
THE CHARTER OF FUNDAMENTAL RIGHTS OF THE EUROPEAN UNION: *A Commentary*

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ARTICLE 22

Cultural, religious and linguistic diversity

The Union shall respect cultural, religious and linguistic diversity.

1. Diversity is an intrinsic feature of the European project and also one of its fundamental principles. The EU – like its predecessor, the EEC – brings together States that are very diverse and also keen to preserve their respective national identities. The project’s purpose is not to erase the diversity of the cultures and traditions of the peoples of Europe in the name of an ever-closer union or of common values, even though the efforts put into promoting a “European identity” may suggest otherwise. As we can read in the Charter’s Preamble, the Union contributes to the development of common values among the peoples of Europe “*while respecting the diversity of the cultures and traditions*” of these peoples, as well as the national identities of the Member States. The Union’s motto is precisely “United in diversity”, which suggests a difficult balance between integration and autonomy, but which is nevertheless presented with confidence in the official European discourse as both a source of originality and a key to the Union’s success. Instead of aiming to be a single culture, the EU’s Europe presents itself as a mosaic of different cultures – as a “culture of cultures” –, combined to form a whole which is greater than the sum of its parts. That is why the EU considers itself to be particularly suited to build bridges between different cultures and why it is committed to fostering intercultural dialogue, inside and across borders. A commitment confirmed, for example, by the involvement of the European Community in the negotiations of the UNESCO Convention on the Protection and Promotion of the Diversity of Cultural Expressions, adopted in 2005, and by the European Parliament and Council’s decision to celebrate 2008 as the European Year of Intercultural Dialogue.

2. Diversity is therefore not just a feature of Europe and European societies, each day ever more multicultural due to the impact of migration flows and globalisation, but rather an asset to be preserved and a normative principle underlying the European construct and its legal system. Article 22 confirms this. According to the explanatory note initially prepared under the responsibility of the *Praesidium* of the Convention which drafted the Charter, Article 22 was based, not only on Article 151(1) and (4) of the EC Treaty, but also on Article 6 of the EU Treaty, something which has been interpreted as evidence that diversity is a “quasi-constitutional” principle of the EU legal order. Even though the CJEU is yet to acknowledge a general constitutional principle of cultural diversity in its rulings, diversity is commonly referred to as such in political and academic discourse, and the existence of a “diversity *acquis*” – with Article 22 as a key component – is widely recognised. The bases for Article 22 were Article 6 of the EU Treaty and Article 151 of the EC Treaty, two provisions introduced by the Treaty of Maastricht, under which the Union “*shall respect the national identities of its Member States*” and the Community “*shall contribute to the flowering of the cultures of the Member States,*

while respecting their national and regional diversity.” Both provisions keep, for the most part, the same wording in the current version of the Treaties. Article 167 of the TFEU is the same as former Article 151, whereas the duty of respect for the national identities of the Member States is now established in Article 4(2) of the TEU, under which the Union “*shall respect the equality of Member States before the Treaties as well as their national identities, inherent in their fundamental structures, political and constitutional, inclusive of regional and local self-government.*” Respect for diversity was in the meantime reinforced by Articles 2 and 3 of the TEU, which establish the Union’s values and aims. Article 2 includes respect for the rights of persons belonging to minorities among the values on which the Union is founded and lists pluralism and tolerance as features that are common to the Member States. Article 3(3) establishes that the Union shall respect its rich cultural and linguistic diversity. The goal of safeguarding diversity is also mentioned *a propos* specific subjects, such as education [Article 165(1) TFEU], the welfare requirements of animals (Article 13 TFEU) and the negotiation and conclusion of agreements with third countries in the field of trade in cultural and audio-visual services [Article 207(4) TFEU].

3. Although respect for diversity is an ever-present idea in European rhetoric and is expressly enshrined in the text of the Treaties, the concept of diversity remains extremely vague, which may hinder the practical relevance of Article 22. First, it is not very clear whether it is meant to protect only diversity *between* States – in which case it demands that the Union refrains from acting – or if it aims to go further and also protect diversity *within* Member States, which would require the Union to act on behalf of members of cultural, religious or linguistic minorities when their identities are threatened by assimilationist policies of Member States. The Treaties offer contradictory signs and the extremely generic terms in which Article 22 is drafted are also not of much help. On the one hand, we have references to national identity, to the cultures, customs and cultural and linguistic diversity of Member States, in support of an *exclusive* reading of diversity. On the other hand, we also find references to the pluralism of European societies, to the rights of persons belonging to minorities, to the diversity of cultures and traditions of the peoples of Europe, to the regional diversity of Member States and to the cultural and linguistic diversity of the Union itself, which authorises an *inclusive* reading of the concept. In defence of the first reading, it can be argued that, in the absence of a European consensus on the best way to manage cultural diversity, Member States should be free to decide upon the degree of diversity they are willing to allow in their territories, especially since that is bound to determine their respective national identities. Harmonising action on the part of the EU on behalf of *intra-state* diversity would always require a sacrifice of *inter-state* diversity. At the same time, it does not seem to make much sense to establish a separate principle of diversity if the intention is simply to protect the Member States’ autonomy *vis-à-vis* the Union, since this protection is already provided by other means, such as the principle of subsidiarity, the principle of enumerated powers and the requirement of unanimity for treaty revision. Besides, an exclusive reading of diversity would neglect multiple forms of cultural, linguistic and ethnic diversity that, although internal to Member States, significantly contribute to European diversity in general. Traditionally, it was, without a doubt, the exclusive reading of diversity which prevailed. Consider, for instance, Directive 77/486/EEC, of 25 July 1977, on the education of children of migrant workers, which made it incumbent upon Member

States to promote teaching of the “mother tongue” and “culture of the country of origin” of workers and their children. The Directive excluded not only the teaching of minority languages and cultures existing in the Member State of origin, but also the teaching of languages and cultures of migrant workers coming from third countries. In recent years, however, there have been some changes in approach, to a large extent due to the rise of immigration on the European political agenda. Several measures have been adopted to reinforce the legal status of third-country nationals residing in the territory of Member States, in order to facilitate their integration in their respective host societies. As stressed in many political statements, integration is a two-way process, which must be promoted while respecting the identity and the culture of origin of third-country immigrants. Another important factor in this, still modest, change in perspective was the attribution to the EU, by the Amsterdam Treaty, of an explicit competence to combat discrimination based on any ground, such as racial or ethnic origin and religion or belief [Article 13 of the EC Treaty; now, Article 19(1) TFEU], something which the Charter reinforced by prohibiting any discrimination based on race, colour, ethnic origin, language, religion and membership of a national minority (Article 21). Therefore, it can be said that EU law already offers some measure of protection to intra-state diversity.

4. The case-law of the CJEU provides abundant evidence of the ambiguous stance of EU law *vis-à-vis* diversity. On the one hand, the Court is respectful of the Member States’ national identities. In *Groener*,¹ the Court was willing to accept that the protection of Irish national identity justified making the appointment to a permanent full-time post as a lecturer in public vocational education institutions conditional upon proof of an adequate knowledge of the Irish language, even though the duties associated with said post were to be carried out in English. On the other hand, in a case which opposed the European Commission and the Grand Duchy of Luxemburg,² regarding the access by nationals of other Member States to civil service and public sector posts not involving participation in the exercise of powers conferred by public law or the safeguarding of the general interests of the State, the Court did not accept the argument put forward by the Luxemburg Government according to which the nationality requirement in relation to teachers was an essential condition for preserving Luxemburg’s national identity, in view of the size of the country and its specific demographic situation. The Court held that the protection of national identity cannot justify the exclusion of nationals of other Member States from all the posts in an area such as education, since that interest, whilst legitimate, could be effectively safeguarded otherwise than by a general exclusion of nationals from other Member States, and since nationals of other Member States must, like Luxemburg nationals, still fulfil all the conditions required for recruitment, in particular those relating to training, experience and language knowledge. In *UTECA*,³ the Court accepted that the defence of Spanish multilingualism constitutes an overriding reason in the public interest, which justified requiring television operators to invest in cinematographic films and films made for television in an original language which

¹ Judgment *Anita Groener v. Minister for Education and the City of Dublin Vocational Educational Committee*, 28 November 1989, Case C-379/87, ECLI:EU:C:1989:599.

² Judgment *Commission of the European Communities v. Grand Duchy of Luxemburg*, 2 July 1996, Case C-473/93, ECLI:EU:C:1996:263.

³ Judgment *Unión de Televisiones Comerciales Asociadas (UTECA) v. Administración General del Estado*, 5 March 2009, Case C-222/07, ECLI:EU:C:2009:124.

was one of the official languages of that Member State, even though the beneficiaries of the financing concerned were mostly cinema production undertakings in that Member State. In *Mutsch*⁴ and *Bickel and Franz*,⁵ the Court dismissed the argument that respect for the national (multicultural) identities of, respectively, the Belgian and the Italian States would justify an exception to the principle of non-discrimination on grounds of nationality, in such a way that domestic law provisions adopted for the benefit of an officially recognised minority could apply only to the members of that minority and not to citizens of other Member States. On occasion, the Court has also granted protection to the cultural identities of individuals against assimilationist policies of Member States. In *Konstantinidis*,⁶ the Court held that it was contrary to Community law for a Greek national to be obliged, under the applicable national legislation (*in casu* German legislation), to use, in the pursuit of his occupation, a spelling of his name whereby its pronunciation was modified, and the resulting distortion exposed him to the risk that potential clients could confuse him with other persons. According to the reasoning of the Court, however, what was at stake was not the interest in preserving one's cultural identity, but the commercial interest in not seeing one's name mistaken with that of someone else. In *Garcia Avello*,⁷ the Court held that a uniform system for the attribution of surnames is neither necessary nor even appropriate for promoting integration within Belgium of the nationals of other Member States, and concluded that the administrative authorities of a Member State could not refuse to grant an application for a change of surname made on behalf of minor children resident in that State, and having dual nationality of that State and of another Member State, in the case where the purpose of that application was to enable those children to bear the surname to which they were entitled according to the law and tradition of the second Member State. Revealing of the Court's sensitivity to the growing multicultural character of European societies and of the specific needs of immigrants is illustrated by the observation made in *Haim II*⁸ – a case regarding the language requirements set by German law for the eligibility for appointment as a dental practitioner of a Social Security Scheme – according to which, while the “*reliability of a dental practitioner's communication with his patient and with administrative authorities and professional bodies constitutes an overriding reason of general interest such as to justify making the appointment as a dental practitioner under a social security scheme subject to language requirements, [it] is in the interest of patients whose mother tongue is not the national language that there exist a certain number of dental practitioners who are also capable of communicating with such persons in their own language.*”

5. The normative weakness that can be ascribed to Article 22 is not just a result of the uncertainties about the kind of diversity that the Union is bound to respect, but is also largely due to the extremely soft terms in which this duty to respect is phrased. In a text such as the Charter, dominated by the establishment of rights by means of directly applicable provisions, this Article stands out for simply stating

⁴ Judgment *Ministère Public v. Robert Heinrich Maria Mutsch*, 11 July 1985, Case 137/84, ECLI:EU:C:1985:335.

⁵ Judgment *Pretura Circondariale di Bolzano v. Horst Otto Bickel and Ulrich Franz*, 24 November 1998, Case C-274/96, ECLI:EU:C:1998:563.

⁶ Judgment *Christos Konstantinidis v. Stadt Altensteig, Standesamt and Landratsamt Calw, Ordnungsamt*, 30 March 1993, Case C-168/91, ECLI:EU:C:1993:115.

⁷ Judgment *Carlos Garcia Avello v. Belgian State*, 2 October 2003, Case C-148/02, ECLI:EU:C:2003:539.

⁸ Judgment *Salomone Haim v. Kassenzahnärztliche Vereinigung Nordrhein*, 4 July 2000, Case C-424/97, ECLI:EU:C:2000:357.

a general principle, without granting rights nor demanding from the Union that it actively promotes cultural, religious and linguistic diversity. As noted by some commentators, only in the English version of the Charter's text is it established that the Union shall respect diversity, thereby suggesting a duty of positive action on the part of the Union. In the other linguistic versions, the verb *respect* appears isolated – the Union respects –, which can be interpreted as an indication that the drafters of the Charter simply decided to abstain from taking a firm and clear stand on this matter. On the one hand, they were not satisfied with a mere prohibition of discrimination on the grounds of ethnic, religious and linguistic identity, which they enshrined in Article 21. Yet, on the other hand, they did not want to go so far as to demand from the Union that it adopts measures to safeguard and guarantee diversity, as would be the case if the text of Article 22 used more assertive verbal forms, such as the Union *safeguards* or the Union *guarantees* diversity. Whereas under the Treaty provisions on education and culture the EU has a duty to promote linguistic and cultural diversity, under Article 22 it seems to be only required to avoid that its actions may endanger that diversity. It may nevertheless be considered that the systematic placement of a statement of respect for cultural, religious and linguistic diversity in the chapter dedicated to equality is most significant and can be interpreted as the formal acknowledgement of the link between the principle of non-discrimination and the protection of difference, and as a sign of openness for the protection of minorities. Conversely, it may also be claimed that Article 22 merely restates the principle of non-discrimination, as it translates one of its necessary aspects, which is the principle of differentiation. However, this claim is problematic for two main reasons. First, it reduces respect for diversity to a dimension of the principle of equality, hindering its potential reach. Secondly, it suggests that the Charter adopts a substantive and not a formal understanding of equality, by admitting and even imposing the adoption of differentiating or positive discrimination measures, which is contradicted by an analysis of the other provisions in Chapter III. As it happens, the Charter only allows for positive discrimination measures in matters pertaining to equality between men and women (Article 23) and these measures – referred to as “*specific advantages in favour of the underrepresented sex*” – appear as an exception to the principle of equality, not as one of its essential dimensions.

6. Contrary to the opinion of the EU Network of Independent Experts on Fundamental Rights,⁹ it cannot be said that Article 22 constitutes a minority protection clause. The possibility of including a separate provision on minority rights was suggested in several proposals put forward during the Convention that drafted the Charter, but it was eventually dropped, due to opposition from the French among others. The explanatory note initially prepared under the responsibility of the *Praesidium* of the Convention which drafted the Charter did not mention any international law instrument pertaining to the protection of minorities and its updated version, prepared under the responsibility of the *Praesidium* of the European Convention in 2007, does not even mention Article 2 of the EU Treaty, where respect for the rights of persons belonging to minorities is listed among the values on which the Union is founded. The inclusion of this mention of the rights of persons belonging to minorities in the Treaty was not followed by the attribution of any

⁹ See EU Network of Independent Experts on Fundamental Rights, Report on the situation of Fundamental Rights in the European Union and its Member States in 2002, available at <http://www.statewatch.org>.

specific EU competence in the field of minority protection. It is, therefore, highly unlikely that the Union's commitment to diversity may so easily translate into a founding norm on minority protection, applicable throughout Europe. After all, it is precisely this respect for diversity that Member States have been using for years to shield their domestic policies on immigrant integration and minority protection against the Union's harmonising interference. The Union may well come to institute its own system of minority protection and use this Article 22 combined with Article 2 of the EU Treaty as legal grounds for it. However, given the circumstances that surrounded the adoption of Article 22 and the very laconic terms in which it is drafted, this Article is much more a reflection of the present lack of political will on the part of Member States to move towards such a system than a promise of future developments. It is worth recalling that the idea of instituting minority protection mechanisms at the EU level goes as far back as the 1980s – when Count Stauffenberg and Siegbert Alber submitted their proposals for an EC Charter of Rights for Ethnic Groups – and has been continuously championed by the European Parliament in several resolutions. The 2004 Eastern enlargement made the issue all the more pressing. First, by shedding light on the EU's duplicity when it came to minority protection, since it became apparent that the EU was very strict in its demands that candidate states respected the rights of persons belonging to minorities, while it had always ignored the treatment of minorities by "old" Member States. Secondly, by bringing into the Union's legal landscape the domestic minority issues of the "new" Member States. And finally by revealing the lack of a consistent and EU-specific set of normative standards on minority protection, since the Commission's periodic reports on the fulfilment by candidate states of the so-called *Copenhagen criteria* addressed minority issues in a haphazard manner and made frequent use of standards set by the Council of Europe and the Organization for Security and Co-operation in Europe. The existence of these European standards on minority protection, on the other hand, can be used as an argument against the need for the Union to set its own normative standards. That would not be the case only if the Union, enjoying competence for the protection of minorities, was able to adopt its own definition of minority and apply it to groups present in the territory of the Member States, recognising them as "European minorities" – even when these groups were not recognised as minorities by the Member State of residence – and granting them rights defined at a European level. Given the current stage of European integration this is entirely unrealistic. In spite of all the obstacles to the institution of an EU policy on minority protection, it must be acknowledged that the process of European integration has brought many benefits, even if indirectly, to persons belonging to minorities. Consider, first and foremost, the EU's action in the fight against discrimination, the recognition of linguistic and mobility rights associated with EU citizenship, and the EU funding for projects in the fields of education, culture, languages and regional development. The CJEU has contributed to this indirect protection by holding, for example, that "*in the context of a Community based on the principles of free movement of persons and freedom of establishment the protection of the linguistic rights and privileges of individuals is of particular importance*" (*Mutsch, Bickel and Franz*), and that, in some circumstances, the imposition by Member States of uniform spelling for individuals' surnames is incompatible with EU law (*Konstantinidis, Garcia Avello*). In *Bickel and Franz*, the Court went so far as to admit that the protection of an ethno-cultural minority may constitute a legitimate aim of the Member States.

This remark, however, can hardly be interpreted as recognition by the Court that the protection of minorities is a general principle of EU law. The Court will certainly have plenty of opportunities to come back to this issue, now that the Treaties expressly mention the rights of persons belonging to minorities (Article 2 of the EU Treaty) and prohibit any discrimination based on membership of a national minority [Article 21(1) of the Charter], and considering that the number of minority groups within the EU rose significantly with the Eastern enlargement. It remains to be seen what role Article 22 may perform in such case-law. So far, the Court has made a very frugal use of Article 22. Only in very few cases has the provision warranted express mention and, for the most part, the references are limited to a citation of the provision without further comment (*Angioi*)¹⁰ or accompanied by bland statements such as “the Union must respect its rich cultural and linguistic diversity” (*Runevič-Vardyn and Wardyn*,¹¹ *Las*,¹² *Cilevičs and Others*).¹³ In keeping with this minimalist stance, in the case which opposed the Kingdom of Spain and the Council of the European Union,¹⁴ concerning the compatibility with the Treaties and the CJEU case-law of Council Regulation no. 1260/2012, of 17 December 2012, implementing enhanced cooperation in the area of the creation of unitary patent protection with regard to the applicable translation arrangements, the Court made only a very brief mention of Article 22, citing it as evidence, along with Article 3(3) of the EU Treaty, of the Union’s commitment to the preservation of multilingualism.¹⁵ Also, in *Centraal Israëlitisch Consistorie van België and Others*,¹⁶ the Court did not find it necessary to elaborate separately on Article 22, holding instead that “*in the light of the considerations [made with regard to Articles 20 and 21 of the Charter], it must be held that Regulation no. 1099/2009 does not disregard the cultural, religious and linguistic diversity guaranteed in Article 22 of the Charter, in providing only for a conditional exception to the prior stunning of animals, in the context of ritual slaughter, while excluding from that regulation’s scope, or exempting from the obligation of prior stunning laid down therein, the killing of animals during hunting, recreational fishing, and sporting and cultural events.*” The only case in which the reach of Article 22 was slightly elaborated upon by the Court was *Izsák and Dabis*.¹⁷ The case concerned a refusal on the part of the European Commission to register a citizens’ initiative entitled “Cohesion policy for the equality of the regions and sustainability of the regional cultures”, which aimed at the adoption of a legal act to require the EU’s cohesion policy to pay special attention to “*regions with*

¹⁰ Judgment of the EU Civil Service Tribunal (Full Court), *Marie-Thérèse Angioi v. European Commission*, 29 June 2011, Case F-7/07, ECLI:EU:F:2011:97.

¹¹ Judgment *Malgožata Runevič-Vardyn, Łukasz Wardyn v. Vilniaus miesto savivaldybės administracija, Lietuvos Respublikos teisingumo ministerija, Valstybinė lietuvių kalbos komisija, Vilniaus miesto savivaldybės administracijos Teisės departamento Civilinės metrikacijos skyrius*, 12 May 2011, Case C-391/09, ECLI:EU:C:2011:291.

¹² Judgment *Anton Las v. PSA Antwerp NV*, 16 April 2013, Case C-202/11, ECLI:EU:C:2013:239.

¹³ Judgment *Cilevičs and Others*, 7 September 2022, Case C-391/20.

¹⁴ Judgment *Kingdom of Spain v. Council of the European Union*, 5 May 2015, Case C-147/13, ECLI:EU:C:2015:299.

¹⁵ Similarly, in a case opposing the Kingdom of Spain and the European Parliament, judgment of 26 March 2019, Case C-377/16, ECLI:EU:C:2019:249, with regard to a selection procedure for contract staff, the Court referred to Article 22 as evidence of the importance of respect for the linguistic diversity of the Union.

¹⁶ Judgment *Centraal Israëlitisch Consistorie van België and Others v. Vlaamse Regering*, 17 December 2020, Case C-336/19, ECLI:EU:C:2020:1031.

¹⁷ Judgment *Balázs-Árpád Izsák and Attila Dabis v. European Commission*, 10 May 2016, Case T-529/13, ECLI:EU:T:2016:282.

national minorities”, in order to foster their economic development and safeguard the preservation of their ethnic, cultural, religious and linguistic characteristics. The Court decided against the initiative’s proponents, holding *inter alia* that Article 22 could not be used as legal grounds for the Commission to submit, within the framework of the EU’s cohesion policy, a proposal for a legal act designed to protect the cultural diversity represented by national minorities, an act which, in any case, would not have corresponded to the purpose and content proposed in the initiative.¹⁸

7. In what concerns specifically the Union’s respect for *cultural diversity*, it is worth noting that EU action in the field of culture has been unfolding without being based on a clear and unequivocal understanding of the parameters and substance of the term “culture”. The expression *culture* is used interchangeably in its material and spiritual meanings, as synonymous both of archaeological heritage and fine arts and of a system of values and ways of life. In its first report on the consideration of cultural aspects in European Community action, of 1996, the European Commission drew attention to the “nebulous” character of the concept of *culture* – “*which can vary from one school of thought to another, from one society to another and from one era to another*” – and ended up by declining to put forward a precise definition of the concept, even though it recognised that it would be too narrow to merely identify culture with the traditional components of cultural policies (heritage, the live arts, literature, etc.).¹⁹ More recently, in its communication on a European agenda for culture in a globalising world, the Commission did not hesitate in adopting a wide understanding of *culture*, by stating that it “should be regarded as a set of distinctive spiritual and material traits that characterize a society and social group. It embraces literature and arts as well as ways of life, value systems, traditions and beliefs.”²⁰ This wide understanding of *culture* represents the acknowledgment that culture also has an anthropological meaning, constituting the “*basis for a symbolic world of meanings, beliefs, values, traditions which are expressed in language, art, religion and myths*” and, as such, “*plays a fundamental role in human development and in the complex fabric of the identities and habits of individuals and communities.*” Culture therefore encompasses religion and language, which means that the text of Article 22 is not only extremely vague, but also tautological. The intention of the authors of the Charter – when they added to the statement of respect for cultural diversity the express mention of religious and linguistic diversity – seems to have been to stress the importance of these two cultural expressions and of their diversity across Europe. Besides, the expression “cultural and linguistic diversity” has some tradition in the text of the Treaties. Less defensible would be to interpret the distinction between cultural diversity and religious and linguistic diversity to mean that the understanding of culture underlying Article 22 is narrower than the one advanced by the European Commission and includes only archaeological, historical and artistic heritage and cultural services. The case-law of the CJEU on the topic of cultural diversity, although often addressing the compatibility with EU law of

¹⁸ On appeal, this judgment was set aside for errors in law regarding the allocation of the burden of proof and the Commission’s decision was annulled. *Izsák and Dabis v. Commission*, 7 March 2019, Case C-420/16 P, ECLI:EU:C:2019:177. One of the grounds of appeal was the violation of Article 22, but the Court did not consider it necessary to analyse this argument.

¹⁹ See First Report on the Consideration of Cultural Aspects in European Community Action, COM(96) 160 final, of 17 April 1996, in <http://aei.pitt.edu>.

²⁰ See Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions on a European Agenda for culture in a globalizing world, COM(2007) 242 final, 10 May 2007.

domestic policies and legislation directed at safeguarding their respective artistic and historic heritage, including publishing, television and movie industries, has also ruled on the protection of culture as ways of life and value systems. In general, the Court does not easily accept that Member States' protectionist measures may evade the application of EU law, but it does acknowledge that domestic cultural policies may justify restrictions on the freedom of movement and of services, provided that they meet adequacy and proportionality requirements. In the case which opposed the European Commission and Italy, regarding the levy of a tax on exports to other Member States of articles possessing artistic, historic, archeologic or ethnographic interest,²¹ the Court refused to treat said tax as an equivalent to the export restrictions authorised by Article 36 of the EC Treaty to protect national treasures possessing artistic, historic or archaeological value, having argued that the levy had the sole effect of rendering more onerous the exportation of the products in question, without ensuring the attainment of the object referred to in Article 36, which is to protect artistic, historic or archaeological heritage. In the cases which opposed the European Commission to France,²² Italy²³ and Greece,²⁴ regarding tourist guides, the Court did not accept that Member States could subject the provision of services by tourist guides travelling with a group of tourists from another Member State to the possession of a licence which requires the acquisition of a specific training evidenced by a diploma, on the grounds that it imposed restrictions going beyond what is necessary to protect the general interest in a proper appreciation of places and things of historical interest and the widest possible dissemination of knowledge of the artistic and cultural heritage of a country. In *Fedicine*,²⁵ the Court held that the provisions in Spanish legislation, which reserved the granting of licences for dubbing films from third countries to distributors who undertook to distribute national films, were incompatible with EU law, on the grounds that an advantage was granted to producers of Spanish films in comparison with producers established in other Member States. According to the Court, said provisions pursued only an economic objective and not a cultural aim, since they promoted the distribution of national films whatever their content or quality. In *LIBRO*,²⁶ the Court held that Austrian legislation, by prohibiting importers of German-language books from fixing a price lower than the retail price fixed or recommended by the publisher in the State of publication, had instituted an unjustified restriction on imports from other Member States. The Court rejected the argument put forward by the Austrian government, according to which, given the characteristics of the Austrian market (very low number of booksellers and significant imports from Germany), the restriction constituted a proportionate means of achieving overriding objectives in the public interest, namely that of financing the

²¹ Judgment *Commission of the European Communities v. Italian Republic*, 10 December 1968, Case 7/68, ECLI:EU:C:1968:51.

²² Judgment *Commission of the European Communities v. French Republic*, 26 February 1991, Case C-154/89, ECLI:EU:C:1991:76.

²³ Judgment *Commission of the European Communities v. Italian Republic*, 26 February 1991, Case C-180/89, ECLI:EU:C:1991:78.

²⁴ Judgment *Commission of the European Communities v. Hellenic Republic*, 26 February 1991, Case C-198/89, ECLI:EU:C:1991:79.

²⁵ Judgment *Federación de Distribuidores Cinematográficos v. the Spanish Stated supported by the Unión de Productores de Cine y Televisión*, 4 May 1993, Case C-17/92, ECLI:EU:C:1993:172.

²⁶ Judgment *Fachverband der Buch- und Medienwirtschaft v. LIBRO Handelsgesellschaft mbH*, 30 April 2009, Case C-531/07, ECLI:EU:C:2009:276.

production and marketing of more demanding but economically less attractive works. The Court acknowledged that the protection of books as cultural objects can be considered as an overriding requirement in the public interest, but concluded that the objective of protecting books as cultural objects could be achieved by less restrictive measures for the importer. The Court noted, furthermore, that the protection of books as cultural objects and the protection of cultural diversity in general could not be considered to come within the scope of Article 30 of the EC Treaty, regarding the protection of national treasures possessing artistic, historic or archaeological value. It also stressed that Article 151 of the EC Treaty, which provides a framework for the activity of the European Community in the field of culture could not be invoked as a “provision inserting into Community law a justification for any national measure in the field liable to hinder intra-Community trade.” In *Gouda*,²⁷ *Veronica*,²⁸ *United Pan-Europe*²⁹ and *European Commission v Belgium*,³⁰ the Court acknowledged that the safeguarding of pluralism in a Member State might constitute an overriding requirement relating to the general interest, which justifies a restriction on the freedom to provide services. It added, however, that compliance with EU law required that said restrictions had to be necessary and suitable for securing the attainment of the objective which they pursued. These requirements are only met if implementation of national legislation is subject to a transparent procedure based on criteria that are objective, non-discriminatory and known in advance. In the case which opposed the European Commission and Belgium, on the transposition of Article 31 of Directive 2002/22/EC, of 7 March 2002, on universal service and users’ rights relating to electronic communications networks and services, the Court held that Belgian legislation did not meet those requirements of necessity and suitability. Although Belgian legislation pursued an objective of general interest – to ensure plurality and cultural diversity – it did not clearly define the actual criteria relied upon by the national authorities to select the television broadcasters benefiting from the “must-carry” obligation, which compromised the transparency of the entire selection procedure. In *Gouda*, the Court concluded that there was no necessary connection between the cultural policy implemented by the Dutch government for the audio-visual sector and the conditions imposed by Dutch law relating to the structure of foreign broadcasting bodies, and that therefore said conditions could not be regarded as “*being objectively necessary in order to safeguard the general interest in maintaining a national radio and television system which secures pluralism.*” On the other hand, in *Veronica*, which also concerned the Dutch audio-visual broadcasting system, the Court accepted that the disputed provisions of Dutch law – which were part of “*a cultural policy intended to safeguard, in the audio-visual sector, the freedom of expression of the various (in particular social, cultural, religious and philosophical) components existing in the Netherlands*” – were necessary and suited to secure its intended aims, which were to prevent that the financial resources available to the national broadcasting organisations to enable them to ensure pluralism in the audio-visual

²⁷ Judgment *Stichting Collectieve Antennevoorziening Gouda and others v. Commissariaat voor de Media*, 25 July 1991, Case C-288/89, ECLI:EU:C:1991:323.

²⁸ Judgment *Vereniging Veronica Omroep Organisatie v. Commissariaat voor de Media*, 3 February 1993, Case C-148/91, ECLI:EU:C:1993:45.

²⁹ Judgment *United Pan-Europe Communications Belgium SA, Coditel Brabant SPRL, Société Intercommunale pour la Diffusion de la Télévision (Brutélé), Wolu TV ASBL v. Belgian State*, 13 December 2007, Case C-250/06, ECLI:EU:C:2007:783.

³⁰ Judgment *European Commission v. Kingdom of Belgium*, 3 March 2011, Case C-134/10, ECLI:EU:C:2011:117.

sector were diverted from that purpose and used for purely commercial ends, and to ensure that those organisations could not use the freedoms guaranteed by the Treaty to improperly evade the obligations deriving from the national legislation concerning the pluralistic and non-commercial content of programmes. In *United Pan-Europe*, the Court concluded that EU law did not preclude national legislation such as the Belgian legislation which required cable operators providing services in the bilingual region of Brussels-Capital to broadcast television programmes transmitted by private broadcasters falling under the public powers and designated by them. The Court held that the legislation under dispute pursued an aim in the general interest, since it formed part of a cultural policy the aim of which was to safeguard, in the audiovisual sector, the freedom of expression of the different social, cultural, religious, philosophical or linguistic components which exist in the bilingual region of Brussels-Capital. The Court found that the Belgian legislation constituted an appropriate means of achieving the cultural objective pursued, since it permitted Dutch-speaking television viewers to have access to television programmes having a cultural and linguistic connection with the Flemish Community and French-speaking television viewers to have similar access to television programmes having a cultural and linguistic connection with the French Community, thereby guaranteeing to television viewers in the region of Brussels-Capital that they would “not be deprived of access, in their own language, to local and national news as well as to programmes which are representative of their culture.” In the cases *Torfaen*,³¹ *Schindler*,³² *Läävä*,³³ *Zenatti*,³⁴ *Gambelli*³⁵ and *Placanica*,³⁶ the Court acknowledged the relevance of “national or regional socio-cultural characteristics” and of “moral, religious or cultural aspects” in the regulation, by Member States, of the opening hours of retail premises and of gambling activities. It concluded, in *Torfaen*, that EU law does not preclude national rules prohibiting retailers from opening their premises on Sunday, and, in *Schindler et al.*, that national authorities may impose restrictions on gambling and associated activities, bearing in mind the “moral, religious or cultural aspects of lotteries, like other types of gambling, in all the Member States”, provided that those restrictions are justified by overriding public interest, are limited to the necessary to attain their aim and are not applied in a discriminatory manner.

8. Regarding *religious diversity*, it is worth mentioning that, according to the explanations to the Charter, of 2000, Article 22 was inspired by Declaration no. 11 to the Final Act of the Amsterdam Treaty on the status of churches and non-confessional organisations. The text of the Declaration was in the meantime incorporated, by the Treaty of Lisbon, in Article 17 of the TFEU, under which terms the Union respects and does not prejudice the status under national law of churches and religious associations or communities in the Member States, as well as the status

³¹ Judgment *Torfaen Borough Council v. B & Q plc (formerly B & Q (Retail) Limited)*, 23 November 1989, Case C-145/88, ECLI:EU:C:1989:593.

³² Judgment *Her Majesty's Customs and Excise v. Gerhardt Schindler and Jörg Schindler*, 24 March 1994, Case C-275/92, ECLI:EU:C:1994:119.

³³ Judgment *Markku Juhani Läävä, Cotsawold Microsystems Ltd and Oy Transatlantic Software Ltd v. Kihlakunnansyöttäjä (Jyväskylän) and Suomen valtio (Finnish State)*, 21 September 1999, Case C-124/97, ECLI:EU:C:1999:435.

³⁴ Judgment *Questore di Verona v. Diego Zenatti*, 21 October 1999, Case C-67/98, ECLI:EU:C:1999:514.

³⁵ Judgment *Piorgiorgio Gambelli and Others*, 6 November 2003, Case C-243/01, ECLI:EU:C:2003:597.

³⁶ Judgment *Massimiliano Placanica, Christian Palazzese and Angelo Sorricchio*, 6 March 2007, joined cases C-338/04, C-359/04 and C-360/04, ECLI:EU:C:2007:133.

of philosophical and non-confessional organisations, while maintaining an open, transparent and regular dialogue with all, based on the recognition of their identity and their specific contribution. More than the text of Declaration no. 11, which very clearly only protected diversity among Member States, Article 17 TFEU reflects the ambiguity between *exclusive* and *inclusive* diversity already mentioned, by stating, on the one hand, that the Union respects and does not prejudice the status of churches and non-confessional organisations *under national law*, but adding, on the other hand, that it maintains a *direct dialogue* with churches and organisations existing in the territory of the Member States. Nevertheless, it seems beyond dispute that the inclusion of the reference to religious diversity in Article 22 was designed above all to safeguard Member States' autonomy in defining the place to be occupied by religion in their respective societies. The individual dimension of religious freedom is already protected by other provisions of the Charter: Article 10 (freedom of thought, conscience and religion), Article 14(3) (the right of parents to ensure the education and teaching of their children in conformity with their religious and philosophical convictions), and Article 21 (non-discrimination on grounds of religion or belief). It was on behalf of religious diversity, in both its national and individual dimensions, that the drafters of the Charter opted not to include a reference to God in the Charter's Preamble. It was not even possible to reach an agreement on the less charged formula of the "religious inheritance of Europe", which is now part of the Preamble to the EU Treaty, following protracted debates about the possibility of an *invocatio Dei* in the Preamble of the Treaty establishing a Constitution for Europe. In the text of the Treaties, besides the already mentioned Article 17, references to religion are limited to its inclusion among the grounds for discrimination which the Union is bound to combat [Articles 10 and 19(1) TFEU] and to the statement of respect for the customs of the Member States relating to religious rites when considering the treatment of animals in the context of the Union's policies on agriculture, fisheries, transport, etc. (Article 13 TFEU). The case-law of the CJEU on the topic of religious diversity was until recently likewise remarkably scarce. The first time the Court was asked to rule on an issue involving a member of a religious minority was in the *van Duyn* case.³⁷ Here, a Dutch national had been refused leave to enter the UK to take up employment as a secretary with the Church of Scientology on the grounds that the Secretary of State considered it undesirable to give anyone leave to enter the UK on the business of or in the employment of that organisation, given that its activities were considered to be socially harmful. The Court did not address the issue from the perspective of whether Ms. van Duyn had been discriminated against because of her religion. It did not seem to consider the Church of Scientology to be an actual Church as it referred to it between quotation marks. Instead, the Court focused on whether the UK could invoke public policy reasons to prevent a national of another Member State from taking gainful employment within its territory due to his or her association with an organisation such as the Church of Scientology. The Court concluded in the affirmative, holding that it was necessary to allow the competent national authorities an area of discretion to decide when to use the concept of public policy and that a Member State, in imposing restrictions justified on grounds of public policy, was entitled to take into account, as a matter of personal conduct of the individual concerned, the fact that the individual was associated with some body or organisation the activities of which the Member State considered socially harmful.

³⁷ Judgment *Yvonne van Duyn v. Home Office*, 4 December 1974, Case 41-74, ECLI:EU:C:1974:133.

In *Prais*,³⁸ the Court was called to rule on a decision by the Council which had rejected a request made on religious grounds for the fixing of an alternative date for the written test of a recruitment competition. Vivian Prais had informed the Council that, being Jewish, she would not be able to undergo the test on the date fixed by the Council, since it coincided with the first date of the Jewish feast of *Shavuot* (Pentecost), during which it is not permitted to travel or to write. Before the Court, the Council argued that such an attention to the religious identity of the candidates would force it to set up an elaborate administrative machinery, since it would be necessary to ascertain the details of all religions practiced in any Member State in order to avoid scheduling a test on a date or at a time which might offend against the tenet of any such religion. The Court acknowledged that, “*if a candidate informs the appointing authority that religious reasons make certain dates impossible for him[,] the appointing authority should take this into account in fixing the date for written tests, and endeavour to avoid such dates.*” However, since in this case the candidate had only informed the Council of her religious reasons after the date of the test had been announced, the Court held that the Council was entitled to refuse to set a different date when the other candidates had already been convoked, in order to ensure respect for the principle of equality. In the case which opposed the United Kingdom and Northern Ireland to the Council,³⁹ with regard to Council Directive 93/104/EC, of 23 November 1993, concerning certain aspects of the organisation of working time, the Court showed again a degree of sensibility to religious diversity in Europe, by annulling the second sentence of Article 5 of said Directive, per which the minimum weekly rest period should in principle include Sunday. The Court noted that, “*whilst the question of whether to include Sunday in the weekly rest period is ultimately left to the assessment of Member States, having regard, in particular, to the diversity of cultural, ethnic and religious factors in those States[,] the fact remains that the Council has failed to explain why Sunday, as a weekly rest day, is more closely connected with the health and safety of workers than any other day of the week.*” As mentioned earlier, similar acknowledgments of the relevance of religious factors may be found in passing in *Torfaen*, also with regard to the opening of retail premises on Sundays, and in *Schindler et al.*, which ruled on the regulation of gambling activities. Since 2017, the CJEU has rendered several judgments on religious discrimination in the workplace, by reference to Directive 2000/78/EC, of 27 November 2000, which established a general framework for equal treatment in employment and occupation to combat discrimination based on, inter alia, religion or belief. In *G4S Secure Solutions*,⁴⁰ *Bouagnaoui*,⁴¹ *WABE and MH Müller Handels*,⁴² and *L.F.*,⁴³ the CJEU addressed the issue of the use of the Islamic headscarf during working hours. In *G4S Secure Solutions*, the Court accepted as legitimate an employer’s “policy of neutrality”, in the pursuit of which certain restrictions may be imposed

³⁸ Judgment *Vivien Prais v. Council of the European Communities*, 27 October 1976, Case 130-75, ECLI:EU:C:1976:142.

³⁹ Judgment *United Kingdom of Great Britain and Northern Ireland v. Council of the European Union*, 19 November 1996, Case C-84/94.

⁴⁰ Judgment *Samira Achbita, Centrum voor gelijkheid van kansen en voor racismebestrijding v. G4S Secure Solutions NV*, 14 March 2017, Case C-157/15, ECLI:EU:C:2017:203.

⁴¹ Judgment *Asma Bouagnaoui, Association de défense des droits de l’homme (ADDH) v. Micropole SA*, 14 March 2017, Case C-188/15, ECLI:EU:C:2017:204.

⁴² Judgment *IX v. WABE eV and MH Müller Handels GmbH v. MJ*, 15 July 2021, joined cases C-804/18 and C-341/19.

⁴³ Judgment *L.F. v. SCRL*, 13 October 2022, Case C-344/20, ECLI:EU:C:2022:774.

on the employees' freedom of religion, while at the same time holding that a general prohibition on the visible wearing of any political, philosophical or religious sign may amount to indirect discrimination on grounds of religion. In *WABE and MH Müller Handels*, the Court went further, holding that such a prohibition is liable to constitute direct discrimination if limited to the wearing of conspicuous, large-sized signs of political, philosophical or religious beliefs. In *Bouagnaoui*, the CJEU rejected that the willingness of an employer to take account of the wishes of a customer not to be assisted by a worker wearing an Islamic scarf could be considered a genuine and determining occupational requirement for the purposes of Directive 2000/78. Significantly, the CJEU has been increasingly demanding with what employers can claim in the name of neutrality. In *WABE and MH Müller Handels*, the CJEU clarified that the mere desire of an employer to pursue a policy of neutrality is not sufficient, as such, to justify objectively a difference of treatment indirectly based on religion or belief, since such a justification can be regarded as being objective only where there is a genuine need on the part of that employer, which it is for that employer to demonstrate. In *L.F.*, the CJEU added that this interpretation is “*inspired by the concern to encourage, as a matter of principle, tolerance and respect, as well as acceptance of a greater degree of diversity, and to avoid abuse of a policy of neutrality established within an undertaking to the detriment of workers who observe religious precepts requiring the wearing of certain items of clothing.*” Another important religious discrimination case is *Cresco*,⁴⁴ where the Court found that Austrian legislation establishing Good Friday as a public holiday only for employees who are members of certain Christian churches, and entitling only those employees to extra payment for work done on that day, amounted to direct discrimination. The Court addressed the question of the exemption allowed by Article 4(2) of Directive 2000/78/EC for ethos-based employers in *Egenberger*⁴⁵ and *IR*,⁴⁶ having found inter alia that it must be possible to subject to effective judicial review an assertion by a church or other organisation whose ethos is based on religion or belief that religion constitutes a genuine, legitimate and justified occupational requirement, and that such a requirement must be necessary and objectively dictated by the nature of the occupational activity concerned or the circumstances in which it is carried out, and cannot cover considerations which have no connection with that ethos or the right of autonomy of the church or organisation. The tension between ritual slaughter and animal welfare was addressed in *Liga van Moskeeën en Islamitische Organisaties*,⁴⁷ *OABA*⁴⁸ and *Centraal Israëlitisch Consistorie van België and Others*, with the Court finding inter alia that restrictions to the ritual slaughter of animals without prior stunning did not constitute an infringement of the right to freedom of religion.

9. Finally, in what concerns *linguistic diversity*, it is worth stressing that multilingualism has been, from the outset, a defining feature of the European project. The Treaty of Rome was drafted in Dutch, German, French and Italian, all four texts being equally valid. Pursuant to Article 217 of the Treaty of Rome, the Council

⁴⁴ Judgment *Cresco Investigation GmbH v. Markus Achatzi*, 22 January 2019, Case C-193/17, ECLI:EU:C:2019:43.

⁴⁵ Judgment *Vera Egenberger v. Evangelisches Werk für Diakonie und Entwicklung eV*, 17 April 2018, Case C-414/16, ECLI:EU:C:2018:257.

⁴⁶ Judgment *IR v. JQ*, 11 September 2018, Case C-68/17, ECLI:EU:C:2018:696.

⁴⁷ Judgment *Liga van Moskeeën en Islamitische Organisaties Provincie Antwerpen VZW and Others v. Vlaams Gewest*, 29 May 2018, Case C-426/16, ECLI:EU:C:2018:335.

⁴⁸ Judgment *Oeuvre d'assistance aux bêtes d'abattoirs (OABA) v. Ministre de l'Agriculture et de l'Alimentation and Others*, 26 February 2019, Case C-497/17, ECLI:EU:C:2019:137.

adopted, in 1958, Regulation no. 1, determining the languages to be used by the EEC. Regulation no. 1 recognised to Member States and to any person subject to the jurisdiction of a Member State the right to communicate (address and receive written documents) with the Community's institutions in any one of the official languages selected by the sender; it also required that regulations and other documents of general application, as well as the *Official Journal*, be drafted and published in the four official languages. The right to communicate with Union institutions in one of the languages of the Treaties was elevated to the status of a *citizenship right* by the Treaty of Amsterdam and later recognised, by the Charter, also to third-country nationals [Article 41(4) of the Charter]. Successive enlargements, combined with growing calls for the protection of minority languages, led to an increasingly complex linguistic regime in the Union, which resulted, on the one hand, in an increase in the number of protected languages and, on the other hand, in a decrease in the number of languages actually used by European institutions in their daily functioning, which has led to frequent interventions by the CJEU. Per Article 55(2) of the EU Treaty, Member States may determine the translation of the Treaty into any other languages which, in accordance with their constitutional order, enjoy official status in all or part of their territory. The decision is still up to the Member States, which may simply opt for silencing the minority languages present in their territories, but the recognition of this possibility nevertheless represents an advance in the protection of lesser-used languages in Europe. At least that is how this innovation is explained by Declaration no. 16 annexed to the Final Act of the Intergovernmental Conference which adopted the Treaty of Lisbon. Safeguarding and promoting linguistic diversity is, therefore, an objective of the Union and has justified, over the years, an array of resolutions, programmes, action plans and initiatives, among which the creation in 1982 of the European Bureau for Lesser Used Languages (EBLUL), the launch in 1989 of the *LINGUA* Programme, and the celebration of 2001 as the European Year of Languages. However, an abundance of initiatives does not protect the Union from the accusation that it is not implementing a genuine policy on behalf of linguistic diversity in Europe. The EU is criticised, first and foremost, for the fact that its commitment to linguistic diversity is selective and half-hearted, since the languages benefiting from protection are solely the national or official languages of Member States, with the exclusion of traditional regional languages as well as of the languages spoken by third-country nationals. The case-law of the CJEU pertaining to linguistic diversity addresses two main types of questions. First, the respect for the equal status of the languages of the Treaties, in the interpretation of provisions of EU law (*EMU Tabac*)⁴⁹ and in the functioning of European institutions (*Lassalle*,⁵⁰ *Rudolph*,⁵¹ *Rasmussen*,⁵² *Kik*,⁵³ *Polska Telefonía*,⁵⁴ *Kingdom of Spain v. Council of the European Union*, *Italian*

⁴⁹ Judgment *The Queen v. Commissioners of Customs and Excise, ex parte EMU Tabac SARL, The Man in Black Ltd, John Cunningham*, 2 April 1998, Case C-296/95, ECLI:EU:C:1998:152.

⁵⁰ Judgment *Claude Lassalle v. European Parliament*, 4 March 1964, Case 15/63, ECLI:EU:C:1964:9.

⁵¹ Judgment *Charlotte Rudolph v. Commission of the European Communities*, 23 March 2000, Case T-197/98, ECLI:EU:T:2000:86.

⁵² Judgment *Lars Bo Rasmussen v. Commission of the European Communities*, 5 October 2005, Case T-203/03, ECLI:EU:T:2005:346.

⁵³ Judgment *Christina Kik v. Office for Harmonisation in the Internal Market (Trade Marks and Designs) (OHIM)*, 9 September 2003, Case C-361/01 P, ECLI:EU:C:2003:434.

⁵⁴ Judgment *Polska Telefonía Cyfrowa sp. z o.o. v. Prezes Urzędu Komunikacji Elektronicznej*, 12 May 2011, Case C-410/09, ECLI:EU:C:2011:294.

Republic v. Commission of the European Communities,⁵⁵ *EESC*,⁵⁶ *Angioi*). Second, the compatibility with EU law of domestic legislation directed at protecting national or official languages (*Mutsch, Groener, Bickel and Franz, Angonese*,⁵⁷ *UTECA, Runevič-Vardyn and Wardyn, Las, Cilevičs and Others*). In *EMU Tabac*, the Court rejected the claim that the Greek and Danish versions of the text of a Directive could not be decisive in the interpretation of the Directive's provisions because those two Member States represented only a small percentage of the total population of the EEC. The Court took the opportunity to stress that "all language versions must, in principle, be recognised as having the same weight and this cannot vary according to the size of the population of the Member States using the language in question." In *Lassalle*, the Court held that it was inadmissible to require a "perfect level of Italian" as a condition of eligibility for an administrative post at the European Parliament, since this condition was not justified on the grounds of the proper functioning of the department responsible for the post in question and gave automatic priority to nationals of a specific Member State irrespective of any consideration of the merits of the officials eligible for promotion. In *Rudolph and Rasmussen*, the Court clarified that the provisions in Regulation no. 1 regarding communications between EU institutions and persons subject to the jurisdiction of a Member State were not applicable to the relations between the EU institutions and its officials or servants, even though the administration was bound to ensure that they could easily and effectively be aware of the administrative acts which concerned them. In *Kik*, the Court held that the Treaty provisions on the use of languages in the EU could not be invoked in support of a possible principle of equality of languages, nor could they be regarded as evidencing a "general principle of Community law that confers a right on every citizen to have a version of anything that might affect his interests drawn up in his language in all circumstances." According to the Court, the right of citizens to communicate with EU institutions in one of the languages of the Treaties is not generally applicable to all bodies in the Union, the same way that an individual decision need not necessarily be drawn up in all the official languages, even though it may affect the rights of a citizen of the Union other than the person to whom it is addressed. At stake was the Regulation on the Community trade mark, per which the application for a Community trade mark shall be filed in one of the official languages of the EC and the applicant must indicate a second language, among the languages of the Office for Harmonisation in the Internal Market (English, German, French, Italian and Spanish), the use of which he accepts as a possible language of proceedings for opposition, revocation or invalidity proceedings. According to the Court, the requirement of the indication of a second language is justified by the operating needs of the Office for Harmonisation in the Internal Market and does not amount to a violation of the principle of non-discrimination. In *Polska Telefonia*, the Court was asked to rule on whether, under the 2003 Act of Accession, the Polish National Regulatory Authority was prevented from referring to the Commission's guidelines on market analysis and assessment of significant market power ("2002 guidelines"), in a decision which imposed certain

⁵⁵ Judgment *Italian Republic v. Commission of the European Communities*, 20 November 2008, Case T-185/05, ECLI:EU:T:2008:519.

⁵⁶ Judgment *Italian Republic v. European Economic and Social Committee (EESC)*, 31 March 2011, Case T-117/08, ECLI:EU:T:2011:131.

⁵⁷ Judgment *Roman Angonese v. Cassa di Risparmio di Bolzano*, 6 June 2000, Case C-281/98, ECLI:EU:C:2000:296.

regulatory obligations on an operator of electronic communications services, in view of the fact that said guidelines had not been published in the *Official Journal* in Polish. The Court answered in the negative, pointing out that the 2002 guidelines did not lay down any obligation capable of being imposed, directly or indirectly, on individuals and that Article 58 of the 2003 Act of Accession did not require the Council, the Commission or the European Central Bank to translate into the nine new languages listed in that provision all the acts of the institutions and the European Central Bank adopted prior to the accession of the new Member States. In the case which opposed the Kingdom of Spain and the Council of the European Union – about the translation arrangements established by Council Regulation no. 1260/2012, of 17 December 2012, for the European patent with unitary effect –, the Court concluded that the Council’s decision to differentiate between the official languages of the European Union, and to choose only English, French and German, was appropriate and proportionate to the legitimate objective pursued, which was to facilitate access to patent protection, particularly for small and medium-size enterprises, by reducing the costs associated with translation requirements. In the cases that opposed Italy to the European Commission and to the European Economic and Social Committee (EESC), the Court resumed the line of reasoning adopted in *Kik*, by pointing out that, under Article 6 of Regulation no. 1, European institutions are free to stipulate in their rules of procedure which of the languages are to be used in specific cases – in their relations with their officials and servants, as well as in relations with the candidates for those posts –, which means that they can decide to publish vacancy notices in only a few of the official languages. The Court stressed that “*there is no provision or principle of Community law requiring that such publications should routinely be made in all the official languages*”, even though the posts are likely to be of potential interest to candidates from any Member State. The Court added, however, that, although the Appointing Authority is entitled to adopt measures to regulate aspects of the procedure for recruiting its senior management staff, those measures must not result in discrimination on grounds of language between the candidates for a specific post. Therefore, if the Appointing Authority decides to publish the full text of a vacancy notice in the *Official Journal* only in certain languages, it must, in order to avoid discriminating on grounds of language between candidates potentially interested in the notice, adopt appropriate measures to inform all the candidates of the existence of the vacancy notice concerned and the editions in which it has been published in full. In *Angioi*, the Court held that, although the Conditions of Employment of Other Servants of the EU only require a thorough knowledge of one of the languages of the EU and a satisfactory knowledge of another language of the EU, the administration “*may, if necessary, where the needs of the service or those of the post require it, legitimately specify the language(s) of which a thorough or satisfactory knowledge is required.*” Therefore, the Court concluded that the European Personnel Selection Office had not infringed EU law by requiring candidates for recruitment as contract staff to have, as their main language, a thorough knowledge of one of the official languages and a satisfactory knowledge, as a second language, of English, French or German (that second language having to be different from the main language).⁵⁸ In

⁵⁸ This issue is recurrent. In *European Commission v. Italian Republic*, judgment of 26 March 2019, Case C-621/16 P, ECLI:EU:C:2019:251, the Court of Justice was equally not persuaded and ruled against the Commission, noting that the restriction on the choice of second language must be based on objectively verifiable elements, both by the candidates and by the courts of the European Union, such

Mutsch, the Court was asked to rule on whether a Luxemburg national, residing in Belgium in a German-speaking municipality, could rely on the right, granted by Belgian law to Belgian nationals residing in a German-speaking municipality, to require that proceedings before the Criminal Court take place in German. The Court started by noting that, in the context of a Community based on the principles of free movement of persons and freedom of establishment, “*the protection of the linguistic rights and privileges of individuals is of particular importance.*” The Court held that the right to use his own language in proceedings before the courts of the Member State in which he resides falls within the meaning of the term “social advantage” as used in Article 7(2) of Regulation no. 1612/68 and concluded that the principle of free movement of workers requires that “*a worker who is a national of one Member State and habitually resides in another Member State be entitled to require that criminal proceedings against him take place in a language other than the language normally used in proceedings before the court which tries him if workers who are nationals of the host Member State have that right in the same circumstances.*” A similar question was addressed by the Court in *Bickel and Franz*, with the difference that the defendants here were not habitually resident in the Member State where the criminal proceedings took place. An Austrian national and a German national had been arrested by the Italian authorities while travelling in the province of Bolzano and, when brought before the local magistrate, had requested that the proceedings be conducted in German, relying on rules for the protection of the German-speaking community of the province of Bolzano. The Court held that Mr Bickel and Mr Franz’s situation was covered by EU law provisions on the freedom to provide services, since both men were nationals of a Member State and were visiting another Member State where they intended or were likely to receive services. The Court noted that the ability of EU citizens to use a given language to communicate with the administrative and judicial authorities of a State on the same footing as its nationals is likely to enhance the exercise of the right to move and reside freely in another Member State. “*Consequently, persons such as Mr Bickel and Mr Franz, in exercising that right in another Member State, are in principle entitled, pursuant to Article 6 of the Treaty, to treatment no less favourable than that accorded to nationals of the host State so far as concerns the use of languages which are spoken there.*” The Court rejected the argument put forward by the Italian government, according to which the aim of the rules in issue was to recognise the ethnic and cultural identity of persons belonging to the protected minority (the German-speaking community of the province of Bolzano) and it would be undermined by an extension of the right of that protected minority to the use of its own language to nationals of other Member States who are present, occasionally and temporarily, in that region. The Court acknowledged that the protection of a minority such as the German-speaking community of the province of Bolzano might constitute a legitimate aim, but added that there was no indication that that aim would be undermined if the rules in issue were extended to cover

as to justify the knowledge of the languages required, which must be proportionate to the real needs of the service. On the same day, the Court annulled a call for expressions of interest for contract staff issued by the European Parliament because the electronic application form for the call was only available on EPSO’s website in English, French and German, which created an unjustified restriction on the choice of language of communication. The Court was also not persuaded that the reasons given to justify the restriction on the choice of language 2 of the selection procedure in any way addressed the justification for that restriction in relation to the actual language needs relating to the duties that the recruited drivers would be required to perform. *Kingdom of Spain v. European Parliament*, judgment of 26 March 2019, Case C-377/16, ECLI:EU:C:2019:249.

German-speaking nationals of other Member States exercising their right to freedom of movement, in particular since the courts concerned were in a position to conduct proceedings in German without additional complications or costs. In *Groener*, the Court ruled on the compatibility with EU law of the provisions in Irish legislation which made appointment to a permanent full-time post as a lecturer in public vocational education institutions conditional upon proof of an adequate knowledge of the Irish language. Such provisions had determined the refusal, on the part of the Irish Minister for Education, to appoint a Dutch national to a permanent full-time post as an art teacher after she had failed an Irish language examination, in spite of her proficiency in English and of the fact that it was in English that the duties attached to the post were to be carried out. As noted earlier, the Court accepted that, given the “*special linguistic situation in Ireland*”, the linguistic requirement was justified “*by reason of the nature of the post to be filled*”, since the obligation imposed on lecturers in public vocational education schools to have a certain knowledge of the Irish language was one of the measures adopted by the Irish government in furtherance of its policy to “*promote the use of Irish as a means of expressing national identity and culture.*” The Court drew attention to the fact that the EEC Treaty did not prohibit the adoption of a policy for the protection and promotion of a language of a Member State which is both the national language and the first official language. It noted, however, that the implementation of such a policy must not encroach upon a fundamental freedom such as that of the free movement of workers, and that therefore the requirements deriving from measures intended to implement such a policy must not in any circumstances be disproportionate in relation to the aim pursued and the manner in which they are applied must not bring about discrimination against nationals of other Member States. Exemplifying, the Court noted that the principle of non-discrimination precludes the imposition of any requirement that the linguistic knowledge in question must have been acquired within the national territory. In *Angonese*, the Court returned precisely to this point and ruled as incompatible with the principle of non-discrimination on grounds of nationality a requirement imposed by a private banking undertaking in the province of Bolzano for admission to a recruitment competition. One of the conditions for entry to the competition was possession of a type-B certificate of bilingualism, which is issued by the public authorities of the province of Bolzano after an examination which is held only in that province. The Court noted that persons not resident in the province of Bolzano had little chance of acquiring the required certificate, which, combined with the fact that the majority of residents of the province are Italian nationals, resulted in a disadvantage to nationals of other Member States. The Court concluded that, even though requiring an applicant for a post to have a certain level of linguistic knowledge may be legitimate, the fact that it is impossible to submit proof of the required linguistic knowledge by any means other than the certificate, in particular by equivalent qualifications obtained in other Member States, must be considered disproportionate in relation to the aim in view. In *UTECA*, the Court ruled as compatible with EU law the provisions in Spanish legislation which required television operators to allocate, first, 5% of their operating revenue for the previous year to the funding of full-length and short cinematographic films and European films made for television and, secondly, 60% of that funding to the production of films of which the original language is one of the official languages of the Kingdom of Spain. The Court held that, although constituting a restriction on several

fundamental freedoms, the measure served overriding reasons relating to the general interest – the defence of Spanish multilingualism – and appeared appropriate to ensure that such an objective was achieved as it did not go beyond what was necessary to achieve it. In contrast to its stance in *Fedicine*, the CJEU dismissed as irrelevant the absence of legal criteria to classify the works concerned as “cultural productions” and noted that, since language and culture are intrinsically linked, “*the view cannot be taken that the objective pursued by a Member State of defending and promoting one or several of its official languages must of necessity be accompanied by other cultural criteria in order for it to justify a restriction on one of the fundamental freedoms guaranteed by the Treaty.*” On the possibility of such a measure resulting in discrimination on grounds of nationality, since the beneficiaries of the financing concerned were mostly cinema production undertakings established in Spain, the Court held that it appeared inherent to the linguistic objective pursued the possibility to benefit cinema production undertakings working in the language covered by the linguistic criterion and which may in practice mostly comprise undertakings established in the Member State of which that language constitutes an official language. In *Runevič-Vardyn and Wardyn*, the Court held that the provisions in Lithuanian legislation, under which forenames and surnames must be written on certificates of civil status using only the characters of the Lithuanian language, pursued the legitimate objective of protecting the official national language and as such was capable of justifying restrictions on the rights of freedom of movement and residence granted to EU citizens. The Court admitted, however, that the refusal on the part of Lithuanian authorities to amend the joint surname of the couple in the main proceedings could cause serious inconvenience to them at administrative, professional and private levels. It concluded that it was for the national court to determine whether such inconveniences existed and, if so, to decide whether the refusal of the Lithuanian authorities was necessary and appropriate to achieve the objectives pursued, weighing, on the one hand, the right of the applicants to respect for their private and family life and, on the other hand, the legitimate protection by the Member State concerned of its official national language and its traditions. In *Las*, the Court was asked to rule on the compatibility with EU law of legislation such as that of the Dutch-speaking region of the Kingdom of Belgium, which required all employers established in the region to draft cross-border employment contracts exclusively in Dutch, failing which the contracts were to be declared null and void by the national courts of their own motion. Similarly as in *Runevič-Vardyn and Wardyn*, the Court pointed out that the provisions of EU law do not preclude the adoption of a policy for the protection and promotion of one or more official languages of a Member State. Here, however, the Court had no doubts that the legislation went beyond what was strictly necessary to attain its purported objectives and could not be regarded as proportionate. It noted that the parties to a cross-border employment contract do not necessarily have knowledge of the official language of the Member State concerned, in which case the establishment of free and informed consent requires the parties to be able to draft their contract in a language other than the official language of that Member State. On this point, the Court added that the objectives pursued by the legislation of the Dutch-speaking region of the Kingdom of Belgium could be attained by legislative measures less prejudicial to the freedom of movement of workers, as would be the case with legislation requiring the use of the official language of the Member State for cross-border employment contracts, while allowing the drafting of an authentic version of such contracts in a

language known to all the parties concerned. In *Cilevičs and Others*, the Court concluded that Article 49 TFEU, which guarantees freedom of establishment, must be interpreted as not precluding legislation of a Member State which, in principle, obliges higher education institutions to provide teaching solely in the official language of that Member State, in so far as such legislation is justified on grounds related to the protection of its national identity, that is to say, that it is necessary and proportionate to the protection of the legitimate aim pursued. The Court recalled that Member States enjoy broad discretion in their choice of the measures capable of achieving the objectives of their policy of protecting the official language, since such a policy constitutes a manifestation of national identity for the purposes of Article 4(2) TEU, even though that discretion cannot justify a serious undermining of the rights which individuals derive from the provisions of the Treaties enshrining their fundamental freedoms. What is key is that the legislation requiring the use of the official language of the Member State allows for exceptions that ensure that a language other than the official language may be used in the context of university education. Otherwise, the legislation would exceed what is necessary and proportionate for attaining the objective pursued, namely the defence and promotion of the official language.

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