

‘We don’t talk Gypsy here’: Minority language policies in Europe

William S. New¹, Hristo Kyuchukov², Jill de Villiers³

¹ Beloit College, USA, ² Uniwersytet Slaski w Katowicach, Poland

³ Smith College, Northampton, USA
newb@beloit.edu

Abstract

The Roma constitute an ideal case of educational injustice meeting linguistic difference, racism, social marginalization, and poverty. This paper asks whether human-rights or capabilities approaches are best suited to address issues related to the language education of Roma students in Europe. These children are disadvantaged by not growing up with the standard dialect of whatever language is preferred by the mainstream population, and by the low status of the Romani language, and non-standard dialect of the standard language they usually speak. We examine language education for Roma students in Croatia, the Czech Republic, and Bulgaria, describing similarities and differences across contexts. We explain weak and strong version of language rights arguments, and the ways these principles are expressed, and not expressed in education policies. Sen’s capabilities approach can be employed to generate contextualized visions of education reform that speak directly to disadvantages suffered by Roma children.

Key words: education policy, human rights in education, Romani language, dialect, educatrional injustice, disadvantages in education, Croatia, the Czech Republic, Bulgaria

The language of school has almost everywhere and always been an obstacle to the state education of indigenous, migrant, and minority children. These children are disadvantaged by not growing up with the standard dialect of whatever language is preferred by the mainstream population, including teachers and students, and by the low status of whatever ‘foreign’ language, or dialect of the standard language, serves as these children’s mother tongue. We know from examples around the world that this is not simply a matter of competence – even though eager linguistic nationalists tend to insist that it is – but rather that even the smallest deviations in usage and pronunciations, deviations that have nothing to do with competence, are sufficient to stigmatize already stigmatized minority speakers. Additionally, the languages of ethnic minorities are very often also the languages of poverty, which exacerbates the disadvantage that their speakers

experience in mainstream institutions like schools just on the basis of language, not considering the many other disadvantages contributed by poverty.

One such group in Europe, the Roma, constitutes an ideal case of educational injustice meeting linguistic difference, racism, social marginalization, and poverty. For the Roma, as for other disadvantaged groups, there is no shortage of well-intentioned and well-funded policy recommendations for educational reform related to school language, but unfortunately the situation for these children over the past two decades seems mostly to have gone from bad to worse. Many of these policy recommendations start from a position of defending the linguistic and other human rights of Roma children, which are not now and have never been respected by the majority populations and institutions of European nations.

Apart from the seemingly intractable problem of implementation, though, we wonder whether this rights-based approach is itself part of the problem. That is not to say that even the formal recognition of the human and civil rights of Roma children that has been achieved in only the past few years, and is still contested in many places, is not a *sine qua non* for Roma progress, but rather to suggest that normative rights-language often does not translate into successful educational policy. We would like to raise the possibility of using a capabilities approach instead, which we feel might serve best the interests of Roma (and other minority) students with respect to school language. Integrating these two theoretical approaches might lead to the most workable remedies for the injustices suffered by linguistic minority children in European schools. Though we do not envision any quick or satisfying justice any time soon regardless of the remedy. That would be an unrealistic hope given the many centuries of obdurate prejudice against the Roma.

We will begin with an example of linguistic exclusion of Roma children in Croatia – the subject of a European Court of Human Rights decision – and explore the ways in which the educational dilemma facing Roma children and schools could be interpreted from rights-based perspectives and from a capabilities perspective. This discussion will lead to a broader exploration of the foundational precepts of the rights-based and capabilities approaches, where they converge and where they diverge, specifically with respect to language. We will ground our inquiry by describing the Romani language, its historical and social contexts, and the specific development of Romani competence in two contrasting European locations: Bulgaria, where most Roma children are fluent speakers of Romani, and the Czech Republic where Roma children often speak their own dialect of Czech, but most don't speak much Romani. These empirical descriptions will provide a context for discussion of models of linguistic inclusion and exclusion in schools, and the ways in which these models interact with the capabilities and rights-based approaches to education reform.

Oršuš and others v. Croatia (2010): a case of linguistic exclusion?

In 2010, the European Court of Human Rights (ECtHR) ruled in favor of Romani students, who claimed that placement in special classes because of purported deficiencies in their Croatian language competency was a violation of their human rights. This case originated in the late 1990s – in the aftermath of the wars with Serbia and Bosnia during which Roma were targets of ethnic violence by Croatian nationalists – in two rural villages in Međimurje county in the northeast corner of Croatia, adjacent to Slovenia and Hungary, only 30 km from Austria. While the data concerning these fourteen students was typically bleak — none of them finished primary school and many were absent from school as much as they were present — the ECtHR decided only by the narrowest of margins, 9-8, that unequal treatment had occurred (ECtHR, 2010). While advocates of the Roma cause claimed that the decision made discrimination on the basis of language difference illegal (Memedov, 2010, for example), that seems a wishful representation of what the majority actually said. In fact, separation of students into separate classes on the basis of language difference or deficiency was not found to be illegitimate in itself, but rather the Court found that the two village schools in Croatia had not taken adequate measures to see that the Roma children were given the opportunity to actually learn Croatian – and consequently the rest of the mainstream curriculum – in their segregated classes. Had the schools done better at teaching the Roma children how to speak good Croatian, their separation would have been justified, seemingly regardless of the outcome.

But eight of the seventeen judges believed that these Roma children were sufficiently deficient in Croatian to merit separate placements, and that the schools had through their curriculum and other programs offered met the test of reasonable accommodation. Albeit, what counted as reasonable was minimal, since the Roma children did not in fact become literate in Croatian. The judges instead laid blame on the Roma parents for not supporting the educational needs of their children. Even after the decision favoring these students, the majority concluded it will 'not be easy for the respondent State or any other State party to the Convention faced with schooling problems in relation to minority groups to follow the present judgment' (ECtHR, 2010, §15). Or, to put it more plainly and pragmatically, where a commitment to full social integration of the Roma is not popular, it ought to be possible to devise and implement school policies that separate students on the basis on language (while simultaneously suppressing mention of other grounds on which the separation is occurring), and still meet the fairly low standard of reasonable justification. In fact, this is exactly what one sees wherever Roma children go to school. It's important, also, to attend to the social and historical contexts of ECtHR decision, where Roma students are accorded at least formal equality in the school setting. For example, two years after the ECtHR

rights verdict in Oršuš, more than 40 non-Roma Croatian parents barred entry to the Roma students who had been assigned to the school where their children attended (European Roma Rights Center, 2012).

This incident resonates with a series of violent attacks against Roma carried out over the past decades in Croatia and in other Central European countries. In the past ten years, the ECtHR has decided on several cases related to violence against Roma – *Đorđević v Croatia* (2011), *Borbála Kiss v Hungary* (2012), *Koky v Slovakia* (2012) to name just three. These cases involve violence against Roma by everyday people, by business owners, members of right-wing organizations, and the police themselves. Croatian para-military forces also targeted Roma during the conflicts with Serbia in the 1990s. Croatian nationalists are committed generally to a form of ethnic purity – which includes linguistic purity – that required the symbolic and practical exclusion of both Serbian and Balkan (Roma) elements (Korb, 2010). Nationalist tendencies, with linguistic undertones, have tended in Croatia and neighboring countries to preclude assimilation or inclusion of Roma, no matter what languages they speak. The liberal theory of formally equal citizens embodied in the European Convention of Human Rights (ECnHR), in contrast, offers a narrow interpretation of language and other civil rights, without much force of implementation, and has not captured the imagination of many public or private actors in the new democracies of Europe.

Another important context is the linguistic/ethnic history and contemporary situation where the alleged discrimination occurred. The Međimurje region of Croatia is the most culturally and linguistically heterogeneous in the country, historically part of the Austro-Hungarian empire. The Slavic language spoken by the people native to this region, including the Roma – called Kajkavian in Croatia and Prekmurian across the river in Slovenia – includes many loan words from German and Hungarian. Until 1920, the language of schools in Croatia was Hungarian, though close nearby, German was more common. The official languages of Croatia until the breakup of Yugoslavia in the early 1990s was Serbo-Croatian, a standardized version of one of the many mutually intelligible dialects, but since the independence of Croatia, a spirit of linguistic nationalism has prevailed and efforts have been made to purify *Hrvastki* of its foreign elements, i.e. Serbian and Bosnian.

Roma have lived in this region for several centuries, and speak a variety of Romani dialects, as well as Croatian and Hungarian. The largest group of Roma in the region are the Boyash (*mine workers*), descendants of Roma who were kept in slavery in Romania between the 15th and 19th centuries, where they were forbidden to speak Romani language, and now speak a variant of Romanian (Šlezak, 2009). They came to this region in the late 19th century after the abolition of slavery in Romania. These non-Romani speaking Boyash are Catholics, like most

other Croatsians. They came to this region in the late 19th century after the abolition of slavery in Romania. These non-Romani speaking Boyash are Catholics, like most other Croatsians. The Čergarja (*nomads*, in English) migrated from Bosnia to Croatia some fifty years ago, when both were part of Yugoslavia. They are Muslim, though their religious practice is not strict. There are also smaller groups of Roma in Croatia: the Lovara (*horse traders*) have resided in the region for several hundred years, and the Roma from Kosovo, displaced by the war there in the late 1990s. The Lovara are Christians and speak Romani, while most Kosovo Roma speak Albanian. Christian Roma are generally more accepted by the mainstream society than Muslim Roma, who bear the added the burden of centuries of anti-Muslim sentiment in Croatia (CAHROM, 2014).

Notwithstanding the significant differences between these groups, there are many more cultural and linguistic similarities, which together constitute the *Romanipen*, their shared Roma identity. Part of this cultural heritage comes from India, and part comes from the long shared Diasporic experience in Europe, which includes a history of social exclusion, and an existential need to cultivate belonging across subgroup divisions, such as between, for example, the Lovara and Balkan Roma. Importantly, Roma groups participate in a predominantly oral culture, regardless of the particular language of use, unlike their non-Roma neighbors who are part of a print culture, even when their levels of literacy are not high. The family is the almost exclusive source of knowledge and belief through and beyond early childhood, and the parents are the main “teachers” of their children. Roma children from birth are immersed in a language environment of songs, fairy tales, teasing and jokes, in which the children are actively involved as partners. As Shirley Brice Heath (1983) documented many years ago in the American South, minority children who grow up in this kind of oral culture develop their cognitive abilities through very different methods than the majority children, whose language environment is much more influenced by print culture.

The present-day version of official Croatian in use in the schools that the Roma attended in Međimurje County is not necessarily the dialect spoken in the homes of the students in the schools, but nearly all these parents – except the Roma – would be familiar with the official language from their own schooling, through work, through reading and writing, and through the media. Roma parents would likely have limited and mostly unsuccessful school careers, hence little knowledge of the official language, or of reading and writing generally. While the Roma language would be the first language of many or most Roma children, all will have grown up speaking and hearing also a Roma-inflected variant of the local Slavic dialect. Thus, when the Court referred to ‘Roma-only’ classes, the reference was not to language, but to ethnicity. The teachers of the Roma-only classes were Croatsians speaking the official Croatian language, while the children were

speaking some Roma amongst themselves and their own non-standard version of Croatian with the teacher. The language status of the Roma children was defined not in terms of what they know, but in terms of what they don't know, i.e. the official school language. Most of the teachers working with Roma children across Europe have little accurate knowledge about their cultural and linguistic background, and tend to underestimate the knowledge, and the value of the knowledge, they have acquired in their familial and community interactions, and have little understanding or disposition to put this knowledge to use in learning the official language of school (Stoilescu & Carapanait, 2011; Kyuchukov, 2015).

The foregoing gives some sense of the complexity of the language and schooling situations for Roma students in northeast Croatia. And this level of complexity is the rule across European settings, rather than an exception. For instance, in Medimurje County, the diverse populace makes distinct communicative use of several languages and vernaculars, and each of these can be associated with a social identity and a social status. The schools have both integrating and differentiating functions, wrapped up in the schools' dynamic, historical relationships with shifting national identities. Before Croatia was Croatia, it was Yugoslavia, and before that it was part of the Hungarian Empire, while always being still and only Croatia. The Roma who live in this area are themselves a diverse lot, culturally and linguistically, and not the homogenous class of victims they are made out to be in official documents and procedures. It is also worth remembering that while the situation for Roma in the Czech Republic and Bulgaria is similarly and equally complex, each of these regions has very different histories, populations, and social problems. The discourse of the Court, and that of much of the NGO human rights community – even when deciding or advocating for the Roma – tends to misrecognize their subjects, smoothing them into a single ethnic class, in which essential linguistic and social differences are often erased.

Minority (Roma) language rights in contemporary Europe

Linguistic rights are human rights: the weak version of the argument

The ECtHR has generally taken the narrowest, most pragmatic approach in language rights cases, beginning with a case in Belgium where French parents living in the Dutch-speaking part of the country claimed unsuccessfully that not providing a French education for their children constituted discrimination (ECtHR, 1967). Article 14 of the European Convention on Human Rights protects against discrimination on the basis of language, and (in Article 2 of the Protocol) against the denial of education, but it has proved difficult to infer from Article 2 the right to a particular kind of education, i.e. bilingual education. The Court in the Belgian case, using a logic that prevails until today, wrote that interpreting the law against discrimination as 'as conferring on everyone within the jurisdiction of a State a right to obtain education in the language of his own choice would lead to absurd

results, for it would be open to anyone to claim any language of instruction in any of the territories of the Contracting Parties' (§ 32). Had the school in question not been teaching Dutch to the French-speaking children, or teaching French to some children and not others, that would have constituted discrimination. The fact that Dutch speakers were advantaged in this part of Belgium over the French speakers does not figure into this logic, nor does the fact this advantage nearly always extends to social and economic advantages later on, or that the speakers of minority languages tend increasingly to be already otherwise disadvantaged.

This was the same rationale that prevailed in the Oršuš case. The Croatian schools were judged not to have been providing adequate instruction in Croatian to Roma children, but there was no suggestion that these children had the right to demand their education be served in another language. We should recall that a large minority of the Court felt that knowing Croatian was at least much the responsibility of the Roma parents, and the children themselves, as it was that of the schools. When we consider that the French-speaking citizens of Belgium are neither, as a group, ethnically or economically disadvantaged, and that French is one of the national languages of Belgium, in comparison to the plight of the Roma, whose low-status languages or dialects are undeveloped as written languages, and whose economic and social conditions are the worst of anyone in Europe, one problem with a reliance on the formal equality of citizens becomes apparent.

European states are all party to several international agreements that assert that using minority languages in private and in public is a human right. A literal reading of Article 5 of the *Framework Convention for the Protection of National Minorities* (Council of Europe, 1995, p. 4) might even lead one to believe, if not hope, that States would 'refrain from policies or practices aimed at assimilation of persons belonging to national minorities against their will.' But if that were the hope, then one would be disappointed, because States have not generally acknowledged that the abstract language rights of minorities granted by the Framework guarantee, for instance, public schooling in other than the official state language, or even the right to use one's own language to defend oneself in court (Paz, 2013).

In practice, nation states nearly always insist upon primary (and usually exclusive) instruction in the official language or languages, and offer first-language instruction to speakers of other, minority, languages only when this minority is affiliated with another nation state of comparable status and political power. The Hungarian minorities in both Slovakia and Romania, for example, have access to state-sponsored education in the Hungarian languages, while the Roma who reside in these countries do not. In Berlin, there are only five, small Turkish-German bilingual primary schools, though approximately 10% of the school population is Turkish speaking. French schools operate on the understanding that French the

'absolute priority' (Helot & Young, 2002) and offer it exclusively to all students, regardless of their proficiency, with only high-status, 'international' languages like English and Spanish offered, or now required, for foreign-language study. As Eric Hobshawn (1995) points out, bilingual education is an idea that has never caught on, particularly not in secondary and higher education where acquiring advanced literacy in the official language is the leading purpose, even though linguistic heterogeneity within nations is the historical rule, and homogenization can only be achieved through coercive assimilation, exclusion, or genocide (Smolicz, 2002).

The logic that permits or requires both (a) endorsement of liberal ideals of equal rights, which include preferred language use as a protected right, and (b) the promotion of the language of the State, and assimilation to the common civic conventions, is a binding part of the fabric of modern nation states (May, 2011). All national or ethnic minorities experience this combination as problematic, since the general theme is to grant rights in theory that are only partly, or not at all, respected in official policy or popular practice. Nowhere is this truer than the 'new democracies' of Central Europe, the successors of the Hapsburg Empire, for whom dismemberment, domination, and disappearance have been historical realities and are not unjustified fears for the future. Their territorial and cultural vulnerability is increased by economic precarity, and continued subordination to the 'Great Powers' and globalized neoliberal markets. Sometimes extreme forms of linguistic nationalism, as observed above in Croatia, are a corollary.

But it is important to note, as well, that the rationale of the European Court of Human Rights that we see in *Oršuš* and other cases is very much grounded in one interpretation of linguistic rights as human rights. States are forbidden by this logic from interfering with the private use of language, and are responsible (in theory) to provide some means for individuals who don't understand the official language(s) of the state to participate in institutional life, e.g., to participate in legal or police proceedings, as a way to protect recognized due process rights. The failure of many states to provide this protection is not sanctioned by the Court, any more than school segregation is. In this version, though, the language identity of students does not translate into a mandate for state institutions to provide education in that language, but only to provide a means by which non-majority language speakers can gain access to instruction and curriculum.

Linguistic rights are human rights: the strong version of the argument

While advocates for reform of Roma (language) education policy and practice celebrated the 'victory' in *Oršuš*, there is consensus that the changes that decision mandates are insufficient to really improve educational outcomes for Roma students, and in most places, the realistic expectation is for more of the same. Additionally, the post-communist nations targeted by ECtHR decisions have

proven unwilling or unable to implement substantive reforms, while more prosperous 'core' EU nations adhere to monolingual policies in reference to Roma and other migrants. De Witte and Mancini (2008) suggest that protecting the linguistic rights of minorities can be considered a primary means to promote a harmonious cultural diversity, and this goal – particularly in multinational contexts like the EU – underpins all the other social and economic goals of the European community. Human rights claims about mother tongue education, and the use of mother tongue in private and public spaces, are explicit in international instruments like the *Convention on the Rights of the Child* (1989): "The education of the child shall be directed to ... the development of respect for the child's parents, his or her own cultural identity, language and values ... [and] a child belonging to ... a minority or who is indigenous shall not be denied the right ... in community with other members of his or her group, to enjoy his or her own culture, to profess and practice his or her own religion, or to use his or her own language" (Articles 29-30).

There is also overwhelming empirical evidence that support of mother-tongue proficiency and bilingualism deliver clear cognitive, cultural, and affective benefits to children, and to their communities (Cummins, 1984; Odesope, 2010; Bialystok, 2011; Kroll & McClain, 2013). For speakers of official school languages, the benefit of an education in one's mother tongue, and the development of the capacity to use this language at home and in the broader community come for free, because the oral language they bring from home is developed and expanded in the school environment, and they are able additionally to achieve literacy in their native languages. These are not benefits enjoyed by minority language speakers.

The possibilities for state response to language diversity lie on a spectrum, from enforced monolingualism, to tolerance of non-dominant language use, to promotion of the use of non-national languages, to the provision of institutional fairness, in some form, to the speakers of minority languages. The minimal form of tolerance is when the state does not interfere with the use of minority languages in private spaces, like homes. However, this level of intolerance was not uncommon in Europe in the past, with reference to Romani and other vernaculars, even though it clearly violates post World War II human rights norms. Modern states also do not typically interfere in the use of minority languages in public places – streets, buses, and parks, et al. – though of course many citizens are prone to vocal objections to hearing low-status languages anywhere. While intolerant attitudes and practices in school toward students' use of languages other than the language of instruction to communicate between themselves have softened from the days when, for example, Mexican-American or Finnish-speaking Swedish children were punished for speaking their home languages at recess, there is still official and informal pressure to use the language of instruction exclusively in

schools. In Slovak schools, for example, Roma students are actively encouraged by teachers not to speak Romani in school, are reprimanded when they do, and their 'insistence' on speaking Romani reinforces, in the minds of many Slovaks, the stigma of being Roma. This marks, then, one typical limit of tolerance of minority languages in school.

On the other hand, one of the remedies to school language failure undertaken across Central Europe is the provision of Roma assistants in classrooms, Romani-speaking aides whose purpose it is to facilitate interactions between student, teachers, school, and community, and development of Romani language curricula. This is an example of the promotion of the use of a minority language in a school setting. But where in the U.S. and Canada, for example, transitional bilingual programs are relatively common in elementary settings – in which languages other than English and French are 'promoted' as languages of instruction – they are relatively rare in Europe, and nearly non-existent with respect to Romani. Modern European schooling has historically been much more engaged in standardizing privileged forms of national languages, at the expense of regional variants, than in promoting bilingual education. Defenders of the instrumental, social, and political value of rapid and mandatory language assimilation point to increased opportunities for professional development, access to economic advancement and political participation, and increased cultural belonging, to name just a few advantages. Those with political sensibilities farther to the right sometimes are intolerant of any use of minority languages, but most do not regard it as the responsibility of the state, or of the majority population, to promote advancement or intergenerational maintenance of proficiency in languages that history has not reckoned to be languages of the nation.

Proponents of expanded language rights argue that educational policies requiring assimilation to the dominant national language(s) without provision for education in the mother tongue are genocidal in principle, and that bilingual/multilingual education is the best, if not only way, to protect the human rights of indigenous, minority, and migrant students (Skutnabb-Kangas, 2000; Darder, 2014). Even policies like transitional bilingual education that provide temporary support provided of the mother tongue as a means to expedite learning the standard language can be considered to violate students' human rights. This implies a strong position on the relationship between cultural identity and the language traditionally associated with the culture: that is to say, for instance, that Kurdish group identity cannot be fully accessed through Turkish, even for those individual Kurds whose primary language might be Turkish.

This perspective thus also includes a strong argument for instruction in 'heritage languages,' on the premise that individual members of a cultural group can regain a portion of their identity – and with this, they might also regain

possibilities for political and personal efficacy – by regaining knowledge of their ‘own’ language and undoing, at least symbolically, a prior historical genocide. When a class of indigenous children, for instance, begins to use even some of the language of their tribe, along with associated cultural teachings, this can serve to empower them to resist the stigmatization that can be associated with being a person stripped of their cultural identity, and ‘rightful’ mother tongue.

This is not simply a matter of protesting the extinction of languages for the sake of the languages themselves, however noble that cause might be. Nor is it an argument for the right of a child (through the parents) to have an education in any language she wants. Rather, the strongest arguments, in the liberal human rights tradition, are grounded in considerations of fairness. Denise Réaume (2000, p. 246) develops a theory of linguistic security, which entails the recognition of a cultural/linguistic group’s right to the state support of its mother tongue, a right that transfers to the right of an individual member of that group, thereby – following the logic of Will Kymlicka (1995) – and thereby furnishes the individual ‘the ability to plan one’s life, to choose one’s commitments and pursuits, that makes life worthwhile for human beings.’ The first condition of linguistic security is that others must recognize the intrinsic and instrumental values of the marginalized community’s language, implying also that neither the language nor its speakers be denigrated, or that its use becomes a social liability. When this kind of denigration occurs, members of stigmatized groups lose self-efficacy and often abandon their mother tongue, thereby limiting their ability to ‘choose their own commitments and pursuits.’ The second condition of linguistic security is that the instrumental use of the language be supported, and not hindered, for both extrinsic reasons and for the maintenance of the life of the community. Insofar as these kinds of linguistic security are provided to majority language communities and their members through schooling and other public policies, the failure to protect the value of Romani as a full-fledged language, and the dignity of those who use this language, is manifestly unfair and discriminatory (Patten, 2009).

Capabilities approach to language rights and language education

As suggested earlier, human rights discourse about language tends to assume a normative situation wherein culturally and linguistically cohesive groups confront nation states, with which they contest the limits of individual rights against claims about common social interests. In other ECtHR decisions regarding school segregation and exclusion of the Roma, the result of this kind of reasoning has been to create a relatively homogenous class of victims, defined as ‘socially disadvantaged,’ and to suppress the differences between the circumstances for very diverse Roma in very dissimilar places. Even in the strong forms of the argument for language rights (where failure to provide linguistic security might be

considered a form of cultural genocide), there is a tendency to assume uniformity within the victim group, e.g. Roma, as well as uniformity in governmental conditions or majority popular sentiments. That is to say, the differences between Roma groups suffering some kind of linguistic discrimination or deprivation, and the specific historical sociopolitical circumstances in which these violations arise, are not adequately accounted for in the proposed educational remedies.

The resulting policy recommendations are then often ill-suited to the demands of concrete situations, exacerbating the tendencies of municipalities and nations to resist compliance. This was evident in *Oršuš*, where starting and ending with the abstract rights with respect to education that the Roma plaintiffs in Medimurje county were supposed to possess did not lead to a constructive diagnosis of their educational or linguistic problems, nor to a significant change in the schooling they received. This doesn't mean that these Roma students' rights have not been violated, or that recognition of these violations is not a remarkable achievement, given the history, but there must be a better way to think about remedies, which could begin with a more context-sensitive, nuanced understanding of how specific kinds of violations affect the life chances of specific groups of children.

The capabilities approach, developed initially by Amartya Sen (1985, 1999, 2011) as an alternative to a human capital approach to development, offers some ways to overcome the shortcomings of a human rights approach to language education. Space does not permit more than a very partial explanation of what Sen, and many others, mean by capabilities, as an alternative or complement, to rights. But we can begin by saying that rather than focusing on what individuals or groups are entitled to from the State, as rights, the capabilities approach concerns itself instead with respective advantages and disadvantages, opportunities, and the freedom to exercise them. "[I]ndividual advantage is judged in the capability approach by a person's capability to do things he or she has reason to value. A person's advantage in terms of opportunities is judged to be lower than that of another if she has less capability - less real opportunity - to achieve those things that she has reason to value. The focus here is on the freedom that a person actually has to do this or be that - things that he or she may value doing or being. ... [T]he idea of freedom also respects our being free to determine what we want, what we value and ultimately what we decide to choose" (Sen, 2009, pp. 231-232).

For Sen, capabilities are the means by which individuals can achieve 'functionings,' by which he means, in the plainest language, to the reality of doing something in the world. Capabilities are to some degree derivative of potential functionings, but in other important ways they are irreducible to their instrumental value. For example, the opportunity for an education in math may lead, perhaps not by itself, to the capability for quantitative reasoning, and quantitative reasoning is required for effective functioning in an economic market.

Sen, and other capabilities theorists and practitioners, are interested in practical matters such as the essential ability to function in a market, but they wish to go beyond the domain of 'human capital' to consider the capabilities and freedoms necessary to live a life of dignity. Nussbaum (2011) asks what a life of dignity requires, and arrives at a threshold of ten basic capabilities, many of which are relevant to our present concerns with language and education. First, she insists that in order to enjoy a 'flourishing life,' a person must be able to use the senses, to imagine, think, and reason – and to do these things in a 'truly human way, a way informed and cultivated by an adequate education, including, but by no means limited to, literacy and basic mathematical calculation and scientific training.' She also includes the ability to participate in political choices that affect one's life, and protections of free speech and association. Persons must also have the ability, according to Nussbaum, to the social bases of self-respect and non-humiliation, as part of the capacity to form mutually respectful relations with others.

In many respects, these concerns dovetail with those that human rights instruments mean to protect, but Sen (2009, p. 20) invokes an a distinction between two concepts of justice in early Indian jurisprudence to illustrate how justice might be conceived within the capabilities framework, and how this conception differs from the normative tendencies of human rights reasoning. *Niti* was a principle that stressed organizational propriety and behavioral correctness, that is, normative rules that would apply in all times for all subjects. 'Let justice be done, though the world perish,' is his example. *Nyaya*, on the other hand, is 'inescapably linked to the world that actually emerges, not just the institutions or rules we happen to have.' He invokes the state of *matsyanyaya*, 'justice in the world of fish,' where the big are free to eat the small with impunity, as the state of nature that justice as *nyaya* is intended to counteract. Since 2000, many educational theorists have suggested that the capabilities approach provides ways of thinking and acting toward injustice and inequality that are less available through a either human capital or human rights approaches. The 'pragmatism' of governmental and even NGO policymakers in the context of globalization in thinking about what schools and what languages are for, especially for minority students, falls generally into the human capital approach. School is meant to train up students in the skills necessary for success in the workplace, and language is important insofar as it contributes to developing and sustaining economic relations.

The logic of the human capital approach justifies assimilation to the national language, along with education in international languages, especially English. Akire (2002), in the context of literacy classes for Muslim women in Pakistan, and Melanie Walker (2008), in the context of South African higher education, make compelling cases for the advantages of the capabilities approach in enhancing opportunities for students to develop their capabilities and exercise freedom with

respect to eventual functionings. Robeyns (2006, p. 76-79)) goes on to describe four potential problems with rights-based approaches to improving educational opportunities: tendencies (1) to be rhetorical, with scant interest in realities that don't match the rhetoric; (2) to reduce moral rights to legal rights; (3) for governments to regard their responsibilities to extend no further than execution of a contract; (4) and to be exclusively government-focused. We could amend this last item to point out that governments often pass the responsibilities for implementing human rights decisions to NGOs, whose ability to affect long-term systemic change is severely constrained.

All of these problems with the human rights approach, plus those we mentioned at the outset related to tendencies to polarization, are glaringly visible in the struggle for Roma educational and language rights. The text of the *Oršuš v. Croatia* decision, for example, refers to almost countless previous proclamations and policy projections, national and international, that promised Roma students a fair shake, none of which were realized. Where the 'world of staggering inequalities' (Walker, 2012) that faced the cohort of students from Međimurje seemed to demand a moral response, the Court and school personnel seemed capable only of thinking about the narrowest legal rights. The government of Croatia resisted meaningful reform for nearly a decade while this case was under review, and then its response to the decision – as has been the case where other ECtHR cases have originated – was minimal. At the end of the day, only the government was called upon to take any action, leaving the social and political *matsyanyaya* that the partially segregated schools support unaddressed. Another way of framing this situation is to say that the problems with schooling and language facing the Roma students in this corner of Croatia, in the first part of the 21st century, cannot be solved in the abstract. In the remainder of this essay, we will attempt to show how we could use the capabilities approach to at understand the challenges facing Roma students in two, contrasting local settings in achieving the basic capabilities that would allow them a fair chance at living a life they have reason to value.

Roma and the Romani language

The history of the Romani language in Europe is complex, and contested, as is the current state of knowledge and use of Romani across the continent. The ancestors of contemporary Roma came from northern India, beginning probably before 1000 BCE, as part of several migrations about which we have limited historical information. These migrations seem to have more the quality of exodus, rather than a purposeful migration to some other location, and continued over the course of several hundred years. To illustrate, the first Roma people probably left India in the 9th century, and the Roma did not appear in Central Europe until the 15th century. In any case, the core grammar and vocabulary of Romani is related

to Sanskrit, and thus to the modern languages of the sub-continent, like Hindi. The other ancestors of the Roma, linguistically and ethnically, are the many languages and people with whom they came into contact during these protracted movements from India, across western Asia, into the Byzantine Empire, and then north and west and east, coming to reside eventually to every country in Europe. Persian and Byzantine Greek vocabulary are common to all modern forms of Romani, which have been much further differentiated through contact with different European languages. Most of what is known about the early history of the Roma is derived from studies of the language. Until the late 19th century, there was no written form of Romani, and because Romani has never been the language of school or government or literature, it has never been standardized: consequently, very few Roma (but a good many non-Roma linguists) read or write in Romani.

The Romani Project at Graz University ([romani]PROJECT, online) describes Romani as a ‘primarily oral, functionally restricted, dominated, stateless diaspora language with non-monolingual speakers,’ a status it shares with many other languages. Many of the languages that share these features are endangered or have become ‘extinct.’ Romani is on the UNESCO list of endangered languages, on the basis of a nine-factor methodology of measuring language vitality, and some forms of Romani have very few, if any, speakers today. Stateless, oral languages are almost intrinsically at-risk, because they depend crucially on intergenerational transmission and institutional practices and policies toward minority languages for their survival. These language vitality factors are not strong for Romani, generally, even though many children still learn Romani as their mother tongue. These languages are also vulnerable to migration and dispersion pressures and opportunities, both of which affect Roma directly because of accession to EU of countries, like Bulgaria and Romania, with large Roma populations, and poor records of support for minority rights.

Linguists define Romani as a ‘macrolanguage’ that include seven ‘member languages.’ The two most vital of these member languages – in terms of number of speakers, proportion of speakers in the total population, intergenerational transmission, and community attitudes toward Romani are the Balkan and Vlax groups, both of which have many sub-varieties. Both Balkan and Vlax Romani are spoken in Bulgaria. While attitudes toward and treatment of Roma during the long period of Turkish/Ottoman domination of Bulgaria were not exactly friendly, language and cultural policies were not generally restrictive, and high degrees of multilingualism and multiculturalism were the rule (see Matras, 2002, for an overview of Romani linguistics). Neither the communist or the post-communist governments of Bulgaria have been so tolerant, neither to the Roma nor the Turks, in the past century, but both languages continue to be commonly spoken. In this relatively high-vitality language context, Romani is the primary (or shared)

language for intra- and inter-familial communication, and is common also in domains of everyday life, in dealings with other Roma.

In the Czech Republic, Roma speak mostly the Romungro or East Slovak dialects of the Central sub-division of Romani, since most have migrated there from Slovakia in the past fifty years. Romani dialects have been under pressure in Slovakia since the nineteenth century, due to the intense Magyarization policies that severely restricted the use of any language other than Hungarian for official, and even private functions, even though the Roma population in Slovakia is relatively high (Hübschmannová & Šebková, 1999). The threats to Romani language vitality for migrant Slovak Roma in the Czech Republic have been unrelenting since the communist era, when families were strongly encouraged to adopt a 'Czech only' language practice at homes and in all public places, and have only increased in the post-communist period, with community fragmentation and alienation, along with decreased intergenerational transmission of Romani. In low language vitality Romani communities like the Czech Republic, the use of Romani – highly inflected by Czech and Slovak – is restricted to inter-familial contexts, which is often shares with Czech, in turn highly inflected by Romani (Hübschmannová, 1979; Cina, 2002).

For hundreds of years Romani has been regarded by non-Roma Europeans as something less than a real language, as gibberish, a secret language for criminals, or a kind of slang (Willems, 1997; Mayall, 2005). This contributes, if not determines, the legal status of Romani, and by extension, its speakers, and tends to negatively impact attitudes of Romani speakers toward their mother tongue. But until recently, little research has been conducted on the actual language vitality or use of Romani in different countries, which may account in part why Romani can be considered as 'endangered,' because differences across dialects and territories has not been assessed. There is extensive evidence that Romani is a full-featured, vital language in use in many communities, albeit a primarily local, and context-constrained language. Additionally, research suggests that the development of Romani competence among children who live in places – like most Bulgarian Roma villages and even some isolated Vlach-speaking communities in the Czech Republic – follows the same early course as development in official languages that function across all social contexts, like Czech and Bulgarian (Kyuchukov & de Villiers, 2014; Kyuchukov, 2014a). The 'normal' language abilities of these Romani-speaking students is very often not recognized by school officials, who instead subject Romani children to intelligence and academic tests in Bulgarian, for example, and place them in special education settings on the basis of these results (New, 2011; Kyuchukov, 2014b).

Envisioning language education for Roma students in Bulgaria and the Czech Republic

Without doubt, the educational opportunities offered to Roma students in these two countries, among many others, are so glaringly insufficient and unequal as to justify a judgment of racial or ethnic discrimination, or human rights abuse. High school graduation rates are below 10%, and Roma university students are rare birds in university classroom in either the Czech Republic or Bulgaria. Students at the primary level attend segregated, unequally resourced schools and classes where they are routinely denigrated on the basis of their cultural identities and the languages they speak. There is no question of the value of Court decisions, at every level, that de-legitimate discrimination and demand recognition of the rights of Roma. But this recognition, however valuable in moving the needle of public understanding and increasing pressure on authorities to affect meaningful policy change, has not translated well into educational practice at local levels.

We can perhaps use the capabilities approach to provide a more nuanced view of ‘realized injustices’ and the differentiated means by which one might ideally address these particular issues. Advocates for linguistic rights might be inclined in both the Czech Republic and Bulgaria to insist that bilingual education – that goes beyond the instrumental goals of transitional models or second-language instruction – is the proper way forward, while those in government are likely to say that minority language students’ linguistic rights do not extend beyond the acquisition of a working knowledge of the national language, which would permit them to participate in the economy. In practice, the rhetoric of both of these positions has turned out to be empty. And insofar as the work of educational reform is often relegated to NGOs, the potential for systemic, sustained change is undermined from the outset.

We might begin, instead, with an appreciation of what capabilities Bulgarian Roma students, and Czech Roma student have and don’t have, in their current circumstances. We would recall that Bulgarian Roma students are likely to use Romani as the primary mode of communication in the family and interfamilial spheres, in the community, and in the non-formal areas of official Bulgarian institutions (like schools). Because there are larger concentrations of Roma living together in Bulgaria, the tendency is for ‘ghetto’ schools, comprised almost exclusively of Roma students, though the language of instruction is always Bulgarian. The situation for Czech Roma, for the most part, differs markedly. We recall that a majority of Czech Roma children have limited exposure to Romani as young children, and speak mostly Czech within their families, and in all other communicative contexts. Roma in the Czech Republic have most often lived in urban areas, and their already small ‘communities’ have been increasingly fragmented by gentrification and other marginalizing public policies.

Consequently, Roma do not constitute a majority population in many places, and Roma students attend either mainstream Czech schools, where they are often relegated to Roma classes with various designations, or to special schools, which they share with students identified as handicapped (New & Merry, 2008).

What capabilities and freedom do these children have, in Sen's words, 'to do this or be that - things that he or she may value doing or being?' And how do their linguistic practices and proficiencies bear on their ability to flourish? At the most instrumental level, formal education is not providing these children with an adequate education, starting with abilities in literacy, numeracy, and science; nor is there any evidence that these children are developing their capacities to imagine, think, and reason in the ways defined by school and valued in the larger world. Language could be considered the essential component in the mixture, but in this case, the languages most at issue - at least with respect to the socioeconomic ends, or 'functionings,' that are supposed to follow from formal education - would be Bulgarian and Czech, and potentially English. Likewise, formal education in both locales fails to provide, by all accounts, opportunities for political participation, or free speech and free association, for Roma children. Again, these capabilities depend crucially on the possession of language skills.

Finally, Nussbaum and others stress the importance of developing the social bases of self-respect and non-humiliation, as part of the capacity to form mutually respectful relations with others. To a large extent, also inscribed largely in the context of oral language, this capability underwrites all the other functionings. Success in the workplace, in political settings, in institutional exchanges, especially across social groups, and across divisions of social power, depends on the possibility of entering into mutually respectful relationships. This might serve, in the abstract, as an accurate summary of the main lack experienced by Roma in their lives in a mostly hostile environment. The entire weight of the burden of disrespect cannot be placed on schools, but we can also see how those aspects of disrespect that cannot be attributed to schooling enter into the educational environment as attitudes and predispositions *not* to extend respect to Roma children, and to create conditions, intentionally or not, that are humiliating. As many Roma have testified, this disrespect is expressed through language, the majority language, at language, either Romani or the form of the majority language spoken by Roma children.

All this, though, does not constitute a good argument for bilingual education as the necessary or sufficient means to give Roma students the opportunity to develop capabilities that they can use to enjoy a life they have reason to value. Not to say that bilingual education cannot be, or should not be, part of the equation, but it should be understood as a means to an end, not the end itself. As a first step, joining the discourse of human rights and capabilities discourse, we can return to

Réaume's (2000) notion that linguistic security is a right of members of linguistically vulnerable communities, meaning that majority language group members should be bound to recognize the value of the marginalized community's language, which would ensure that neither the minority language or its speakers would be denigrated, nor that using this language would become a social liability. Secondly, linguistic security requires support for the instrumental use of the language, for both extrinsic reasons and for the maintenance of the life of the community.

The first condition suggests that educational reform – reaching beyond just the school – must begin with a focus on members of the majority, reducing the psychological and symbolic violence toward minority language speakers and their language, and the investigation of institutional structures that reinforce devaluation and stigmatization. It is important to note that rights-based discourse has limited leverage to affect the dispositions of majority citizens toward minority groups and individuals. These 'reforms' – not of minority education but of majority educators – might take the form, in Bulgaria, of increasing the knowledge of Bulgarian teachers, administrators, and students of Romani as a full-fledged language, and the recognition that students' facility with a home language not spoken in school is an asset in the acquisition of the school language. In both the Czech and Bulgarian contexts, one might also help the majority culture/language teachers and student appreciate the social and historical relationships between official written languages, like school Czech, and Czech vernaculars such as are spoken by Roma students, and to understand that the Roma ethnolect is not just an inferior version of their own vernacular. It might come as a surprise to many Czechs that the local languages many of their grandparents spoke in their villages were actively suppressed by other Czechs, who wanted to make their own version of the language into the standard that everyone must follow. In neither case is the instrumental and personal value of becoming fully fluent and literate in the national language – for the sake of adult functioning within a majority language economic, social, and political contexts – undersold. From a capabilities perspective, there is nothing to object to in the sentiment of the justices in *Oršuš* that ensuring that all students learned Croatian was perhaps the most important and natural function of Croatian schools. But their seeming disinterest in the interpersonal conditions in which this learning take place, i.e. the pedagogy and environment of the school and society, shows the limitations of *niti*.

The second condition, that linguistic security writ large demands some level of support for the actual use of the minority language for both extrinsic reasons *and* for the maintenance of the life of the minority community, goes beyond what many are willing to accept, particularly when it involves using government funds to achieve these goals. Previously, we suggested that this demand, from a rights

perspective, is grounded in fairness. Bulgarian students, for example, whose home language corresponds to the language of instruction in schools, and in government, are advantaged by school system that teaches exclusively to them and for them, despite the presence of many 'others' who are not likewise advantaged. From a capabilities perspective, when states do not take it upon themselves, through education, to help maintain the full cultural lives of minority communities, in which their languages play a central role, are limiting the opportunities of children from these communities to participate politically, to sustain family and interfamily affiliations, and experience the mutual recognition of other members of the community that is essential to the formation of strong and resilient cultural identities. For the state to do this for one part of the student body, and not the 'Others,' is to discriminate. Nor, so long as language is so central to schooling, can it be rendered 'neutral' with respect to advantages, and to the freedoms to choose a life one wants, on the basis of these advantages.

Bilingual education for bilingual students, such as one finds in Bulgaria, would probably be the best way to achieve fairness, and would provide another incentive for desegregation. The situation for Czech Roma is not entirely comparable, but arguments can be made for instituting heritage language programs – as has been done in Spain – that support whatever use of Romani continues to exist in the Roma community, and to improve attitudes toward Romani within the Roma community. In both cases, the Romani language vitality could be increased by decreasing the factors that suppress intergenerational transmission, e.g. community regard for Romani and its speakers, fear of humiliation speaking Romani, institutional pressure to discourage children from using whatever Romani they have, or from recognizing the extent to which their Czech language includes Romani.

Conclusion

The movement from a solely rights-based approach to improving the educational and linguistic lives of Romani children can be understood as movement away from the dependence of state compliance to international norms that (a) have little popular support, and may in fact 'violate' public conceptions of fairness, (b) require funding for implantation that politicians and the public are unwilling and unable to support, and (c) are not accompanied by effective sanctions. When the Decade for Roma Inclusion (2005-2015) –sponsored by the Soros Foundation with great fanfare, and signed onto by every European nation with a 'Roma problem' – arrived recently at its scheduled end, the results with respect to inclusion and fairness were not encouraging, to say the least (Rorke et al, 2015). To invoke the capabilities approach must not be understood as a different kind of utopianism that will simply replace the faltering hopes of the human rights movement that European nation states will any time soon, or ever,

be persuaded to take sustained action to raise the social and educational status of their Romani (or other minority and migrant) residents.

The capabilities approach that we advocate has more of a moral than legal basis. States and their citizens ought not to reform their educational practices because international laws, and the EU, require it, but because the everyday practices of teachers, parents, administrators, politicians, and children themselves prevent 'non-standard' children (and the adults they will grow up to be) from leading lives they have reason to value. The capabilities approach offers the means to explicate the contextually specific ways that disadvantage and deprivation is delivered upon Romani children, in language that is more accessible and meaningful to the ordinary people – including policymakers and members of the majority – whose beliefs, actions, and moral reasoning determine the character of our shared world. The mostly silent suffering of the Roma minority may not distract the majority from pursuing its 'natural' ways of living, grounded in traditional exclusive modes of education, particularly with respect to language use. But perhaps the growing unrest, and willingness to disrupt 'normal' life demonstrated by other minority groups, will cause some who enjoy privileged identities and languages to re-evaluate social and political processes, like schooling, they have taken historically to be natural.

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Contacts

Prof. William New

Department of Education and Youth Studies
Beloit College
Beloit, WI 53511, U. S. A.
newb@beloit.edu

Prof. Hristo Kyuchukov

Uniwersytet Slaski w Katowicach, Poland
hkyuchukov@gmail.com

Prof. Jill de Villiers

Professor of Philosophy and Sophia and Austin Smith Professor of Psychology
Smith College
10 Elm Street
Northampton
Massachusetts 01063, U.S.A.
jdevilli@smith.edu