice has decided that also indirect discrimination is unlawful, under European Law, see decisions dealing with labour-conditions, e.g. Cases 43/75 ( "Defrenne" ), 96/80 ( "J.P.Jenkins" ).

<sup>38</sup> Osterloh, op.cit., No. 255 f.

<sup>39</sup> Council Directive 2000/43 from 29 June 2000, L 180/22.