Petra Lea Láncos | Balázs Szabolcs Gerencsér [eds.]

Governing Linguistic Diversity in Europe

The European Charter for Regional or Minority Languages under a legal lens



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Main professional partner:
This volume was published with the support of Pázmány Péter Catholic University.



The Deutsche Nationalbibliothek lists this publication in the Deutsche Nationalbibliografie; detailed bibliographic data are available on the Internet at http://dnb.d-nb.de

1st Edition 2026

© The Authors

Published by
Nomos Verlagsgesellschaft mbH & Co. KG
Waldseestraße 3–5 | 76530 Baden-Baden
www.nomos.de

Production of the printed version:
Nomos Verlagsgesellschaft mbH & Co. KG
Waldseestraße 3–5 | 76530 Baden-Baden

ISBN (Print) 978-3-7560-2130-7
ISBN (ePDF) 978-3-7489-5678-5

DOI: https://doi.org/10.5771/9783748956785



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Prologue

Fernand De Varennes

This volume on the European Charter for Regional or Minority Languages arrives at a critical time as language issues are again fertile terrains of contestation and even supression under a new wave of majoritarian nationalism sweeping Europe.

It is not hyperbole. We have seen this before.

The late 1980s and early 1990s were a period shaken by a surge in intra-State violent conflicts such as the breakup of Yugoslavia, the war in Bosnia, separatist violence in Corsica France, Basque Country Spain, Northern Ireland and others which often – some would argue mainly – involved amongst others majoritarian nationalism leading to grievance claims due to the denial of the identity and human rights of national or ethnic, religious and linguistic minorities.

This is the context which led not only to the Language Charter, but to the adoption of a whole series of treaties and other instruments in the early 1990s, including the UN Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities,[1] the Council of Europe's Framework Convention for the Protection of National Minorities (the Framework Convention),[2] the OSCE's High Commissioner on National Minorities,[3] the initial, language focused guidelines adopted under the OSCE High Commissioner,[4] and the Copenhagen membership accession criteria for countries wishing to join the European Union which

1 Adopted 18 December 1992, UN General Assembly resolution 47/135, https://www.ohchr.org/en/instruments-mechanisms/instruments/declaration-rights-persons-belonging-national-or-ethnic.

2 Council of Europe, Strasbourg, 1 February 1995, ETS 157, https://rm.coe.int/16800c10cf.

3 OSCE High Commissioner on National Minorities, Mandate, https://www.osce.org/hcnm/107878.

4 The 1996 Hague Recommendations Regarding the Education Rights of National Minorities, https://www.osce.org/files/f/documents/e/2/32180_0.pdf and the 1998 Oslo Recommendations Regarding the Linguistic Rights of National Minorities, https://www.osce.org/files/f/documents/8/1/67531.pdf.

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included "stability of institutions guaranteeing democracy, the rule of law, human rights, and "respect for and protection of minorities".[5]

Broadly speaking, these instruments, if not identical in wording or focus, share common themes: they more or less explicitly acknowledge that in Europe (and globally) the protection of minorities and their human rights are significant factors for the prevention of violent conflicts. For the most part they suggest that grievances of exclusion, discrimination and undermining of identity were often central to the tensions which led to many of the conflicts which were so threatening during this period.

The Language Charter was therefore adopted in a context of optimism. It was believed that conflicts in Europe could be addressed and even prevented through a rule-based legal order through among others standards relating to the protection of language diversity, human rights, and other minority issues agreed to in European (as well as to a lesser extent in global) institutions. It was for many at the time a period of noteworthy and positive developments, but also arguably of naïveté, missed opportunities, and of arrested development: none of the Council of Europe treaties (the Language Charter or the Framework Convention) are directly applicable legal documents, with surprising and even counter-intuitive results: they are at the European level deemed to create legal obligations (on States for the Language Charter) and even individual rights (in the case of the Framework Convention), but none of these can be invoked directly in a court in the countries involved. Simply put, this period of innovations and stronger protections for minorities were for political reasons, in order to achieve some kind of European consensus around language obligations and minority human rights. This meant the instruments were more declaratory than mandatory, in the sense that they were neither legally binding in European law, nor backed up by any solid enforcement mechanisms.

Today, the vulnerabilities of these early political compromises and the subsequent failure to enforce legal standards through national court systems characteristic of these initiatives are becoming increasingly visible with an apparent downgrading of a rule-based European legal system flailing confronted with a new rise of nationalism.

On the one hand, instruments such as the UN Declaration, the Oslo Recommendations and the Hague Recommendations are not legally binding documents. On the other, even those instruments which were legally

5 1993 Copenhagen European Council accession criteria, https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=legissum:accession_criteria_copenhague.

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binding were never intended to be directly legally enforceable: the Framework Convention is 'only' a framework and not a directly applicable treaty in national law, while the Language Charter explicitly states that no one, neither individually nor collectively, has any enforceable rights. To say there are rights or obligations on one hand, and then deny any legal recourse if these are not complied with, again seems to make a mockery of the concept of the rule of law and of legal protections which remain unenforceable, *lettres mortes* in a sense.

Thus the trend after the initial enthusiasm, optimism, and arguably effectiveness of these instruments in the 1990s has not been positive for language rights or minorities, especially in the last two decades.[6] Both the UN Secretary General, the UN Special Rapporteur on Minority Issues and numerous civil society organisations working with minorities agree that the situation which has emerged is one of denial and regression in terms of the full and equal respect of the human rights of minorities, compliance with language obligations under the Language Charter, but also in conflict prevention efforts.[7]

This is quite clearly apparent in Europe where there appears to be a growing dismissal, perhaps even hostility, towards recognising and protecting the languages, cultures or identities of minorities. Such was the conclusion in 2024 of a large number of human and minority rights experts and activists who were brought together for the Ewald Ammende International Conference in Brussels,[8] where there was a broad recognition that the last 20 years or so has been of regression rather than progression in Europe in the recognition and protection of the language and other human rights of minorities.

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6 UN Special Rapporteur on Minority Issues, Report on the protection of the rights of minorities in the institutions, structures and initiatives of the United Nations, 2022 Annual Report to the UN General Assembly, 29 July 2022, UN Doc A/77/246, https://docs.un.org/en/A/77/246.

7 UN Special Rapporteur on Minority Issues, Mainstreaming minority rights at the UN and elsewhere: An Assessment of the 2013 UN Secretary General's Guidance Note and 30 years of the UN Declaration, Annual Report to the UN Human Rights Council, 19 January 2023, UN Doc A/HRC/52/27, https://docs.un.org/en/A/HRC/52/27; and UN Special Rapporteur on Minority Issues, Conflict prevention through the protection of the human rights of minorities, Annual Report to the UN Human Rights Council, 15 March 2022, UN Doc A/HRC/49/46, https://docs.un.org/en/A/HRC/49/46.

8 Federalist Union of European Nationalities, 6 March 2024, This is the beginning: minority experts from all over Europe answer FUEN's call, https://fuen.org/en/article/This-is-the-beginning-minority-experts-from-all-over-Europe-answer-FUENs-call.

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This can be seen for example at the European Union where, despite the massive backing of over a million EU citizens and the support of the European Parliament expressed in a resolution with over 75 % of the votes cast, as well as numerous national and regional government endorsements including the Bundestag of Germany, the Second Chamber of The Netherlands, the Parliament of Hungary, the Landtag of Schleswig-Holstein, Lower Saxony and Brandenburg, the Landtag of the Autonomous Province of Bolzano-South Tyrol and the Frisian Parliament, the European Commission rejected outright the Minority Safepack European Citizens' Initiative[9] which called for the adoption of a set of legal acts to improve the protection of persons belonging to national and linguistic minorities and to strengthen cultural and linguistic diversity in the Union. It argued against the adoption of any of the proposed legal acts or measures because, 'the full implementation of legislation and policies already in place provides a powerful arsenal to support the Initiative's goals,'[10] even attempting to pre-emptively prevent the petition collection itself from being held altogether 10 years earlier, until ordered to desist in its attempts to block the petition drive by the Court of Justice of the European Union.[11] Attempts to have these language and human rights for minorities matters reviewed by the Court of Justice of the European Union have been futile, the CJEU concluding amongst others that European institutions such as the Commission enjoy "broad discretion and, in particular, where they are required to make choices that are, in particular, of a political nature and to undertake complex assessments, judicial review of the assessments that underpin the exercise of that discretion is to consist in determining the absence of manifest errors".[12] An ungenerous response might be that the ECJ is interpreting certain citizens rights as less deserving and best left to the European Commission's 'broad discretion' when it comes to 'complex matters' such as language…

9 See generally http://minority-safepack.eu/ For the European Commission response, see also https://citizens-initiative.europa.eu/initiatives/details/2017/000004/minority-safepack-one-million-signatures-diversity-europe_en.

10 *European Citizens' Initiative: European Commission replies to 'Minority Safepack' initiative*, 15 January 2021, https://europeansting.com/2021/01/15/european-citizens-initiative-european-commission-replies-to-minority-safepack-initiative/.

11 *Affaire T-646/13: Arrêt du Tribunal du 3 février 2017*, https://op.europa.eu/fr/publication-detail/-/publication/89a41baf-0d39-11e7-8a35-01aa75ed71a1.

12 *Citizens' Committee of the European Citizens' Initiative "Minority SafePack – one million signatures for diversity in Europe" v. European Commission*, 5 June 2025, https://curia.europa.eu/juris/document/document.jsf?text=&docid=300968&pageIndex=0&doclang=en&mode=req&dir=&occ=first&part=1&cid=9263556.

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The overall impression that emanates in Europe is of a weakening commitment towards the universal application of human rights when it concerns language and minority issues, as the central claims in the Minority Safepack European Citizens' Initiative case was of unequal (and therefore discriminatory) treatment, and hence a violation of one of the pillars of human rights protection for minorities. While there is limited comparative research dealing with these issues,[13] there is an impression that the interpretation of fundamental human rights between global (United Nations) mechanisms and those of Europe (at least the European Court of Human Rights) have begun to diverge dramatically, and even to be in direct contradiction, at least when it comes to language matters and the rights of minorities.

From about the mid-2000s numerous cases such as F.A. v. France,[14] Sonia Yaker v. France,[15] Miriana Hebbadj v. France,[16] Hudoyberganova v. Uzbekistan,[17] and Bikramjit Singh v. France[18] saw the UN Human Rights

13 Henrard K. and Vermeersch, P. (2020) *Nationalism with a Human Face? European Human Rights Judgments and the Reinvention of Nationalist Politics* : "Judgments of the European Court of Human Rights… have provided nationalists with an unexpected opportunity to promote a nationalist discourse … the Court accepted the arguments of liberal democratic states to infringe fundamental rights of persons belonging to (immigrant) Muslim minorities in the name of "requirements of living together" or "social integration… the justifications by the states for these infringements point to concerns about perceived threats to national identity and culture… nationalist politicians in countries with minority populations… have used justifications in terms of national self-protection… to pursue old anti–human rights agendas"; Koev, D. (2019) Not Taking it on Faith, p. 197: "The Court has been exceedingly deferential to state governments, providing them substantial latitude in curtailing the rights to the exercise and expression of religious beliefs of their [minority] citizens… ECHR judge votes have been especially unfavorable to Muslim applicants… ECHR judges in part succumb to national influences when examining politically sensitive and controversial cases, such as those pertaining to freedom of religion [of religious minorities]".

14 UN Human Rights Committee, communication No. 2662/2015, views of 16 July 2018 (ban on wearing a headscarf in the workplace).

15 UN Human Rights Committee, communication No. 2747/2016, views of 17 July 2018 (blanket ban on wearing the full-face veil in public).

16 UN Human Rights Committee, communication No. 2807/2016, views of 17 July 2018 (blanket ban on wearing the full-face veil in public).

17 UN Human Rights Committee, communication No. 931/2000, views of 18 January 2005 (student excluded from university because she refused to remove the headscarf).

18 UN Human Rights Committee, communication No. 1852/2008, views of 1 November 2012 (student excluded from public school for wearing conspicuous religious items or clothing).

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Committee reject the invocation of the margin of appreciation doctrine, vague restrictions on universal human rights standards based on abstract concepts such as 'vivre-ensemble", which does not exist in international law, without any evidence of why such restrictions were permissible. The European Court of Human Rights often arrived at the opposite result in similar, in some situations practically identical, cases involving minorities, usually after invoking the margin of appreciation doctrine and largely accepting at face value the arguments or assertions presented by national authorities or institutions with no attempt to verify if these were factually and objectively valid. The result is rather stunning: whereas the UN human rights mechanism led to conclusions of clear violations of the rights of minorities in areas of religion (and language), the European Court of Human Rights usually concluded that a State's wide margin of appreciation meant that the human rights of minorities could be restricted – a result clearly incompatible with universal human rights obligations.

In more recent years the trend in Europe of judges setting aside their impartiality in cases involving minorities and the doctrine of margin of appreciation have become even more pronounced in the area of language. In Valiullina and others v. Latvia[19] and Džibuti and Others v. Latvia,[20] the European Court of Human Rights largely deferred to the determinations by national authorities in the 'sensitive' area of language of instruction in public and private schools. It even went as far as denying that obligations concerning the rights of minorities in European treaties and instruments (such as the Language Charter and the Framework Convention) were of any utility in its determination of the claims of the Russian-speaking minority in Latvia because these instruments "did not represent a European consensus" despite their ratification by a significant proportion of European States. The European Court of Human Rights also dismissed out of hand all non-binding instruments – including instruments such as the UN Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities, the OSCE and other European entities), an approach that again conflicts with prevailing views of the use of soft law instruments for interpretive purposes in treaty law:

19 Valiullina and others v. Latvia, Applications nos. 56928/19 and 2 others, final judgment of 19 February 2024, https://hudoc.echr.coe.int/eng?i=001-226485, p. 16.

20 Džibuti and Others v. Latvia, 14 September 2023, https://hudoc.echr.coe.int/#{%22itemid%22:[%22001-228839%22]}.

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> 213. The Court is well aware that several international and European bodies have issued recommendations with respect to the implementation of the language policy in the education system in Latvia and its possible impact on minority rights as established in other international or European legal instruments (see, for example, paragraphs 84, 89–93 above). However, as regards the applicants' complaint under Article 14 taken in conjunction with Article 2 of Protocol No. 1 to the Convention, the Court considers that the Government have provided objective and reasonable justification for the need to increase the use of Latvian as the language of instruction in the education system in Latvia.

Again the treatment of language rights and other human rights of minorities by the European Court of Human Rights is diametrically different from that of global human rights mechanisms who must be impartial and not 'favour' a defendant through the invocation of an unrecognised margin of appreciation doctrine. At the international level, numerous human rights bodies had held that there is a right to education in a minority language under certain conditions, such as when involving substantial and concentrated minority communities, without providing for education in minority languages, or to actively prohibit teaching in a minority language, could be discriminatory. This is unambiguously what is expressed at the OSCE and the United Nations levels, amongst others, in instruments such as the Oslo Recommendations Regarding the Linguistic Rights of National Minorities, the Hague Recommendations Regarding the Education Rights of National Minorities, and the Language Rights of Linguistic Minorities: A Practical Guide for Implementation. The latter points out for example:

> Where there is a sufficiently high numerical demand, public education services must be provided in a minority language to the appropriate degree, broadly following a proportional approach. This includes all levels of public education from kindergarten to university. If demand, the concentration of speakers or other factors make this not feasible, state authorities should as far as practicable at least ensure availability of minority language teaching. In addition, all children must have an opportunity to learn the official language(s).[21]

21 Valiullina and others v. Latvia, Applications nos. 56928/19 and 2 others, final judgment of 19 February 2024, https://hudoc.echr.coe.int/eng?i=001-226485, p. 16.

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The tensions and even contradictions between the application of language and other human rights at the global level and the lopsided, non-impartial application of these norms in Europe were particularly striking in relation to the deferential behaviour of the European Court of Human Rights when it came to the issue of the virtual elimination of teaching in Russian as a medium of instruction in private schools.[22] In Džibuti and Others v. Latvia, the majority of the judges of the European Court of Human Rights simply ignored the conclusion of contradictory "international and European bodies", refused to address directly that almost all teaching in private schools using the Russian language for minorities would come to an end (but not restricting education in any other European language) and that this could be discriminatory (see contradictory conclusions as to what constitutes discrimination in international law by claiming that Russian minority children were treated the same as others – which they were factually not since most other children could be taught in their own languages).[23]

That private schools are prohibited or face almost unsurmountable challenges in teaching the language of linguistic ethnic or minority children is a situation which was almost non-existent in recent times. The Venice Commission and UN experts concurred that the language rights of minorities include the right to use a minority language as a language of instruction. Yet the European Court of Human Rights chose to ignore any conflicting interpretation of international human rights, including that contained unambiguously in the Language Charter, and preferred to simply conclude that Latvia had a very wide margin of appreciation in determining in the organisation of the education system and the languages to be used:

> 160. The applicants alleged that Russian-speaking pupils were treated differently, in that they could not pursue an education in their mother

22 Džibuti and Others v. Latvia, 14 September 2023, https://hudoc.echr.coe.int/#{%22itemid%22:[%22001-228839%22]}.

23 See amongst others *Kevin Mgwanga Gunme et al. v. Cameroon*, African Commission on Human and Peoples' Rights, Communication 266/2003, 27 May 2009, and *J.G.A. Diergaardt et al. v. Namibia*, UN Human Rights Committee, CCPR/C/69/D/760/1997, 25 July 2000, UNESCO (2003). *Education in a Multilingual World: Education Position Paper*. UNESCO, at http://unesdoc.unesco.org/images/0012/001297/129728e.pdf; Council of Europe (2012). *Thematic Commentary No. 3, The Language Rights of Persons Belonging to National Minorities under the Framework Convention, Part VI: Language Rights and Education*. https://www.google.com/url?sa=t&source=web&rct=j&opi=89978449&url=https://rm.coe.int/16800c108d&ved=2ahUKEwj8yOrGwLiIAxXvv4kEHUkPFIIQFnoECBMQAQ&usg=AOvVaw3v4YugDOU0IdrwMHXrQnT8.

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> tongue, whereas pupils whose mother tongue was an official language of a country with which Latvia had concluded an international agreement could… The Court finds, however, that the applicants have failed to substantiate their claim in this regard. Although section 9(2)(1) of the Education Law allowed schools to provide an education in another language, the Constitutional Court established that none of the bilateral or multilateral agreements in question allowed educational establishments to use the State language and minority languages in proportions different from those laid down in the domestic law… By concluding bilateral or multilateral international agreements with other States in the field of education, Latvia undertook to ensure that certain minorities were able to learn their mother tongue, history and culture within the education system in Latvia (ibid.). The Court has not been provided with any information which would allow it to depart from the findings of the Constitutional Court in that regard.
>
> 161. In this context, even assuming that Russian-speaking pupils could be considered to be in a relevantly similar situation to pupils who were studying in a language which was an official language of a country with which Latvia had concluded an international agreement, the Court finds that there is no evidence of them being treated differently, taking into account that both groups of pupils could learn their mother tongue within the education system in Latvia.[24]

A less than generous interpretation would be that because of the war in Ukraine, children from the Russian minority could not be expected to be treated similarly to those from Western Europe. No one contested that all students concerned could learn their own language – at least for a few hours a week. The main point of contention and human rights issue was whether private schools could be allowed to use the Russian language generally as the language of instruction: which most judges preferred to deny, but only for the Russian minority by invoking the State's wide margin of appreciation in organising the educational system and regulating private schools.

A final note: it is striking how language and education issues were seen quite different from the European dismissal by the International Court of Justice. It was of the view that not teaching in the language of a minority in the public school system could constitute racial discrimination, and agreed

24 Džibuti and Others v. Latvia.

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that under Article 5 of the International Convention on the Elimination of All Forms of Racial Discrimination, the prohibition and elimination of "racial discrimination in all its forms" guaranteeing "the right of everyone, without distinction as to race, colour, or national or ethnic origin, to equality before the law, notably in the enjoyment of, amongst others, the right to education, included the right to public education and schools teaching in the Ukrainian language:

> 97. … The Court… takes note of the report of the OSCE Human Rights Assessment Mission on Crimea (6 to 18 July 2015), according to which "[e]ducation in and of the Ukrainian language is disappearing in Crimea through pressure on school administrations, teachers, parents and children to discontinue teaching in and of the Ukrainian language". The OHCHR has observed that "[t]he start of the 2016–2017 school year in Crimea and the city of Sevastopol confirmed the continuous decline of Ukrainian as a language of instruction" (report on the human rights situation in Ukraine (16 August to 15 November 2016)). These reports show, prima facie, that there have been restrictions in terms of the availability of Ukrainian-language education in Crimean schools.
>
> 98. The Court considers that there is an imminent risk that the acts, as set out above, could lead to irreparable prejudice to the rights invoked by Ukraine.[25]

The regressive developments at the European level in regard to language rights, human rights and the protection of minorities can be seen elsewhere, including in the growing restrictions on the use of minority languages in education in Spain, Russia, and France, to name a few, with, in the latter case, courts ruling that it is against the French Constitution to use the Corsican language – or any other minority language – in any official public function.[26]

The described regression in the recognition and implementation of the human rights of minorities, particularly in Europe, is witness to how the numerous noble aspirations expressed in non-binding documents such

25 Application of the International Convention for the Suppression of the Financing of Terrorism and of the International Convention on the Elimination of All Forms of Racial Discrimination (Ukraine v. Russian Federation), Order of 19 April 2017, International Court of Justice.

26 French court cracks down on Corsican language use in local assembly, France 24, 26 November 2024, https://www.france24.com/en/live-news/20241126-french-court-cracks-down-on-corsican-language-use-in-local-assembly.

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as the UN Declaration and non-justiciable treaties such as the Language Charter and the Framework Convention are too easily sidestepped in less tolerant environments of increasing majoritarian nationalism.

What appears to be needed some 30 years after the adoption Language Charter, and other instruments such as the Framework Convention and the UN Declaration, are stronger commitments and mechanisms that go beyond the more symbolic or aspirational to the more concrete and enforceable measures to ensure the effective equality and respect for the human rights of minorities, including in their linguistic and cultural diversity.

For the Language Charter in particular, this book will hopefully help open a much need critical and frank acknowledgment that its adoption, in a non-legally enforceable shape in the 1990s, is part of a wider, 'arrested development' story that needs to be rethought and reconceptualised, forming part of a still largely incomplete process that needs further enshrining and solidifying to guarantee truly effective measures of recognition and protection for linguistic diversity and the human rights of linguistic and other minorities. These rights and obligations, including under the Language Charter, need to be further mainstreamed and further steps must taken to ensure their equal protection in Europe, redressing the institutional and structural failures to arrive at full and equal enforcement and respect.

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Introduction to the volume

Petra Lea Láncos, Balázs Gerencsér

Context

The *European Charter for Regional or Minority Languages* (ECRML, Language Charter or Charter) adopted under the aegis of the Council of Europe is based on the recognition that Europe's linguistic landscape is historically given but under threat of linguistic oppression or language shift.[1] Following the World Wars, borders in Europe shifted, and peoples found themselves in new states, in some cases, outside of their 'kin-state'. Linguistic assimilation of these speakers began, reducing the linguistic diversity of the European continent. Subsequently, the late Cold War period, marked by geopolitical upheavals and the dissolution of multiethnic states, underscored the necessity of formalised protections for minority languages. While the end of the last millennium was fraught with tensions regarding individual or collective rights of minorities, indeed, the need for state level protection of languages other than those in official use became increasingly accepted.

The ECRML's drafting process was characterized by a careful balancing act: accommodating the sovereignty concerns of states while embedding commitments to linguistic diversity within a legally binding yet adaptable framework. The Charter's adoption in 1992 and its subsequent entry into force in 1998 reflects this balance and the pragmatic approach to language rights that prioritizes incremental implementation and voluntary commitments. While the Charter is widely hailed as a document incidentally securing language rights in a unique way, the ECRML is based on the premise that it protects languages and not minority communities or their individual speakers. While speakers' needs, demographic, social and economic status, their opportunities for exercising language rights enshrined in national law implementing Charter provisions, indeed, the frequency of, or the degree to which speakers actually exercise language rights are of relevance from the

1 Council of Europe, Strasbourg, 5 November 1992, ETS 148, https://rm.coe.int/1680695175.

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perspective of the fulfillment of ECRML commitments, the Charter is not a fundamental rights document.

Nor is the Charter an isolated development of international law, but much rather a product of international minority protection law in general, and language protection in particular. Indeed, the Preamble of the Charter establishes a direct link to UN documents by stating:

> "Considering that the right to use a regional or minority language in private and public life is an inalienable right conforming to the principles embodied in the United Nations International Covenant on Civil and Political Rights."

This link extends to the International Covenant on Economic, Social and Cultural Rights (ICESCR). While the ICESCR does not explicitly mention minority languages, its principles of non-discrimination and cultural development provide a foundation for a possible future development of minority language rights. Finally, and perhaps most importantly, the ECRML has a strong systemic and organizational link to the Framework Convention for the Protection of National Minorities with whose Advisory Committee the Charter's Committee of Experts (COMEX) shares a Secretariat within the Council of Europe.

Structure and ambition of this volume

This volume looks back upon the past three decades of the Charter, with the goal of providing a closer look into both the interpretation, evaluation and implementation of the ECRML by the COMEX and the States Parties. Written by lawyers, the volume focuses on the legal interpretation, implementation and evaluation of the Charter, with brief excursions into findings of other sciences. While the ratification of the ECRML by further states and the conceptualization of Charter provisions as language rights would be welcome, the authors restricted themselves to analyzing existing commitments, adhering to the concept of the ECRML that it protects languages, not linguistic rights. As such, this volume is predominantly descriptive – and not prescriptive – in nature.

In this spirit, the volume starts with the inception of the Charter, offering a unique insight into the drafting efforts at the Council of Europe and the participating national bodies from the lens of a Hungarian expert who was involved in the drafting process. Without elaborating on Article 7

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commitments and the protection of Part II languages, the volume analyzes in detail the individual Articles under Part III, describing the rationale of the commitments and their monitoring by the COMEX. It is the view of the editors that while Part II protections under the Charter are indispensable for the survival of minority languages, it is in fact the protections under Part III that may contribute to their vitality, covering, but also going beyond Part II protections. Consequently, the authors of this volume concentrated on elaborating the individual articles of Part III in detail, describing their provisions, aim, and the related 'practice' of the COMEX. Next, to illustrate the national implementation of Charter provisions, the volume includes chapters on the situation and implementation in three States Parties. The States Parties described were selected on a geographical basis, from Southern, Western and Central and Eastern Europe: Spain, Germany and Hungary, providing practical examples of implementation for a better understanding of the Charter mechanism. While this selection is not exhaustive, the described States Parties are geographically distinct, and are also different in terms of state structure, with Germany being a federal State, Spain exhibiting federal traits and Hungary being a unitary state. These features, in turn, have implications for the implementation of the Charter. To illustrate the extension of the Charter to a new language, a chapter on the newest Charter language, Papiamentu in the Netherlands was added. The chapter aptly describes the lengthy efforts for, and political conditions of the extension of Charter protection, with lessons to be drawn for the inclusion of other aspiring minority languages. Finally, the volume closes with three chapters on the COMEX, the expert body of the Charter, to enable a deeper understanding of the working methods of, evaluation by and performance of the monitoring body.

The volume serves as a constructive addition to international public law as a whole. By examining the external and internal aspects of a vital international treaty and its monitoring mechanism, the volume provides added value for those interested in international law and international human rights law. The research concentrates on the Charter legal framework and the relevant socio-cultural contexts, without proposing a language policy or political vision for the future.

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Outlook

The European Charter for Regional or Minority Languages was developed at a turning point in world history: the fall of the Iron Curtain in Central and Eastern Europe. This was a time fraught with an optimistic belief in the linearity and „end of history", relying on multilateralism as a means to pacify and democratize states, with the ambition to do away with any remaining pockets of adversity in an otherwise „Westernized" continent.

Today, emerging regional and global conflicts as well as their underlying „multilateralism fatigue"[2] put international frameworks, such as the ECRML in a new light. Yet it is in times of resurging nationalisms, armed conflict, globalization induced migration and 'Englishification' that a renewed focus on the Charter becomes imperative. Three decades after its entry into force, scholars participating in the development of its text, COMEX members conducting the monitoring of the States Parties' performance, and academics or ombudspersons intimately involved in protecting and promoting regional and minority languages in the States Parties are reporting on the achievements, challenges and potential of the Charter.

It is the ambition of this volume to provide lawyers and minority rights activists with insight into the operation of the ECRML mechanism, the working of the COMEX and national implementation to ensure the protection of European minority languages, as well as their passing on to the future generations of speakers.

2 Prato, S., Adams, B. Reimagining Multilateralism: A Long but Urgently Necessary Journey. *Development* **64**, 1–3 (2021). https://doi.org/10.1057/s41301-021-00320-1.

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At the cradle of the European Charter for Regional or Minority Languages…

Péter Kovács

When I was asked to write a few pages in the book commemorating the twenty-fifth anniversary of the entry into force of the ECRML, my colleagues suggested that I should also share my recollections of the making of the treaty within the CAHLR committee (the acronym corresponds to its French name: "Comité *Ad Hoc* des Langues Régionales"), where I had the privilege to participate as the expert designated by the Hungarian government.

At the time, I was at the beginning of my thirties during the very turbulent time marked by the collapse of the Berlin Wall and the political reunification of Europe with a lot of expectations and a good dose of naivety on behalf of top politicians and simple citizens.

In fact, my involvement goes back to 1988, when, while collecting supplementary material for my article about minority protection under the auspices of the Council of Europe during a short research trip at the Faculty of Law of the Université Robert Schuman of Strasbourg, I came across an article published about the preparatory works aiming at the eventual adoption of a Charter for regional or minority languages.

This article recalled that the Committee of Ministers kept rejecting the repeated proposals submitted by the Parliamentary Assembly concerning the adoption of an additional protocol to the European Convention on Human Rights that would grant certain rights to minorities *quasi* missing not only from the ECHR but also from the jurisprudence of the European Court of Human Rights. The essay contained a reference that the Standing Conference of Local and Regional Authorities of Europe – the predecessor of todays' Congress of Local and Regional Authorities – was working on a recommendation with the ambition to convince the Committee of Ministers that they should choose to protect languages *only*. I felt encouraged to continue my research and decided to make an appointment.

I went to the building of the Council of Europe and asked the officers at the entrance whether I can make an appointment concerning the status of the work around the Charter. To my great surprise, after a short call

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the officer informed me that Mr *Philip Blair* was ready to receive me. We had a very good conversation on the Charter, the necessary administrative steps to be taken and the prospects of its adoption by governments. He also provided me with the submitted draft-resolution.

I broadened the scope of my draft-article, which was later published in Hungarian in a booklet,[1] some of the authors of which acquired international fame a couple of years later.[2]

By the time the two volumes were published, political changes accelerated as the hard-liner communists took a step back and a reformist-socialist government was appointed with *Miklós Németh* as prime minister. Several authors of the chapters of the book mentioned above were invited or involved upon their application to work together with deputy-minister *Csaba Tabajdi*, appointed by the new and *quasi* transitional government to work on reframing Hungary's policy vis-à-vis minorities, be they linguistic minorities living in Hungary or Hungarian speaking minorities in the neighboring states. The project was called '*round table for minorities*".

This team included among others professor *János Bruhács,* who was working on minority protection prospects within the Conference on the Security and Cooperation in Europe (the predecessor of the Organization for Security and Co-operation in Europe) and with the prospects of article 27 of the UN International Covenant on Civil and Political Rights. It also included *Erzsébet Szalay-Sándor*, whose duty was to try to draft an independent international instrument taking into account the legacy of the League of Nations. As for myself, I was advocating in favour of trusting the European Charter for Regional or Minority Languages, which had succeeded in getting through different internal procedural steps of the Council of Europe. Other members of the team were engaged in working on a law on the protection of national minorities living in Hungary.

A couple of months after my meeting with *Philip Blair*, the text adopted by the Standing-conference as its resolution 192(1988) was welcomed by the Parliamentary Assembly, which suggested in its Opinion 142(1988) that its

1 Herczegh Géza (ed): Tanulmányok a nemzeti kisebbségek jogvédelméről, Pécs, 1988 Janus Pannonius Tudományegyetem Állam- és Jogtudományi Kar [Studies on the legal protection of national minorities, Volumes I and II, Pécs, Faculty of law of the University Janus Pannonius].

2 Professor Géza Herczegh was elected as judge to the International Court of Justice (1993–2003) and Erzsébet Szalay-Sándor – already the Hungarian ombudsperson for minorities – became member of the monitoring committee of the Framework-convention for the protection of national minorities in Europe. (2016–2020, 2024–2028).

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final version should also be open to non-member states of the Council of Europe.

In the spring of 1989, I was invited by the organizers of the René Cassin Moot Court of Strasbourg to act as a member of the jury. The invitation came at short notice, i.e. approximately a week before the event. However, I needed a French visa in my passport, which would have taken at least three weeks to process at the time. When I mentioned the problem to *Tabajdi*, he proposed to arrange my visa within two days *via* the Foreign Ministry which, at the time, was on very good terms with the French Embassy in Budapest.

Already in Strasbourg, on an off-day of the competition, I had another meeting with *Philip Blair*. I asked his opinion about a possible demand of Hungary to be admitted to participate in the CAHLR as an observer. (I was mandated by *Tabajdi* to ask this question, even though I was an academic advisor and no *de jure* member of the Hungarian governmental administration.) At that time, Hungary was not yet a member of the Council of Europe, but the Hungarian National Assembly was already in a 'special guest' status[3] (a kind of official partnership) with the Parliamentary Assembly of the CoE. Our team discovered a paragraph allowing such participation in the documents on the CAHLR.

Philip Blair understood our intention and found it an interesting initiative, but he was also clear on the fact that he was not mandated to answer. He nevertheless offered to convey our message to his superiors. When I called him back, he asked me to come back in order to meet with his superiors, *Ferdinando Albanese* and *Rinaldo Locatelli:* the former leading the department of Environment and Local Authorities and the latter heading the secretariat of the standing conference. After I explained the Hungarian informal proposal and the current political changes in Hungary, they encouraged us to submit the proposal officially trusting in a most probably positive reply.

Having noted the encouraging answer given in person, *Csaba Tabajdi* made the necessary administrative steps at the ministry of foreign affairs, and finally, two diplomats attended the first meeting of the CAHLR. They were from the unit for the CSCE and besides emphasizing the importance of the minority protection related 4th Chapter of the 1990 Copenhague

3 Resolution 920 (1989), Special guest status with the Parliamentary Assembly, (Amendment of the Assembly's Rules of Procedure).

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Document on the Human Dimension[4], they expressed that Hungary was in favour of the draft.

As a result of the rapid political changes in Hungary, a new constitution was adopted, the reformist-socialist party lost the elections and the new parliament, formed with a slight Christian-liberal majority, elected *József Antall* as a prime minister, who appointed professor *Géza Jeszenszky* minister for foreign affairs. Géza Jeszenszky was also a former member of the '*round table for minorities*'.

Together with some other colleagues, I was invited to work for the Ministry of Foreign Affairs as a diplomat. I served at the Hungarian Embassy in Paris dealing mostly with European affairs and bilateral legal issues. I was however also appointed to the CAHLR as governmental representative and as Hungary entered the Council of Europe in autumn 1990, our 'observer' position became automatically full-fledged. Experiencing rapid political changes domestically, Poland and Czechoslovakia also entered the CoE, thus their representatives also took part in the discussion on the draft of the Charter.

As far as I remember, there was a one week working session every month, meaning that the preparation of the final version of the Charter may have been the quickest in the history of the Council of Europe.[5] The meetings were smoothly and diligently chaired by the Norwegian delegate *Sigve Gramstad*[6] (who later became president of the monitoring committee of experts), and the secretarial duties were conferred upon *Philip Blair*[7]. *Rinaldo*

4 https://www.osce.org/files/f/documents/9/c/14304.pdf, pp. 18–21, §§ 30–40.

5 Kovács, Péter : La protection des langues des minorités – ou la nouvelle approche de la protection des minorités: Quelques considérations sur la Charte européenne des langues régionales ou minoritaires)
Revue Générale de Droit International Public, 97 (2), (1993), pp. 411–418; International law and minority protection: Rights of Minorities or Law of Minorities? Budapest, Akadémiai Kiadó (2000).

6 Gramstad, Sigve: The adaptability of the Charter to national situations, in: Council of Europe (ed.): Implementation of the European Charter for Regional or Minority Languages, Regional or Minority Languages No. 2, Council of Europe Publishing, Strasbourg 1998, pp. 59–63; The Charter's monitoring mechanism: a practical perspective, in: Council of Europe (ed.): Minority language protection in Europe: into a new decade, Regional or Minority Languages No. 8, Council of Europe Publishing, Strasbourg 2010, pp. 29–35.

7 Blair, Philip: Der Entwurf einer „Europäischen Charta der Regional- und Minderheitensprachen" des Europarates, in: Ermacora, Felix/Tretter, Hannes/Pelzl, Alexander (Hg.): Volksgruppen im Spannungsfeld von Recht und Souveränität in Mittel- und Osteuropa, Braumüller, Wien 1993, S. 291–297.

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Locatelli[8] attended the meetings occasionally but *Ferdinando Albanese*[9] was nearly always present; he was very intuitive in proposing formulas satisfying most of the parties without altering the main philosophy and technical structure of the Charter, i.e. to concentrate on the protection of minority or regional languages (instead of entering into the endless debate on collective vs. individual rights) and to do it in the '*à la carte*' system, following the example of the European Social Charter, the European Charter of Local Self-Government and the European Outline Convention on Transfrontier Co-operation between Territorial Communities or Authorities. In this way, national constitutional or legal specificities could duly be taken into consideration, offering a better, more flexible approach than an instrument containing only one type of rule even if allowing for possible reservations.

Given the thirty-five years that elapsed since the negotiations, my recollections are somewhat faded concerning the precise details of the different standpoints. Nevertheless, the main positions of the different delegations can be summarized as follows:

i. The work is ambitious and important: if successfully completed, it could contribute to the appeasement of inter-ethnic tensions having eventual transboundary impacts.
ii. The work is ambitious, and its importance should be evaluated in accordance with the respective countries and situations. If there is no (or there is no longer) active use of a minority language and especially when there is no actual need therefore, it should be avoided to turn back the pages of history.
iii. The work is ambitious and important, but budgetary implications are equally important: attention should be paid to refrain from formulating burdensome rules which are either impossible to execute or could automatically lead to governmental or parliamentary refusal.
iv. The ambitions are slightly exaggerated and care is required in order to avoid touching the constitutional distribution of competence between different levels of state and regional or local authorities or

8 Locatelli, Rinaldo : Les objectifs et les intentions des initiateurs et auteurs de la Charte européenne des langues régionales ou minoritaires, in : Hérodote, n° 105, 2002, pp. 166–168.

9 Albanese, Ferdinando: The position of the European Charter for Regional or Minority Languages in the general context of the protection of minorities, in: Council of Europe (ed.): Implementation of the European Charter for Regional or Minority Languages, Regional or Minority Languages No. 2, Council of Europe Publishing, Strasbourg 1998, pp. 25–30.

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imposing unlawful or undue burden on industries and private businesses.

v. In place of a treaty-law document, a non-binding instrument expressing sympathy vis-à-vis the preservation and promotion of regional or minority languages would be largely sufficient as a kind of a positive message.

vi. The whole exercise is dangerous or at least useless because – despite its philosophical approach – it will be a minority protection instrument, and minorities do not exist (or certainly not constitutionally) in their countries.

vii. The whole exercise is dangerous because the output can reopen historical wounds especially concerning those who survived Nazi or axis-occupation during WW II.

During the negotiations, these background chancellery considerations came to the surface again and again, often in an intertwined form.

Another important aspect was the background of the actual members of the CAHLR. Although all members had to abide by their respective governmental instructions: some of them were career-diplomats or functionaries of the ministry of interior (or education or regional affairs) or special advisors to ministers or head of states, others were MP-s or university lecturers, researchers working in the field of international law, regionalisms or linguistics. These qualities were not necessarily exclusive: some members represented two parameters at the same time.

Let me name some of the colleagues whose activity and remarks impressed me at the time: the Swiss *Romedi Arquint*[10] and the Finnish *Eero Aarnio*[11] (advisors in the ministry of justice of their countries respectively) evoked their countries' example to illustrate that the management of regional officialization of coexisting languages was not that complicated.

10 See Arquint on the Charter in: From Theory to Practice – The European Charter for Regional or Minority languages, Council of Europe Publishing, Regional or Minority languages, No. 3, (2002), pp. 35–38.

11 Aarnio, Eero J., "Minority Rights in the Council of Europe: Current Developments", in Phillips, Alan and Rosas, Allan (eds.), Universal Minority Rights (Institute for Human Rights, Åbo Akademi University and Minority Rights Group (International), Turku and London, 1995), 123–133; See also in: From Theory to Practice – The European Charter for Regional or Minority languages, Council of Europe Publishing, Regional or Minority languages, No. 3, (2002), pp. 38–43.

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Dónall Ó Riagaín[12] often touched upon the successes and difficulties of the revitalization of the Irish language in his country. Austrian diplomat Heinz Tichy[13] was familiar with the linguistic and ethnic problems of the region and he understood the legacy of our common history.

Poznan constitutional law professor and MP, Venice Commission member *Hanna Suchocka*[14] (who later became PM of Poland) and *Péter Hunčík*[15] (minority advisor to Václav Havel) supported my efforts to convince the participants that the adoption of the Charter – as a binding treaty – is in the interest of Central and Eastern-Europe and that even if it does not bind all European countries, it is very important for our region that Central and Eastern European countries fall under its rules and that this be carried out under the umbrella of the Council of Europe.

From time to time, the well-known Belgian professor *Silvio Marcus-Helmons* representing the Holy See (as observer to the CoE) contributed to the debates with short interventions about the interpretation of some notions of international law while *Lluis Maria De Puig*[16] (rapporteur of the Charter at the Parliamentary Assembly) emphasized the importance that the great majority of the MP-s attributed to the successful accomplishment of the drafting.

As the different chapters of the present book deal in depth with the '*à la carte system*', the technique of how to choose from the options, the weaknesses and the strengths of the Charter and the monitoring, I do not want to enter in the comparison of the old version and the final version of the Charter. One can certainly say that more precise rules would be

12 Ó Riagain, Dónall: The political importance of the European Charter for Regional or Minority Languages, in: Council of Europe (ed.): Implementation of the European Charter for Regional or Minority Languages, Regional or Minority Languages No. 2, Council of Europe Publishing, Strasbourg 1998, pp. 14–21; The European Charter for Regional or Minority Languages: legal challenges and Opportunities (Regional or Minority Languages, No.5). Council of Europe Publishing, Strasbourg, 2008.

13 Tichy, Heinz: Die Europäische Charta der Regional- oder Minderheitensprachen und das österreichische Recht, Hermagoras, Klagenfurt 2000.

14 https://en.wikipedia.org/wiki/Hanna_Suchocka.

15 https://hu.wikipedia.org/wiki/Hunčík_Péter.

16 Puig, Lluís Maria de: Informe provisional sobre la preparació d'un projecte de Carta Europea de les llengües regionals e minoritàries, in: Revista de Llengua i Dret (Barcelona), 8 (1986), pp. 79–92; El Consell d'Europa – La Carta de les Llengües, in: Generalitat de Catalunya (ed.): Drets linguistics i drets culturels a las regions d'Europa – Act of the international symposium, Girona, 23–25 April 1992, 1995, p. 91 • Puig, Lluís Maria de: Debat i elaboració de la Carta Europea de les Llengües, Revista de Llengua i Dret (Barcelona), 16 (1991), pp. 153–172.

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more expedient in a number of paragraphs, but the question remains the following: how likely is it that a pro-minority maximalist or theoretically optimal treaty would be accepted by governments? According to the current perception within the Council of Europe, even the current text would not be accepted by governments today. The 25 ratifications[17], covering, *inter alia* the Central-Eastern European states, is in itself a good result especially if we take into account that the acceptance of the Charter became a precondition of admission to the Council of Europe also for those countries who were not present at the drafting table.

Nobody expected France to join the Charter: nevertheless, there were some parliamentary and governmental efforts in this direction – although these initiatives did not make it past the Constitutional Council. Still, regional languages were well and truly resuscitated as it is demonstrated e.g. by the street name plates of Strasbourg or in Bretagne.

Similarly, I remember the long hours we spent discussing whether it was realistic to expect that the "*user's manuals*" of different tools and nutritional components and allergy warnings in foodstuffs could also be written in minority languages if distributed in such a region. Some participants were astonished to hear (or at least seemed to be) that in Central and Eastern-Europe, the same language is an official language in a country, while being a minority language on the other side of the border and *vice versa*.

With the present system of local distribution of several products, this problem seems to have been solved: the packaging of several international actors on the food market contains all the necessary information in all potential languages where the given product is sold.

One cannot say that everything is perfect, we are far from that. However, the Charter definitely contributes to tackling minority language issues in a technical sense and not as a necessarily doubtful and subversive claim.

This is in itself a small step in the right direction. Or perhaps not even that small…

17 (as of January 2025) Armenia, Austria, Bosnia and Herzgovina, Croatia, Cyprus, Czechia, Denmark, Finland, Germany, Hungary, Liechtenstein, Luxembourg, Montenegro, Netherlands, Norway, Poland, Romania, Serbia, Slovak Republic, Slovenia, Spain, Sweden, Switzerland, Ukraine, United Kingdom.
https://www.coe.int/en/web/european-charter-regional-or-minority-languages/signatures-and-ratifications.

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Education in and of regional or minority languages (Article 8)

Jan de Groof – Balázs Szabolcs Gerencsér

1. Introduction

Europe's rich tapestry of ethnic and linguistic diversity has been a source of cultural richness. Today, there are around 200 native languages in Europe, which makes it essential to take account of linguistic heritage. The link between languages and education goes to the heart of communities, the nation, the international community and the development of the individual in its most sensitive dimensions.

The 20th century in Europe was characterized by significant developments in the recognition and protection of minority language rights, particularly in the educational sphere. From the post-World War I treaties to the establishment of the ECRML, there has been a progressive acknowledgment of the intrinsic value of linguistic diversity.[1] Nevertheless, the efficacy of these measures has been inconsistent, making it necessary to ensure ongoing dedication to international principles to guarantee the preservation and revitalisation of minority languages across Europe.[2]

In this chapter, the primary focus is on the examination of the outcomes of Article 8 monitoring within the broader contexts of social and international considerations. Against the backdrop of Europe's complex ethno-linguistic landscape, the authors examine how minority language education has been shaped by international legal instruments, from early 20th-century treaties to the contemporary human rights framework. The chapter situates Article 8 within a matrix of international norms, including the ICCPR, ICESCR, and the Framework Convention for the Protection of National Minorities, underscoring education's function as both a legal entitlement and a sociocultural necessity. Drawing on empirical data from over 150 COMEX country reports, the analysis identifies legal inconsisten-

1 Oszmiańska-Pagett, Aleksandra -Vesna Crnić-Grotić: "The European Charter for Regional or Minority Languages: Its Origins, Structure, and Process." *Journal of Language Policy* 12, no. 3 (2023): 45–67. DOI https://doi.org/10.1515/lme.16303552.

2 Durk Gorter: European minority languages: endangered or revived? *ACM SIGecom Exchanges*, 2007, Volume 6, Issue 2, 7–8.

https://doi.org/10.5771/9783748956785 https://www.inlibra.com/de/page/agb - Open Access - (cc) BY

cies, socio-political challenges, and structural barriers that affect the implementation of minority language education. It highlights education's role in fostering linguistic continuity, social inclusion, and identity preservation within minority communities. However, in line with the aim of the book, this chapter provides a legal analysis that is only tangentially related to policy (making) or pedagogical and sociological studies.

Education is presented not only as a tool for cultural transmission but also as a site of resistance against assimilation. We argue that a rights-based, culturally embedded approach to education policy is essential for promoting linguistic justice and sustaining pluralistic democratic societies.[3]

2. Education as a guarantee for the preservation of the European linguistic heritage -history in a nutshell

The early 20th century witnessed significant geopolitical shifts that reshaped the continent's linguistic landscape. The Treaty of Versailles (1919)[4] and subsequent treaties redrew national boundaries, leading to the emergence of new nation-states and the redefinition of minority statuses. These treaties included provisions aimed at protecting minority rights, including language and education, though implementation varied across countries. These texts contain a similar regulation aiming at the protection of minorities in the post-war countries by granting them human rights and the cultural rights, including the right to education:[5]

3 We extend our gratitude to the diligent and committed graduate and post-graduate law students whose contributions have been instrumental in analysing the substantial monitoring dataset of the Charter. Their invaluable work and contribution in datamining and data analysis has been indispensable. Thanks to the excellent law students at Pázmány Faculty of Law and Political Sciences, Budapest: *Réka Angyal, Orsolya Kálmán, Rebeka Schneider, Zsófia Terenyei, Sára Urbányi, Dóra Előhegyi, Lukács Fux, Dávid Miskolci.*

4 See Treaty of Peace (Versailles, 28 June 1919) Part II., Section VIII.

5 The right to education for minorities appear especially in Treaty with Austria (St. Germain-en-Laye, 10 September 1919) Article 66–67., Treaty with Czechoslovakia (St. Germain-en-Laye, 10 September 1919) Article 8–9., Treaty with Poland (Versailles, 28 June 1919) Article 8–9., Treaty with Roumania (Paris, 9 December 1919) Article 9–10., Serb-Croat-Slovene State (St. Germain-en-Laye, 10 September 1919) Article 7–8., Treaty with Hungary (Versailles, 28 June 1919) Article 58. The most detailed educational regulation is in the treaty with Bulgaria (Neuilly-sur-Seine, 27 November 1919) Article 55.

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1. All nationals[6] shall be equal before the law and shall enjoy the same civil and political rights without distinction as to race, language or religion.
2. "Nationals who belong to racial, religious or linguistic minorities shall enjoy the same treatment and security in law and in fact as the other [majority] nationals. In particular they shall have an equal right to establish, manage and control at their own expense charitable, religious and social institutions, *schools and other educational establishments*, with the right to use their own language and to exercise their religion freely therein."[7]

The interwar period saw fluctuating levels of commitment to minority language education, influenced by rising nationalism and varying interpretations of minority rights. The outbreak of World War II further disrupted these dynamics, leading to significant population displacements and altering the demographic composition of many European regions. In the world war's aftermath, the United Nations (UN, 1945), emphasized human rights and education as pivotal components of global peace and development. The Universal Declaration of Human Rights (1948) underscored the right to education, setting a precedent for future international covenants.

During the Cold War era, Eastern and Western blocs had distinct approaches to minority language education. Western European countries, under democratic governance, gradually recognized the cultural significance of minority languages, leading to policies that supported linguistic diversity by the end of the 80s. Human rights mechanisms have also addressed the relationship between language and education.[8] A prime example is the *Belgian linguistic case*, in which the European Court of Human Rights declared that the state must grant the right to education.[9]

Until the 90s and the fall of communism in Central and Eastern Europe the internal dynamics of dictatorships have also changed over time, which

6 As for the notions here we refer to the original wording of the treaties. 'Nationals' can be read as 'minorities' by the contemporary reader.

7 Article 58 para 5 of the Treaty of Peace with Hungary. (Emphasis added.).

8 Klaus D. Beiter; Terence Karran; Kwadwo Appiagyei-Atua, "Yearning to Belong: Finding a Home for the Right to Academic Freedom in the U.N. Human Rights Covenants," Intercultural Human Rights Law Review 11 (2016): 140.

9 Belgium Linguistic Case (2) – Decision of 23 July 1968 'In the case "relating to certain aspects of the laws on the use of languages in education in Belgium" v Belgium' (Application no 1474/62; 1677/62; 1691/62; 1769/63; 1994/63; 2126/64) 1 EHRR 252.

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of course effected (in)tolerance towards minority languages.[10] During this period of the 20th century, most minorities in Central and Eastern Europe had insufficient opportunities to protect their identity.

The 1960s marked a turning point with the emergence of international instruments addressing minority rights. The International Covenant on Civil and Political Rights (1966) and the International Covenant on Economic, Social and Cultural Rights (1966) both included provisions pertinent to minority language education, reflecting a growing global acknowledgment of cultural and linguistic rights.[11] This trend has also had an impact on the recognition of the right to education in national constitutions.[12]

The culmination of these efforts was the drafting of the European Charter for Regional or Minority Languages (ECRML) in 1992 under the auspices of the Council of Europe. The ECRML aimed to protect and promote regional and minority languages as a vital aspect of Europe's cultural heritage. It provided a comprehensive framework for the preservation of linguistic diversity, emphasizing the importance of education in achieving this goal. The Charter recognized that safeguarding minority languages required proactive measures in various domains, with education being paramount. By the late 20th century, statistical data indicated a decline in the use of many minority languages, underscoring the urgency of implementing robust educational policies to reverse this trend.[13]

10 Balázs Szabolcs Gerencsér: „Nyelvében él..." Kárpát-medencei körkép a határon túli magyarok hivatalos anyanyelvhasználati jogairól. ["Live in its language..." – A Carpathian Basin overview of the official use of mother tongue of Hungarian minorities.] NSKI-Méry Ratio, Budapest, 2015. 99.

11 Jan De Groof, "On the Implementation and Justiciability of the Right to Education," International Journal for Education Law and Policy (IJELP) 11 (2015): 18.

12 Pablo Meix Cereceda, "Equality, Non-Discrimination and Inclusive Education: An International and Comparative Constitutional Perspective," International Journal for Education Law and Policy (IJELP) 12 (2016): 7–20.

13 Douglas Brown – Steven Wrathmall: Geographical modelling of language decline. *Royal Society Open Science* 10, 221045. 2023. https://doi.org/10.1098/rsos.221045.

https://doi.org/10.5771/9783748956785 https://www.inlibra.com/de/page/agb - Open Access - (cc) BY

3. The Role of Education in Preserving Minority Identity: A Socio-Legal Analysis

3.1. Legal and Sociological Remarks on Minority Education

Education is a key mechanism in the preservation and transmission of minority identities, acting as a channel for cultural continuity and a bulwark against assimilation pressures. From both a legal and sociological perspective, education policies and practices have a significant impact on the vitality of minority languages and cultures.[14] Furthermore, education has been shown to be instrumental in the cultivation of a moral, inclusive, and socially responsible individual (citizen), thereby fostering social peace and cohesion.[15]

Article 8 of the Charter specifically addresses education, advocating for the provision of pre-school, primary, secondary, technical, and university education in regional or minority languages where appropriate. This legal recognition establishes a foundation for minority communities to claim education rights essential for preserving their linguistic heritage.[16]

From a sociological standpoint, education is a primary agent of socialization, imparting the values, norms, and knowledge that constitute a community's cultural capital.[17] For minority groups, education in their native language reinforces cultural narratives and historical consciousness, fostering a collective identity distinct from the majority population.[18] Studies have shown that students who receive education in their mother tongue

14 Stephen May: *Language and Minority Rights: Ethnicity, Nationalism, and the Politics of Language*. 2nd ed. New York: Routledge, 2012.

15 Zebun Nisa Khan. Role of Education in Building Social Cohesion. International Journal of Secondary Education. Vol. 4, No. 2, 2016, pp. 23–26. doi: 10.11648/j.ijsedu.20160402.12.

16 Dieter Kugelmann: The Protection of Minorities and Indigenous Peoples Respecting Cultural Diversity. In Armin von Bogdandy – Rüdiger Wolfrum (eds): *Max Planck Yearbook of United Nations Law*. vol.11, 2007. 240 and 245.

17 Garth Stahl – Guanglun Michael Mu (2024). Pierre Bourdieu: Revisiting Reproduction, Cultural Capital, and Symbolic Violence in Education. In: Brett A. Geier (ed): The Palgrave Handbook of Educational Thinkers. Palgrave Macmillan, Cham. https://doi.org/10.1007/978-3-031-25134-4_128.

18 Parra, María Luisa. Working with diversity in the Spanish heritage language classroom: A critical perspective. *Porta Linguarum*, 34, 2020. 17–18. DOI: https://doi.org/10.30827/portalin.vi34.16730.

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exhibit higher self-esteem and a stronger sense of cultural affiliation.[19] This cultural reinforcement is crucial in multicultural societies where minority groups may be susceptible to assimilation pressures.

Moreover, bilingual or multilingual education models have been associated with cognitive benefits, including enhanced problem-solving skills and greater mental flexibility.[20] These advantages extend beyond individual development, contributing to the community's overall resilience and adaptability. By facilitating the transmission of language and culture through education, minority groups can maintain their distinct identities while participating fully in the broader society.

3.2. Challenges in Implementing Minority Language Education

Despite the clear benefits and legal frameworks supporting minority language education, several challenges impede its effective implementation. Resource constraints often limit the availability of qualified teachers proficient in minority languages, and the development of appropriate curricula can be hindered by political and social resistance *(lack of acceptance).* Additionally, globalization and the dominance of major languages may lead to the perception that minority languages are less valuable *(lack of prestige)*, affecting both policy decisions and individual choices regarding language use.

In some cases, state policies may not fully align with international legal standards *(lack of harmonization)*, resulting in inadequate support for minority language education. This misalignment can lead to disparities in educational outcomes and hinder the preservation of minority identities.[21] Therefore, continuous advocacy and monitoring are essential to ensure that legal provisions translate into effective educational practices.

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19 Didem Oral – Anna Lund: Mother Tongue Instruction: Between Assimilation and Multicultural Incorporation. Education Sciences, 12 (11) 2022. https://doi.org/10.3390/educsci12110774.

20 Daehyun Kim – Mark A. Runco: Role of Cognitive Flexibility in Bilingualism and Creativity. *Journal of Creativity*. Volume 32, Issue 3, 2022. https://doi.org/10.1016/j.yjoc.2022.100032.

21 Skutnabb-Kangas, Tove, and Robert Dunbar. *Indigenous Children's Education as Linguistic Genocide and a Crime Against Humanity? A Global View*. Guovdageaidnu/Kautokeino: Gáldu Čála, 2010.

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Education is a cornerstone in the preservation of minority identities, serving both as a transmitter of cultural heritage and a platform for individual and community development. Legal frameworks like the ECRML and the FCNM might provide support for minority language education, but their effectiveness depends on proper implementation and societal recognition of the value of linguistic diversity *(lack of effectiveness)*.[22] Education in minority languages fosters a sense of belonging and cultural pride, contributing to the resilience of minority communities.[23] Addressing the challenges in implementing minority language education requires a concerted effort from policymakers, educators, and communities to ensure that minority identities continue to thrive in an increasingly globalized world.

4. Article 8 within the Framework of International Education Rights

4.1. Alignment with UN Conventions

The ECRML's emphasis on education is evident in its stipulations that encourage the use of regional or minority languages at all levels of education. This focus resonates with several UN conventions that underscore the right to education without discrimination. The Preamble of the Charter establishes a direct link to UN documents by stating:

> "Considering that the right to use a regional or minority language in private and public life is an inalienable right conforming to the principles embodied in the United Nations International Covenant on Civil and Political Rights."

This link extends to the International Covenant on Economic, Social and Cultural Rights (ICESCR) asserts in Article 13 the right of everyone to education, aiming to achieve the full development of the human personality

22 Several excellent scholars question the effectiveness of the Framework Convention itself (i.e. Patrick Thornberry, Tove Skutnabb-Kangas). However, this study is not about the FCNM, so we have taken into account this international legal document as a whole. Skutnabb-Kangas, Tove: *Linguistic Genocide in Education—or Worldwide Diversity and Human Rights?* Lawrence Erlbaum Associates, 2000. 537.

23 Patricia Diane Mouboua – Fadeke Adeola Atobatele – Olateju Temitope Akintayo: Multilingual education and social equity: A comparative study of integration policies in multicultural societies. *GSC Advanced Research and Reviews*, 2024, 19(02), 32–42 DOI: https://doi.org/10.30574/gscarr.2024.19.2.0165.

https://doi.org/10.5771/9783748956785 https://www.inlibra.com/de/page/agb - Open Access - (cc) BY

and the sense of its dignity. While the ICESCR does not explicitly mention minority languages, its principles of non-discrimination and cultural development provide a foundation for advocating education rights for minority language speakers.

Similarly, the Convention on the Rights of the Child (CRC) emphasizes in Article 29 that education should be directed to the development of respect for the child's cultural identity, language, and values. This provision aligns with the ECRML's objectives by recognizing the importance of incorporating a child's linguistic background into their education, thereby promoting inclusivity and respect for cultural diversity.

4.2. Insights from the UN Special Rapporteurs

Fernand de Varennes as the UN Special Rapporteur on minority issues has extensively addressed the intersection of education, language, and minority rights. In his 2020 report to the Human Rights Council, de Varennes emphasizes that the appropriate and proportionate use of minority languages in education can enhance inclusion, communication, and the overall quality of education for minority students. He argues that neglecting minority languages in education settings can lead to marginalization and hinder the exercise of education rights for minority communities.[24] In fact, while the Charter's aim is not to protect speakers' rights, the protection of Charter languages through the States Parties' enforcement of Article 8 directly affects the exercise of speakers' education rights.

De Varennes further highlights that international instruments, including the ECRML, recognize the significance of minority languages in education. He notes that the Charter obliges state parties to make available education in regional or minority languages, thereby directly reinforcing the education rights of minority language speakers. This perspective underscores the Charter's incidental role in operationalizing the broader principles enshrined in UN conventions concerning education rights.[25] He also has called for increased efforts to ensure that minority language speakers can fully enjoy their education rights. He recommends that states adopt

24 Report of the Special Rapporteur on minority issues: Education, language and the human rights of minorities. A/HRC/43/47. para 49.

25 Report of the Special Rapporteur on minority issues: Education, language and the human rights of minorities. A/HRC/43/47. para 42.

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comprehensive language policies that recognize and promote minority languages within the education system. Such policies should be developed in consultation with minority communities to ensure that they address the specific needs and aspirations of these groups.[26]

The UN Special Rapporteur on the right to education also published reports reflecting the education of linguistic minorities. In her 2017 report on equity and inclusion Koumbou Boly Barry focuses on the critical issue of equity and inclusion in education, particularly highlighting marginalized groups such as minorities, indigenous peoples, girls, and children with disabilities. The document underscores that while access to education has improved globally, significant disparities remain, especially for minority communities. The report emphasizes that equitable access goes beyond ensuring everyone can physically attend school. It requires ensuring that education is culturally and linguistically relevant. For minorities, this means education must be available in their mother tongue or provide instruction that respects their cultural identity.[27] As she finds, the barriers faced by minorities are based on either (i) discrimination (schools may not be welcoming environments for minority students, and curricula may exclude their histories, languages, and cultures), (ii) socioeconomic marginalization or (iii) language barriers, because a lack of instruction in minority languages can hinder students' learning and increase dropout rates.[28]

In 2023 Farida Shaheed, the following UN Special Rapporteur on the right to education examined the progress made in securing the right to education globally. She placed a major focus on vulnerable groups, including minorities, who often face systemic barriers to enjoying their right to education fully. Over recent decades, significant progress has been made in expanding educational access. However, the report highlights that access alone is insufficient without ensuring quality and inclusiveness, especially for minority communities.[29] The report stresses that education must respect the cultural and linguistic identities of minorities. Denying children

26 Report of the Special Rapporteur on minority issues: Education, language and the human rights of minorities. A/HRC/43/47. para 41.

27 Report of the Special Rapporteur on the right to education: equity and inclusion. 2017. A/72/496. para 19.

28 Report of the Special Rapporteur on the right to education: equity and inclusion. 2017. A/72/496. para 59–66.

29 Report of the Special Rapporteur on the right to education: Securing the Right to education: advances and critical challenges. 2023. A/HRC/53/27. para 20.

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the right to learn in their mothertongue can have a lasting negative impact on their educational outcomes and personal development.[30]

Both reports by the UN Special Rapporteur on the right to education underline the urgent need to address educational disparities faced by minority communities. They emphasize that merely ensuring physical access to schools is not enough; education must be inclusive, equitable, and culturally relevant. The reports advocate for multilingual education systems, inclusive curricula, and robust legal frameworks to protect the rights of minorities. Importantly, they stress that respecting minority languages and cultures in education is not only a matter of equity but also a means of fostering social cohesion and mutual respect in increasingly diverse societies. That is exactly how the ECRML looks at minority language education.

4.3. Complementarity and Reinforcement of International Norms

The ECRML complements international norms by providing a detailed framework specifically tailored to the protection of regional and minority languages within the education sector. While UN conventions establish broad principles of non-discrimination and cultural rights, the ECRML offers concrete measures for the implementation of these principles in the context of minority language education. The Charter outlines specific obligations for state parties, such as the provision of pre-school, primary, secondary, and higher education in regional or minority languages, where there is sufficient demand. This specificity helps translate international human rights norms into actionable policies at the national and regional levels.

Behind the positive law, UNESCO is increasingly vocal in its support for mother tongue-based education.[31] In this sense, it goes even further than the requirements set out in the Charter – although, due to the soft legal environment, its application is more of a cultural category than a legal one.

The Charter's monitoring mechanism ensures that state parties are held accountable for their commitments, thereby reinforcing the implementation of international education rights. This mechanism provides a model

30 Report of the Special Rapporteur on the right to education: Securing the Right to education: advances and critical challenges. 2023. A/HRC/53/27. para 55.

31 *Why mother language-based education is essential?* UNESCO, Last update:20 April 2023. https://www.unesco.org/en/articles/why-mother-language-based-education-essential.

https://doi.org/10.5771/9783748956785 https://www.inlibra.com/de/page/agb - Open Access - (cc) BY

for monitoring compliance with international norms, contributing to the overall strengthening of human rights protections for minority language speakers.

Despite the synergies between the ECRML and UN conventions, challenges remain in the effective realization of education in minority languages. Resource constraints, political resistance, and varying interpretations of international norms can impede the implementation of the Charter's provisions.

The insights provided by the UN Special Rapporteur on minority issues further elucidate the importance of minority language education in achieving inclusive and equitable quality education for all. However, the effective realization of these rights requires sustained commitment, adequate resources, and inclusive policy-making processes that engage minority communities in meaningful ways.

5. Impact of the ECRML on Minority Language Education

At the beginning of 2025, a total of 153 country reports from 25 Member States were included in the Charter monitoring summary.[32] This will be complemented by a total of 17 reports submitted during the mid-cycle information on the implementation of the recommendations for immediate action (InfoRIA). In each report, the Member States report separately on the application of Article 8 in respect of the protected languages, to the extent that they undertook to do so when they joined the Charter. In its analysis of the country reports, the COMEX highlights both positive and negative points of change. Read together, these paint a picture of the impact of States Parties' policies on the education of minorities. The outcome shows both enhancement of minority language education and challenges in implementation.

5.1. Developments Recognised

COMEX reports indicate that the ECRML has significantly contributed to the improvement of the provision of minority language education in several

32 ECRML monitoring database is available on the Council of Europe's webpage: https://www.coe.int/en/web/european-charter-regional-or-minority-languages/reports-and-recommendations.

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States Parties. Ongoing analysis and findings and recommendations that are specific, i.e. not only to a country but also to a minority language, show direct results.

We see substantive, administrative and institutional development as an outcome of the quarter-century of the Charter. In the Netherlands, the recognition of Limburgish and Low Saxon under the Charter has led to efforts to upgrade the teaching of these languages to the status of regular subjects within the education system. While the COMEX's fifth evaluation report emphasized the need for a national policy encompassing all regional languages, particularly in domains such as education that fall under national authority, the sixth highlights that "since the previous monitoring cycle, more people have attended regional language classes, and more educational material, including in digital form, has been available."[33]

In Switzerland the school inspectorate's monitoring means were extended and made transparent in line with the recommendations, which is now a tool for monitoring the minority language cantons too.[34]

The minority languages of Cyprus and their education suffered from the shortage of teachers and the lack and quality of teaching materials. During the monitoring cycles we can observe progress in the Cypriot Maronite Arabic language, which was declared to be a seriously endangered language.[35] Since 2002, when the Charter entered into force in Cyprus, due to the constant urging of the COMEX to the Cypriot authorities to adopt and implement a structured policy, this language gained a strong state support to involve more inhabitants learning their native tongue.[36]

COMEX reports also document positive developments and best practices in minority language education. In the United Kingdom, for instance, there have been significant efforts to promote regional or minority languages, such as Welsh and Scottish Gaelic, within the educational system. The sixth evaluation report notes that these languages enjoy strong support and have been successfully integrated into various levels of educa-

33 6th evaluation Report of the Committee of Experts on the Netherlands. MIN-LANG (2019) 15final. para 15.

34 Evaluation by the Committee of Experts of the Implementation of the Recommendations for Immediate Action in Switzerland, MIN-LANG (2023) 21. Para 12.

35 1st Evaluation report by the Committee of Experts on Cyprus. ECRML (2006) 3. para 47.

36 4th Evaluation report by the Committee of Experts on Cyprus. ECRML (2014) 8. paras 48–52.

https://doi.org/10.5771/9783748956785 https://www.inlibra.com/de/page/agb - Open Access - (cc) BY

tion, contributing to their revitalization and increased visibility in public life.[37]

Despite such advancements, COMEX reports also highlight challenges in implementing the Charter's provisions on education.

5.2. Social, policy and pedagogical challenges

Before summing up the more than one hundred COMEX evaluation reports, it should not be overlooked that the situation of minority languages and education is not independent of geographical and temporal factors. Our assumption is that there are three aspects – demographic variability, economic variability, and historical antecedents – that have crucial impact on minority education as well.

According to Eurostat, the European Statistical Office, the population of the European Union is growing slightly each year,[38] however the number of births, or fertility rate, is low by comparison.[39] This also shows that the number of Europeans is decreasing year by year. This demographic change is particularly threatening for small minorities. This is why UNESCO monitors endangered languages, and why we see an increasing number of 'critically endangered' or 'extinct' languages in Europe.[40]

Looking at Eurostat data, the GDP rate, which is an indicator of economic development, increases from South to North and from East to West.[41] The impact of the declining population and the volatile economic capacity in Europe is also palpable in minority language education. The third external influence on minority languages and their teaching is the social embeddedness of minorities, their socio-cultural and historical background.

The improvements proposed by the COMEX show similarities in all 25 Member States. We grouped COMEX findings made in Evaluation Reports

37 6th 4th Evaluation report by the Committee of Experts on UK and the Isle of Man. MIN-LANG (2024) 9. para 39.

38 the EU's population has increased from 447.6 million on 1 January 2023 to 449.2 million people on 1 January 2024. https://ec.europa.eu/eurostat/web/products-eurostat-news/w/ddn-20240711-1.

39 The total fertility rate stood at 1.46 live births per woman in the EU in 2022. https://ec.europa.eu/eurostat/statistics-explained/index.php?title=Fertility_statistics.

40 Christopher Moseley (ed): Atlas of the World's Languages in Danger. Third edition. UNESCO Publishing, 2010. 30–42. and Map 10.

41 Regional gross domestic product (PPS per inhabitant) by NUTS 2 region. https://doi.org/10.2908/TGS00005.

https://doi.org/10.5771/9783748956785 https://www.inlibra.com/de/page/agb - Open Access - (cc) BY

into *(i) social*, *(ii) education policy* and *(iii) education methodology* (pedagogical) categories. In all cases, the measures described below are clearly aimed at protecting all minority or regional languages, chiefly those that are particularly vulnerable, in the context of the social, economic and cultural headwinds described above. The survival of languages, and thus of minority identities, is of course conditional upon their being passed on to the next generation, whose members will use them. For minority language education, based on COMEX findings and the proposals for recommendations to the Committee of Ministers, three broad groups have been identified, which concern social coexistence, policy-making and education (pedagogy). However, these groups are not exclusive, but individual instruments (such as the organisation of history education and curriculum development) can serve several purposes at the same time, such as promoting social inclusion, awareness and ensuring quality education.

(i) Social development means, first and foremost, the social recognition and embeddedness of minority languages. A large number of reports call on the Member State to launch social programmes to improve the awareness and recognition of minority languages (CY, CZ, DK, ES, HU, HR, PL, RO, SK, SLO). Promotion, i.e. encouraging parents to enrol their children in minority language institutions and promoting social inclusion, is also repeatedly mentioned in reports in the context of the application of Article 8 (ES, HR, HU, PL, DK).

(ii) Education policy-making or the development of education and language policy are regularly recurring themes in COMEX documents. In relation to education, this encourages the correct development of administrative and legal conditions.

In Slovakia, for example, the policy of 'school rationalisation', aimed at reducing educational costs, has led to the closure of small schools, many of which served minority language communities.[42] This has forced students to choose between traveling longer distances to attend minority language schools or enrolling in Slovak-language schools, thereby potentially diminishing the use of minority languages in education.

Similar administrative activities include the organisation of teacher training (AT, CY, DK, ES, HU, PL, RO, SI, SE, UK), and ensuring access to education from the lowest level (AM, RO, SI) or improving access to technical and vocational training (RO, SI). The lack of regional or minority

42 4th Evaluation report by the Committee of Experts on Slovakia. ECRML (2016) 2. para 6, 60 and 72.

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language teachers is a widespread phenomenon, in itself undermining the success of any relevant education policy.

(iii) The COMEX also made findings in the field of *pedagogy* and *educational methodology*. These include recommendations and findings on the improvement of teaching materials (AM, FI, HU, PL), with the ambition of developing teaching materials relevant to the specific minority language and its users, instead of merely importing these materials from e.g. kinstates. In addition, ensuring access to minority languages at most school levels, or desegregation and the development of inclusive school environments is key.

In the southern and eastern countries of Europe, the COMEX evaluation reports highlight the need to provide more financial resources (AR, CY, HR, HU, PL, RO). However, this recommendation is less frequently made in respect of western and northern States Parties. Here, the need to maintain stability of funding and to encourage more resources for teacher training and curriculum development is a more recurrent recommendation (DE, UK, AU, SW).

6. Summary and outlook

The ECRML has played a crucial role in promoting minority language education across Europe, with COMEX evaluation reports providing valuable insights into its impact. While there have been notable successes in enhancing the status and provision of minority language education, challenges remain in ensuring consistent and comprehensive implementation of the Charter's provisions. The cases highlighted in COMEX reports underscore the importance of national language policies, the need to address challenges such as school rationalisation, and the potential of new technologies in supporting minority language education. Ongoing monitoring and evaluation by the COMEX are essential to address these challenges and to continue promoting the objectives of the Charter.

In minority language education, the top priority is to start education at the lowest level (kindergarten) and to continue it to the highest possible (attainable) level. This is one of the necessary prerequisites for the minority language to survive and be passed down through the generations as a core value and an exceptionally important means of expressing personality and identity.

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A recurring theme in COMEX evaluations is the necessity for comprehensive language policies that encompass all regional and minority languages within a state. The absence of such policies can lead to inconsistencies in the provision of minority language education. The COMEX has consistently recommended that state authorities develop and implement national language policies that ensure equitable support for all minority languages, particularly in the educational sector. As the COMEX stated, "policy relating to regional or minority languages is primarily the responsibility of provincial authorities."[43]

This means, that language policy as well as education policy should reach the lowest level of society, in line with the principle of *subsidiarity*.[44] Consequently, the COMEX asks the central authorities to raise awareness at municipal level for the benefit of all regional or minority languages covered by the Charter.[45]

To achieve all this, teacher training, which is currently one of the biggest shortcomings and problems across Europe, is needed. On the one hand, there is a general material problem of a lack of resources for teacher training and, on the other, a disparity in the prestige of minority languages. As an example, it can be clearly seen in the wider European context that the teaching of more widespread languages (e.g. German) is more accessible to national minorities than less widely spoken languages (Croatian, Slovenian, Slovak) (PL, CZ, HU, HR).

The advent of new technologies, particularly the internet, has also influenced the implementation of the Charter's provisions on education. The COMEX has noted that the internet can serve as a valuable tool for the promotion of minority languages, offering platforms for educational resources and community engagement. However, the impact of the internet on regional and minority languages is seldom evaluated in detail. The

43 6th Evaluation report by the Committee of Experts on the Netherlands. MIN-LANG (2019) 15final. para 7.

44 Gonzalo Jover: Rethinking Subsidiarity as a Principle of Educational Policy in the European Union. In: José Antonio Ibáñez-Martín – Gonzalo Jover (eds) *Education in Europe: Policies and Politics.* Springer, Dordrecht. 2002. https://doi.org/10.1007/978-94-015-9864-4_1 See also one of the most recent analyses on the contemporary notion of subsidiarity that can be, in our reading, in connection with local languages: Ádám Varga: Subsidiarity as an answer to the crisis of local self-government system. *Frontiers in Political Science* 2025, vol. 7. https://doi.org/10.3389/fpos.2025.1583491.

45 5th Evaluation report by the Committee of Experts on the Netherlands. ECRML (2016) 4. para 36, and 6th Evaluation report by the Committee of Experts on the Netherlands. MIN-LANG (2019) 15final. 6th ev rep para 9.

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COMEX has acknowledged the need for more systematic assessments of how new technologies affect the promotion and preservation of minority languages within the educational domain.[46]

However, there is also a lack of clarity in the COMEX practice on digital assets. Saami distance learning tools are praised, but it is not possible to show how these tools contribute to minority language education in Central Europe, for example, for lack of data.

In conclusion, while the ECRML has significantly contributed to the promotion of minority language education across Europe, challenges remain in ensuring a consistent and comprehensive implementation of its provisions. The insights provided by the COMEX underscore the importance of national language policies, the need to address challenges such as school closures, and the potential of new technologies in supporting minority language education. Ongoing monitoring and evaluation by the COMEX are essential to address these challenges and to continue promoting the objectives of the Charter.

46 Sarah McMonagle: The European Charter for Regional or Minority Languages: Still Relevant in the Information Age? *Journal on Ethnopolitics and Minority Issues in Europe*. Vol 11, No 2, 2012, 2.

https://doi.org/10.5771/9783748956785 https://www.inlibra.com/de/page/agb - Open Access - (cc) BY

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Justice and the use of minority languages (Article 9)

Gábor Kardos

1. Naming the world

"Language is a means of naming the objective world"[1], writes Pierre Bourdieau. The question is, if I cannot name certain things, do they actually exist for me? The answer was already given by Ludwig Wittgenstein when he stated that the limits of the language I understand are the limits of my world.[2] Language must be able to describe not only the concepts and institutions of private life, but also of public life, including the administration of justice.

My personal memory is that once, when I was travelling by bus in the countryside, two women sitting nearby were speaking Slovak with each other, but in a way that they mixed Hungarian words into their speech. Words such as appeal or dues. They couldn't name these concepts in their minority mother tongue, their linguistic world no longer covered these.

The lack of legal terminology is a serious problem for minority languages. As a result of the narrow-minded and aggressive linguistic homogenisation of the nation-states, minority languages are losing their public character. This will lead to a situation where the majority of the languages living together will represent modernity and the minority languages will represent backwardness, a situation in which the latter have little chance of survival in the long term.[3] In other words, where modernisation and social advancement are only possible in the majority language, assimilation will necessarily follow. In addition, minority languages will be rendered invisible because they are used only in private life. Minority

1 Bourdieau adds that language is of course a means of communication, but also of domination. See Pierre Bourdieu, Pierre (1991): Language and Symbolic Power. Cambridge MA, Harvard University Press, 165.

2 Wittgenstein, Ludwig (1922): Tractatus Logico-Philosophicus London: Kegan Paul, Trench, Trubner & Co., Ltd. New York: Harcourt, Brace & Company, Inc. 1922, 5.6, p. 74. Online: https://www.gutenberg.org/files/5740/5740-pdf.pdf, 5.6, 74.

3 Díaz López: The Politicization of Galician Cleavages, In: Stein Rokkan, Stein- Derek W.Urwin (ed.):
The Politics of Territorial Identity, London, Sage,1982, p. 393.

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languages will be bones, which will not include the language of administration and justice, or science and other specialised languages. For the use of minority languages in the fields of public administration and justice, adequate legislation is not enough; what is needed is the provision of practical conditions, to mention here only the most obvious: the availability of an interpreter.

Evidence is a key issue in the administration of justice, but also in administrative proceedings. As Fernand de Varennes points out, forcing an individual to use a language that he is uncomfortable with when giving evidence in the court, or a language he is not as comfortable using as a native speaker of the official language, is a "state-sanctioned disadvantage" and can lead to discrimination in the most serious cases.[4] The solution to this problem was already set out by Plato in his *Apology* of Socrates.

> "For the case is this: I now for the first time come before a court of justice, though more than seventy years old; I am therefore utterly a stranger to the language here. As, then, if I were really a stranger, you would have pardoned me if I spoke in the language and the manner in which I had been educated, so now I ask this of you as an act of justice, as it appears to me, to disregard the manner of my speech, for perhaps it may be somewhat worse, and perhaps better, and to consider this only, and to give your attention to this, whether I speak what is just or not; for this is the virtue of a judge, but of an orator to speak the truth."[5]

The international protection of human rights, as part of the right to a fair trial, only provides a remedy in criminal proceedings, and only if the accused cannot use the majority language in which the proceedings are conducted to an adequate degree. In such cases, the fair trial right of the accused is ensured through the assistance of a free interpreter or translator. On the basis of the guidance provided in particular by the case-law of the

4 De Varennes, Fernand (1999): The Existing Rights of Minorities in International Law". In: Miklós Kontra – Robert Phillipson – Tove Skutnabb-Kangas – Tibor Várady (eds): *Language: A Right and a Resource – Approaches to Linguistic Human Rights*. Budapest, Hungary: Central European University Press, 1999, https://doi.org/10.1515/9789633865217-011. 125.

5 Plato: The Apology of Socrates translated by Henry Cary. sgc. edu. Online: http://faculty.sgc.edu/rkelley/The%20Apology%20of%20Socrates.pdf, 3., The Plato quotation is not my invention, but that of Jenő Böszörményi. See Böszörményi, Jenő (2006): Language rights in court proceedings. Workshop Studies 20. Budapest, European Foundation for Comparative Minority Studies, p. 5.

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European Court of Human Rights, this guarantee must also extend the earlier investigative stages of the proceedings and all documents relevant to the defence.[6]

Consequently, express international legal protection is necessary to ensure the use of minority languages in the field of justice. The Council of Europe Framework Convention for the Protection of National Minorities, Article 10.3. merely reiterates the fair trial guarantee of the European Convention on Human Rights, which is fleshed out in detail by Article 9 of the ECRML.

2. The Charter and Article 9

Before reviewing the main features of Article 9 of the Charter, I would like to touch briefly on two issues. The first is 'optimal' regulation, the second is the Charter's choice of values.

Since international legislation is the result of compromises, sometimes with awkward results, one way of avoiding a vague outcome is to give States Parties a choice between obligations of different degrees of difficulty. This is the solution provided by the Charter. The other option is a mere recommendation, i.e. *soft law.* In the latter case, it would be possible to avoid a bad compromise and adopt a near-optimal text. While in the first case, the price to be paid is to ensure a choice, i.e. near-optimal legislation is only one of the options offered. In the second case, the price is the loss of international legal commitment. Of course, hope springs eternal, so a recommendation may encourage an international treaty or possibly domestic legislation. I consider the solution of the OSCE Oslo Recommendations to be fortunate because, in addition to criminal proceedings, it also creates the right to minority language use also in civil and administrative court proceedings in regions and municipalities where there are a significant number of minority language users. It is true that in the latter cases the wording "they have the right" rather than "they must be guaranteed that right" would be perfectly clear. Translation and interpretation are free of charge in the case of criminal proceedings, and free of charge in the other two proceedings if necessary. Furthermore, in regions and localities where

6 Van Dijk, Pieter (1990) Legal Principles of Fair Trial in Criminal Proceedings. In: Rosas, Allan et al. (eds.): *Human Rights in a Changing East–West Perspective*, Pinter, London-New York, 1990. 123–124.

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there are significant numbers of persons belonging to linguistic minorities and where there is a demand for this, States should consider ensuring that all court proceedings involving such persons are conducted in the language of the minority (points 17–18–19).

If we look at the choice of values in the European Charter for Regional or Minority Languages, it is clear that the protection of cultural heritage is the main value. The Charter protects regional or minority languages that are part of Europe's cultural heritage. It seeks to distance the protection of minority languages, which is part of the protection of cultural heritage, from the political world of minority rights and thus make it more acceptable to some European states. However, this benign effort is a wooden spoon: "It is a very artistic iron scroll made of very noble wood."[7] Language is a political issue, and it will remain so even in the airy cloak of cultural heritage protection. If only because the Charter indirectly protects minority language rights through cultural heritage protection. It also confirms that it is impossible to distance oneself from politics and that the Charter also has a political philosophical value choice. This political philosophical value choice is as R. Gwynned Parry points out, is multilingual citizenship, which takes equality on linguistic grounds seriously[8] One of the fundamental areas of this multilingual citizenship is justice system.

Article 9 of the Charter is rather long and complicated, as are most of the substantive articles of the treaty, mainly because of the detailed regulation of the optional obligations. According to Article 2(2) of the Charter, for each minority language protected under Part III, States Parties need only choose one paragraph or point in Article 9. According to paragraph 44 of the Explanatory Report, this is within the limits of a reasonable distribution of obligations between the different areas of protected language use. This is food for thought. If the treaty-makers had actually considered minority language use to be of paramount importance, they should have foreseen the choice of at least three, similarly to Articles 8 and 12, which deal with education and culture. The question is, then, why was minority language use in the area of justice not seen as something that deserved a greater

7 Antal Szerb's statement on the anti-romantic nationalist radical political ideals of Charles Maurras. See Antal Szerb (1973): History of World Literature, Budapest, Magvető. 770.

8 Parry, Gwyned R. (2010): History, human rights and multilingual citizenship: conceptualising the European Charter for Regional or Minority Languages. *Northern Ireland Legal Quarterly* Vol. 61 (2010) No. 4., 329.

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commitment, especially as it is the fundamental context of encountering the majority state, where multilingual citizenship can manifest itself? One might suspect that the explanation has to do with the fact that the vast majority of people belonging to European linguistic minorities have a satisfactory command of the majority language and are therefore able to communicate with state bodies, including the judiciary, through that language. In addition, because of their earlier negative experiences, they do not consider it appropriate to strive to use their mother tongue. As a result, the language use in the judiciary, and in the administration of justice in general, has had only limited added value for the States which have ratified the Charter in terms of the protection and promotion of minority languages, i.e. in terms of the objectives of the Charter.[9]

However, this may be countered by the fact that the use of the mother tongue in court, in addition to its symbolic significance, is not only a means of manifesting identity, but also a means of expressing the existence of the whole community, expressing equality of citizenship, freedom of linguistic choice, which is part of the freedom of expression, and not just an instrumental one, stresses Jacqueline Mowbray.[10]

Of particular interest is paragraph 1, which contains a number of clarifying references that determine the application of the entire article:

> "The Parties undertake, in respect of those judicial districts in which the number of residents using the regional or minority languages justifies the measures specified below, according to the situation of each of these languages and on condition that the use of the facilities afforded by the present paragraph is not considered by the judge to hamper the proper administration of justice:"

The first such concept is the judicial district, which is the geographical area of activity of a given court and in most cases is not the same as one or more administrative divisions. According to paragraph 90 of the Explanatory Report, paragraph 1 refers to judicial districts in which the number of inhabitants using regional or minority languages justifies measures. It

9 *The à la carte* solution of the Charter is shortly but convincingly criticised by Simon K. Maatta in his study on the reasons for the lack of French ratification and the linguistic situation of the French minority, see Simo K. Maatta, Simo K. (2005) The European Charter for Regional or Minority Languages, French Langauge Laws, and National Identity. *Langauge Policy*. 4(2). 172.

10 Mowbray, Jacqueline (2012) *Linguistic Justice: International Law and Language Policy*, Cambridge, Oxford University Press, 143.

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further adds that in the case of higher courts located outside the territory where regional or minority languages are used, it is a matter for the State concerned to take into account the specific nature of the judicial system and the hierarchy of courts. In some European countries, such as Italy and Portugal, points out Catrin Fflur Huws, a court district is considered to be the one where the case can be brought in its entirety.[11] This means that the specific nature of the administration of justice and the structure of the court hierarchy in these countries would allow minority languages to be used in higher courts if the number of speakers so justified.[12] Determining the appropriate number of speakers is a general problem, however, for the reason already mentioned that the judicial districts do not necessarily follow the administrative division of the State. And if this is the case, it is unfair to require the same minority proportion for minority language use as in administrative units. An important factor has been pointed out by the COMEX, as noted by Anna M. Pla Boix, in the case of Hungary. In the context of minority language use, the designation of judicial districts may be helped by other signs of a desire to preserve self-identity, in addition to census data. So, in the case of Hungary, the districts and municipalities in which minority self-governments exist and are active.[13]

In addition, Article 7(1)(b), which prohibits changing administrative divisions to reduce the proportion of minorities, does not seem to apply to judicial districts.[14] Nor should it be forgotten that the wording of Article 9(1), when it refers to judicial districts where the number of minority language users justifies protection in the area of justice, refers not only to areas where the minority language is traditionally used, but also to districts where the justification is simply the concentration of language users. In most cases, of course, the two areas coincide, but in the case of capital

11 Huws, Catrin Fflur (2008): Chartering new territories in Welsh language judicial proceedings. in: *The European Charter for Regional or Minority Languages: Legal Challenges and Opportunities* (Regional or Minority Languages, No.5), 246.

12 Furthermore, if these two states were to ratify the Charter.

13 Cited by Pla Boix – Ana Maria(2012): Article 9. In. Alba Nogueira, et al. (eds.): *Shaping Language Rights. Commentary on the European Charter for Regional or Minority Languages in the Light of the Committee of Experts' Evaluation.* Council of Europe Publishing, Strasbourg.

14 However, the Austrian Federal Government's programme (2020–2024), for example, places emphasis on the need to ensure that, in the event of a merger, minority persons in bilingual judicial districts can use their mother tongue in court. MIN-LANG (2023) 2 para 30.

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cities or other large cities where the language is not traditionally used, for example, the influx of minority language users may be significant.

In the context of obstruction of justice, paragraph 91 of the Explanatory Report refers to the need to ensure equality of the parties and to avoid unnecessary delay, as factors which the judge must consider and decide in each case whether there is an abuse which precludes the use of minority languages. Well, the use of a minority language in any case necessarily causes delay, the question now is on what basis this delay may become unnecessary. It is feared that this provision will open the way to a linguistic climate[15] in the procedure which will discourage those wishing to use a minority language from doing so. This is why Anna M. Pla Boix endorses to the restrictive interpretation of the provision.[16]

The substance of Article 9(1) consists of the optional commitments that can be chosen in criminal proceedings, civil proceedings and administrative court proceedings. The strongest commitment is that the proceedings will be conducted in a minority language. The second option is for the State Party to allow the use of a minority language in a judicial proceeding. In the third option, evidence is admitted in a minority language. The use of minority languages can be facilitated by interpreters and translators, in criminal proceedings in a way that does not entail additional costs for the parties concerned. In civil and administrative court proceedings, the State may, if it so wishes, also undertake to provide interpretation and translation free of charge. If the State does not provide this, litigants must pay, and this means effort, time, cost and risk of misinterpretation for them.[17]

Pursuant to paragraph 3, States Parties undertake to make available in minority languages the texts of the most important State laws and those which are of particular concern to the users of these languages, provided that these texts have not otherwise been made available. This is a major commitment, as the translation of laws is a basic infrastructural prerequisite

15 About the concept: Lindel, Marina et al (2023): The role of ethnolinguistic identity, vitality and trust in perceived language climate change: the case of Swedish speakers in Finland. *Journal of Multilingual and Multicultural Development*, (Open Access) 2023/July, Online: https://doi.org/10.1080/01434632.2023.2227141. 2–7.

16 Boix, 2012, 308.

17 Varennes, Fernand de (1996): *Language, Minorities and Human Rights*. Martinus Nijhoff, the Hague, Boston. 176.

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for effective action before the courts in minority languages.[18] However, a State Party may choose to make a provision on criminal, civil or administrative court proceedings (i.e. in the field of paragraph 1) or on the validity of legal documents (i.e. in matters covered by paragraph 2) without committing itself to Article 3.

3. Ratification and the attitude of the Committee of Experts

Contradictions in the ratifications[19] of the Charter may arise from the fact that the state did not choose to give the language a higher level of protection under Part III according to its objective situation, or that it did not select the obligations accordingly. The underlying question is what the ratifying state can afford to do in this respect. Well, the answer to that question is: everything. It should be noted that the Council of Europe's practice is that the criticism is only done ex-post if the Committee of Experts reviewing the government's implementation reports considers it necessary to raise this in its own evaluation report. Ratification can be ambitious, in which case the state, under pressure from users, adapts its chosen commitments to future language policy outcomes, or it can be one that underestimates the existing legal protection and institutional framework for minority languages. In the case of a particular article, such as Article 9, it may also be the case that the ratifying state does not consider the area covered by the article to be of real importance for the protection of the minority language concerned. In relation to Article 9, it may also be the case that some ratifying States, having regard to the guarantees contained in Article 6 of the European Convention on Human Rights, consider it unnecessary to ratify point (a)(ii), which ensures that the accused uses his or her own minority language in criminal proceedings, and they do not wish to go further.

In the following, I would like to illustrate, by means of a few examples, that in practice ratifications do not always facilitate the protection of minority languages in the field of justice.

18 As the Committee of Experts has repeatedly stated, the implementation of this paragraph is valuable for the development of legal terminology in minority languages. See for example MIN-LANG (2020) 3 COMEX of ECRML, para 34.

19 For ratifications, see Coe Treaty Office.

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As I have already pointed out, a special situation arises when the state accepts the possibility of using a minority language in court, without committing itself to translating the legislation. This has been the case in Bosnia and Herzegovina, the Czech Republic, the United Kingdom with regard to the Welsh language, the Netherlands, Croatia, Germany, Hungary, Switzerland and Slovenia. The other case of a State confirming paragraph 3, which provides for the translation of legislation without giving the right to use a minority language in court proceedings, has occurred only once, namely in the case of the United Kingdom in respect of Irish. This was probably due to the fact that, at the time of ratification, account was taken of an old law which expressly prohibited the use of Irish in court proceedings, which had not been used for some time.[20] Also of interest is the Ukrainian ratification, which, in addition to the use of Gagauz, Yiddish and Moldovan in court, also opts for the translation of legislation into these languages. This is actually commendable in the light of the foregoing, but the actual implementation seems very difficult, costly and therefore unlikely, given the very limited number of users. Not to mention the fact that there is a specific commitment to Romanian, which is hardly different from Moldovan.[21]

Only a few states have adopted obligations to conduct the entire court proceedings in a minority language. Finland, Norway, – but not for Sami,- Slovenia and Switzerland have done so for all three court proceedings.

Denmark and Poland have accepted paragraph 2, which provides for the admissibility of documents in minority languages, without committing themselves to court proceedings. This can be interpreted as a helpful intention on the part of the majority state, but it is also clear that this attitude severely restricts the use of minority languages in courts.

The Committee of Experts pays particular attention to what happens in practice, in addition to the legal issues, in relation to the use of minority languages in the courts and in the administration, but also in other areas, such as Article 12, the promotion of minority culture. Does the use of minority languages, which is guaranteed by law, take place in reality? Sigve

20 The prohibition of the use of Irish in court proceedings and documents was introduced by the Judicature (Language) Act 1737 (Ireland), which only allowed the use of English in the administration of justice. The (Westminster) Language and Identity Act (2022) contains a provision repealing the ban, but this has not yet come into force.

21 In Moldova in the case Moldavian, as it happens with other languages in other states, such as – the Bosnian language in Bosnia-Herzegovina – the principle applies that statehood necessarily leads to a (state) language of one's own.

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Gramstad, the first Norwegian chairman of the Committee of Experts, who was also involved in drafting the text of the Charter, played a decisive role in shaping this attitude.[22] As a result, the conclusion '*formally fulfilled*' was introduced, which refers to cases where the legislation is adequate but minority language use does not actually take place. (If the Committee of Experts finds that there are only a few examples of practice, the qualification 'partially fulfilled' is used.) This attitude of the Committee of Experts confirms Robert Dunbar's statement that the Charter is 'results-based', expecting actual results from States Parties.[23]

The Committee of Experts' attitude of encouraging action, preferably leading to results, is reflected in many State Party evaluation reports, as it is in the latest round of evaluation reports, for example Austria[24], Finland[25], Croatia[26], Hungary[27] Romania[28], Germany[29] or Sweden.[30] My experience as a member of the Committee of Experts during the on the spot visits was that this criticism was generally not received with understanding by the representatives of the judicial bodies. There were some who invoked the independence of the judiciary, while others simply expressed their incomprehension.

4. Structural difficulties of implementation

Legal and practical difficulties may hinder the implementation of Article 9 of the Charter. Article 9 itself is such an obstacle – as I have already

22 It is perhaps not too much to suggest that his thinking may have been influenced by the Scandinavian school of legal realism.

23 Dunbar, Robert (2008): Definitively Interpreting the European Charter for Regional or Minority Languages. in: The European Charter for Regional or Minority Languages: Legal Challenges and Opportunities (Regional or Minority Languages, No.5). 61.

24 For all minority languages protected under Part II, MIN-LANG (2023) para 1, for Burgenland Croatian, also paras 153 and 155.

25 MIN-LANG (2024) 3 para 58.

26 MIN-LANG (2024) 5 para 67.

27 "The judicial and administrative authorities hardly use minority languages. Measures should be taken to encourage speakers of minority languages to use them in their contacts with the authorities." MIN-LANG (2018) 29, 1.

28 MIN-LANG (2023) 13, para 30.

29 MIN-LANG (2022) 7 para 24.

30 Licensed interpreters, in particular for Sami, Meänkieli, Romani and Yiddish MIN-LANG (2022) 16 8th Evaluation Report on Sweden para 52.

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mentioned, it does not contain a commitment to higher legal education in minority languages. As far as the domestic legal regulation of the use of minority languages in courts is concerned, more than twenty-six years after the entry into force of the Charter, the States Parties have adapted it to the requirements of the commitments they have entered into.[31] Consequently, as far as domestic legislation is concerned, the problem is no longer primarily a rule of governing the use of minority court languages which simply emphasise that no one should be disadvantaged because they do not understand the language of the proceedings. It is rather that the provisions are not free from ambiguity. This is why, for example, the Committee of Experts has called on Armenia to remove ambiguities to ensure that minority language speakers in the relevant judicial districts can use their language in criminal, civil and administrative court proceedings even if they know the majority language.[32] In case of Romania the Committee of Experts has also called on the Romanian authorities to amend the relevant laws so as to make it unambiguously clear that minority language speakers may use their language in criminal, civil and administrative proceedings even if they have a command of Romanian, and that they will not incur additional expense if interpretation or translation of requests, evidence or other documents is provided.[33]

As regards the practical difficulties of enforcement, there are two questions to answer. First: how much effort can the authorities be expected to put into enforcement? The second: how do minority language speakers value their own language?

As regards the first question, the situation is controversial. It should be noted that the vast majority of the provisions of the Charter require objective implementation, and this is also the case with Article 9, in the sense that the legal regulation and the necessary infrastructure must be in place even if no one wishes to exercise their right. However, this goes against the perception of the authorities, because why should they make legislative efforts, or worse, why should they spend taxpayers' money, time and effort on something that is not really needed. Moreover, the need is not permanent and why should it be created by the very bodies that have to meet it? For the administration of justice, it is not the objective nature of

31 For example, in Hungary, the laws on criminal procedure and civil procedure have been amended in this sense. See *Practical Impact* 2014 43.

32 MIN-LANG (2020) para 32.

33 MIN-LANG (2023) 13 para 30.

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the international obligation undertaken, but this institutional, bureaucratic approach that is the stronger motivation. This is why the Committee of Experts repeatedly calls for proactive behaviour in respect of many States Parties and remains, as we have seen above, part of the evaluations for many years.

The second question refers to the value that speakers attach to their own language. What do they think their language is capable of? Do they see it as something that is only appropriate in private life, or do they also see it as a means of communicating with the state? In their eyes, can it fulfil this function and is it really capable of doing so? Subjective feelings are most closely linked to the objective situation faced by the person who wishes to use his or her mother tongue in court. They stand up for their linguistic rights, even if they must fear the power mechanism, or if there is too much at stake in a procedure, and they worry that it is not worth antagonising the judge with linguistic wishes. The discouraging linguistic climate of the judiciary, as has already been mentioned, can often hang unspoken in the courtroom, and persons belonging to minorities may not wish to be a troublemaker.[34]

Delay may also be a deterrent to enforcing minority language rights, as no one is an enemy to his or her own cause. Other barriers to language use include a lack of or insufficient knowledge of the language on the part of court staff, or a shortage of interpreters and translators. In addition, bibliographies of decisions, specimen documents and legislation may only be available in the majority language. However, it may also be the case that the above-mentioned infrastructure is more or less in place, but there is a lack of practice to counteract this. In such cases, but also in cases where minority language use is sporadic, the Committee of Experts also expects measures to be taken to ensure that minority persons are aware of their linguistic rights. Not only should information about this possibility be communicated at the beginning of the trial, but also explicit encouragement and signs to that effect should be made. An example could be a sign at the court registry indicating which of its officials understands the relevant

34 See Cardi, Valeria (2007): Regional or minority Language Use before Judicial Authorities: Provisions and Facts, *Journal on Ethnopolitics and Minority Issues in Europe*, Volume 6 (2) 1–8.

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minority language. The Netherlands is a good example in this respect, with its practice of using Frisian in court.[35]

The Committee of Experts' evaluation reports were reviewed by Valeria Cardi,[36] and Anna M. Pla Boix[37] to identify the main factors that discourage language use in the context of the State Party and minority language concerned. For example, in the case of Burgenland Croatian in Austria or Italian in Slovenia, it was the fear that such a claim or practice would have a negative impact on relations with the authorities. In Germany for the Lower and Upper Sorb and in Finland for Swedish, such as in the Netherlands, Armenia and Norway, for example, the avoidance of delays and the non-existence of legal terminology in minority languages was the underlying reason. And the lack of minority language skills of court staff and of language courses is a problem in many States Parties. The low number of interpreters and translators is a problem in Slovakia and Finland, for example. From a Hungarian point of view, it may be added that, unfortunately, all of these obstacles to the use of minority languages in court prevail in Hungary.

5. Conclusion

Ceterum censeo, using Francis Grin's category[38], it can be concluded that it is not only the regulation but the infrastructure, the ability and the willingness of the court staff to use minority languages (opportunity) that are essential for the use of minority languages in the judiciary. Ultimately, it is also the capacity and the desire of the users to do so.

Linguistic equality and, as a corollary, the official use of minority languages is an important issue for modern democracy, which is moving beyond the concept of the homogeneous nation state. This includes ensur-

35 The Dutch judicial authorities have taken several steps to facilitate the use of Frisian in court. These include the organisation of language schools for new employees and ensuring that the use of the language in court outside the province of Friesland is made possible. See *Practical Impact* 2014 44.

36 Cardi, 2007, 17–19.

37 Boix, 2012, 325–328.

38 These apt concepts are also used by Jacqualine Mowbray 2012 p. 138 and Cardi 2007 p. 21. See Grin, Francios (2003): *Language Policy Evaluation and the European Charter for Regional or Minority Languages*. London, Palgrave Macmillan, 2003 43–44.

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ing the inclusive nature of the judiciary.[39] The recruitment of minorities, multilingual legal staff and the use of minority languages can help underrepresented groups to enforce their rights in their own words through the justice system.

39 See for example UK Supreme Court,, Diversity, Inclusion and Belonging Strategy and Action Plan, 2021–2025, Online: https://www.supremecourt.uk/docs/uksc-diversity-inclusion-and-belonging-strategy-2021.pdf.

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Protection and promotion of the use of regional and minority languages by administrative authorities and public services in the context of the Charter (Article 10)

Balázs Vizi

1. Introduction

In the European legal architecture of the protection of minority rights, the Language Charter has a particular position: unlike the only other international treaty regarding the protection of minorities, the Framework Convention for the Protection of National Minorities (FCNM), the ECRML does not grant specific rights to minority language speakers, but it aims at protecting and preserving minority languages by establishing certain state obligations. Obviously, it is impossible to detach the protection of any living language from granting rights to its speakers, but this approach offers to states a larger margin of discretion in recognising language rights claims. What makes language rights claims politically sensitive is that language is not only a tool of communication, but in a European context, it has also gained a strong symbolic political role in nation-building endeavours determining the evolution of modern nation-states. Language policies often reflect the social and political dominance of the majority nation and its language, and official language status is usually reserved exclusively to the majority language. The recognition of a language, the social and legal status of languages indeed reflect also power relations between the majority and minority communities.[1] On the other hand, it is not easy to distinguish between language claims that reflect cultural needs and concerns and language demands which are part of more ambitious political goals of a minority community. For instance, minority endeavours to gain cultural or territorial autonomy are often coupled with language policy requests.

Against this background it is easy to understand why not only the recognition of a minority language as an official language can be a politically sen-

1 May, Stephen (2009) Language and Minority Rights. Abingdon-on-Thames, Routledge. 149–166.

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sitive question, but also the use of minority language in state administration and in public services is seen by many as a delicate political issue. During the drafting of both the FCNM and the ECRML, relevant provisions were among the most debated ones and the final formulation of these norms, including many qualifiers, reflect the political concerns of State Parties.[2] Indeed, the right to use a minority language in communication with state authorities is the most visible sign of a higher status of a language.

The main goal of the ECRML is the protection of regional and minority languages in order to maintain and develop "Europe's cultural wealth and traditions" (ECRML Preamble). To achieve this goal, protecting and promoting the use of minority and regional languages in public sphere, like education, media, cultural life, etc. is essential, but public administration in this regard is also an emblematic sphere where the State goes beyond recognizing language as a cultural value and allows minority language speakers to exercise their rights *as citizens* under conditions that respect their mode of expression.

Still, it shall be underlined that the use of a minority language in communication with administrative authorities does not mean its recognition as an official language. A language recognised as an official language is one that is recognised as official at all levels of public administration, and is considered to be the natural language of communication of state authorities with citizens. Since this is the highest level of recognition for a language in a state, minority languages gain official status only in exceptional cases. The legal position of a minority language in these cases has a symbolic political role as well: "[f]or the minority group, official multi*lingualism* is desired in part because it is a symbol of, and step towards, acceptance, that it is a multi*nation* state, a partnership of two or more nations within a single state. (…) precisely what members of the dominant group typically wish to avoid".[3] The constitutional model of official multilingualism, even at regional level, however has never been a pan-European standard: it has developed in very different forms and reflected a unique political compromise between minority groups and the central government in each country

2 de Varennes, Fernand (1996), *Language, Minorities and Human Rights.* The Hague, Martinus Nijhoff. 302–303 and Woehrling, Jean-Marie 2005: *The European Charter for Regional or Minority Languages*, Strasbourg, Council of Europe Publishing, 2005. 178 respectively.

3 Kymlicka, Will and Patten, Alan 2003b. 'Introduction' in W. Kymlicka and A. Patten, (eds.), *Language Rights and Political Theory.* Oxford, Oxford University Press. 5.

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where it emerged. The ECRML indeed leaves at the exclusive discretion of the states the issue of recognizing a language as official. The Explanatory Report makes clear, that the recognition of a minority language does not entail its recognition as an official language[4] and it rests upon State Parties whether or not the ECRML is applied to a lesser used official language.[5] ECRML's Preamble stresses that the "protection and encouragement of regional or minority languages should not be to the detriment of the official languages and the need to learn them." The Explanatory Report also acknowledges learning and speaking the official language as a legitimate need for minority language speakers (ECRML ExRep para. 29. and para. 65.).

Against this background, the right to use minority language in communication with public authorities does not address the question of official language status, but serves two major goals: it facilitates the communication between minority language speakers and state authorities and grants a higher social status to these languages.

2. Language use in state administration – a fundamental human right or a specific minority right?

The use of a minority language in public administration cannot exclusively be interpreted as a specific minority right: there are different situations when it can be understood as a fundamental human right and as a key factor in a democratic society that also includes a fair access to state services for all. The most common example of a linguistic human right is the right to defence in judicial procedures. At universal level, Article 14(3)(f) of the International Covenant on Civil and Political Rights (ICCPR) has recognised that in a criminal procedure one of the guarantees of a fair trial is that everyone who is accused of having committed a crime has the right to be informed of the reasons of detention or arrest, and of the nature and cause of any accusation in a language he/she understands. In a similar way Article 6(3)(a) of the European Convention on Human Rights (ECHR) reaffirms this procedural right, that only implies that – usually with the assistance of an interpreter – the communication between the accused and the judicial authorities is secured and it does not mean that the accused

4 ECRML ExRep. Explanatory Report to the European Charter for Regional or Minority Languages, Strasbourg, 5.XI.1992. para 58.

5 ECRML ExRep. para. 51.

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person can automatically use her/his mother tongue in the procedure. This is the least controversial language right and it is confirmed also in the FCNM (Article 10(3)). Article 9(1) ECRML builds on the same principle, and it goes even further when it requires to conduct the proceedings in minority or regional language. Nevertheless, it is up to each state to determine what the expression "conduct proceedings" would entail (ECRML ExRep, para. 93).

But language rights as fundamental human rights may extend beyond judicial procedures. In any case when an individual does not speak the official or majority language, in order to guarantee his/her access to state administration services his/her minority language may have a role to play. The idea behind this is that democratic countries recognise the right to impartial and effective public administration, consequently, solving the problems of communication with public authorities shall be a priority. For a long time, this permissive approach was not widely recognised under international law, but in the 1990s in a number of cases international bodies accepted the right to use a minority language by state authorities in situations where the unjustified exclusive use of the official language may be discriminatory.[6] The UN Human Rights Committee has affirmed that states cannot, without any justification, unreasonably deny a demand for services in a minority language.[7] In this aspect the important element is to find a common language of communication, but it does not necessarily mean that this language should be the mother tongue of the individual.

In this context the linguistic human right is the fundamental right to understand the communication and documents of public authorities and to be able to communicate with them. Poggeschi labels this right as a "language right of the first kind" and adds that "[l]anguage rights of the second kind [i.e. specific minority language rights – *BV*] mean that a group of people who want to use their language in dealings with the administrative authorities (and possibly want civil servants to use it in their internal activities) express a strong collective identity (…) [and] it is their fundamental right to 'live' in their languages in all spheres of life, including dealings with the public authorities."[8] As Woehrling formulates it in regard to ECRML:

6 De Varennes 1996, Chapter 4.

7 *Diergaardt* v. *Namibia*, UN Doc. CCPR/C/69/D/760/1997 (2000)

8 Poggeschi, Giovanni 2012. 'The Use of Regional and Minority Languages in the Public Administration and the Undertakings of Article 10 of the European Charter for Regional or Minority Languages' in *Revista de Llengua i Dret* 57 (2012) 167.

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Article 10 basically has two purposes: "solving problems of communication where the official and dominant language has not been mastered—bringing out the importance of the regional or minority language by giving it a role in dealings between citizens and the public authorities".[9]

This explains the particular importance of specific minority language rights, which have not only a practical, but a strong symbolic dimension as well. As the ECRML Explanatory Report stated "allowing the use of regional or minority languages in relations with those authorities is fundamental to the status of these languages and their development and also from a subjective standpoint".[10] In a European context only the FCNM and the ECRML establish legal obligations under international law on the use of minority languages in communication with public authorities. The European Convention on Human Rights is silent on the use of languages in relations with public authorities. Still there have been cases brought in front of the European Court of Human Rights where the applicants claimed that their right to free expression was violated when they could not use their language before administrative authorities. But such claims have never been accepted neither by the European Commission of Human Rights nor by the Court, arguing that the Convention does not explicitly guarantee "linguistic freedom".[11]

Among other, legally non-binding international instruments the CSCE (today OSCE) Copenhagen Document already in 1990 recognized – besides stressing the importance of learning the official language – the need to use minority languages "wherever possible and necessary, for its use before public authorities, in conformity with applicable national legislation".[12] Later, the OSCE High Commissioner on National Minorities went even further in the Recommendations regarding Linguistic Rights of Minorities, that stresses the importance of minority language use in public administra-

9 Woehrling, Jean-Marie 2005. The European Charter for Regional or Minority Languages, Strasbourg, Council of Europe Publishing, 2005. 178.

10 ECRML ExRep para. 101.

11 See also Ulasiuk, Iryna 2011. 'Language Rights in Relations with Public Administration: European Perspectives' in *International Journal on Minority and Group Rights* 18 (2011) 97–99.

12 CSCE Copenhagen Document (1990) Document of the Copenhagen Meeting of the Conference on the Human Dimension of the CSCE. para. 34.

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tion[13] and also states that linguistic rights "must be seen in a balanced context of full participation in the wider society" that enable minorities to integrate "into the wider society as full and equal members".[14] As the explanatory note attached to the Recommendations underlines, these provisions "imply a dynamic participatory relationship wherein the language of the minority may be a fully-fledged vehicle of communication in local political life and in the interface between citizens and public authorities including in the provision of public services".[15]

This approach is reflected also in the undertakings prescribed under ECRML Article 2., that establishes State Parties' obligations to choose at least one provision from among the paragraphs or sub-paragraphs of Article 10. Language rights in public administration may be one of the major concerns of states willing to join the ECRML. There can be cases where any obligations under Article 10. are feared to be too burdensome or almost impossible to apply and this may probably explain why some states have not ratified the Charter. Italy for example, – that offers rather different levels of protection for the 12 linguistic minorities recognised under its domestic law – signed the ECRML in 2000, but it has not since ratified it, due to internal political debates on the potential legal-political-financial consequences of ratification.[16]

But Article 10 of the ECRML reminds us that the different measures related to the use of minority or regional languages with administrative authorities and in public services shall be implemented "as far as reasonably possible" and "according to the situation of each language". There are notable differences between the situations of minority or regional languages in States Parties that may explain this flexible approach: there are regional or minority languages that are also recognised as official languages in autonomous regions, like Catalan or Basque, in Catalonia and the Basque Country respectively. In these contexts, language claims are part of broader political claims on autonomy, eventually formulated also in the context

13 HCNM Oslo Recommendations (1998) The Oslo Recommendations regarding the Linguistic Rights of National Minorities and Explanatory Note. The Hague, Office of the High Commissioner on National Minorities. paras. 13–15.

14 Ibid., p. 13.

15 Ibid., p. 26.

16 Minoranze linguistiche, Manes e Steger: "Italia deve ratificare la Carta del 1992" https://www.rainews.it/tgr/vda/articoli/2023/02/minoranze-linguistiche-manes-e-steger-italia-deve-ratificare-la-carta-del-1992-e0c5b701-a969-400c-b7f0-375dfc827422.html (last accessed on 13 December 2025)

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of self-determination. Still, language plays a different role even among aspiring "nations without a state": while language issues are very important in Catalonia they are less relevant in Scotland. In either case, it can be seen that language is a central question even in autonomous regions, while on the other hand the ECRML covers also small languages, like Bulgarian in Romania, Croatian in Hungary or Manx and Cornish in the United Kingdom. Consequently, when State Parties undertake obligations under Article 10 and assume the duty to protect minority languages, their actions shall necessarily reflect the different situation of each language protected under the ECRML Article 10. (1).

This is not a unique approach, the FCNM also attaches various flexible criteria for minority language use in communication with public authorities, when it states under Article 10 (2): "In areas inhabited by persons belonging to national minorities traditionally or in substantial numbers, if those persons so request and where such a request corresponds to a real need, the Parties shall endeavour to ensure, as far as possible, the conditions which would make it possible to use the minority language in relations between those persons and the administrative authorities." Already at the time of drafting it was clear that the several qualifications that are coupled with the use of minority language with public authorities open the way to broad interpretations. That is why the FCNM Explanatory Report underlines that if the two required conditions are met, "Parties shall endeavour to ensure the use of a minority language in relations with the administrative authorities as far as possible".[17] The Explanatory Report also makes it clear that while FCNM Article 10(2) refers to administrative authorities only, and does not cover all relations between individuals belonging to minorities and public authorities, still this latter provision must be interpreted broadly.[18] As it will be shown below, the ECRML applies similar limitations in regard to demographic and geographic preconditions of minority language use in contact with public authorities and takes a similar position on the relation of official state language and minority languages in this sphere. The FCNM monitoring body, the Advisory Committee (ACFC) followed the FCNM Explanatory Report's interpretation when it acknowledged the legitimacy of the aim to protect and promote the state language. In this sense, Article 10(2) must not be interpreted as under-

17 FCNM ExRep, Explanatory Report on the Framework Convention for the Protection of National Minorities, Strasbourg, 1. II. 1995. para. 65.

18 FCNM ExRep, para. 64.

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mining or downgrading the status of the state language; it just suggests that there exist circumstances where the state language cannot be the exclusive language of dealings with public authorities, but minority languages may well be used alongside the state language. Still, "good command of the State language is not a reason to refrain from encouraging the use of minority languages in the public sphere and from introducing positive measures in accordance with Article 10 of the Framework Convention. Supporting the use of minority languages in relations with the administrative authorities (…) substantially contributes to the preservation of these languages. Furthermore, it is also a way to ease access of persons belonging to national minorities to a number of public services and therefore, to promote their equal opportunities".[19]

In the context of ECRML, even if minority language speakers have no problem with and tend to communicate with administrative authorities in the state language, the implementation of Article 10 requires state authorities to take actions to facilitate minority language use.[20] The COMEX repeatedly underlined that the ECRML requires a proactive and structured approach for its implementation and without questioning the position of state language in public administration, state authorities should encourage minority language use and raise minority language speakers' awareness on the legal and practical options for minority language use.[21]

19 FCNM Azerbaijan, 2008. FCNM Advisory Committee Second Opinion on Azerbaijan, adopted on 9 November 2007. Strasbourg, 10 December 2008. para. 117.

20 COMEX Czechia 2009. Application of the Charter in Czechia, 1st Evaluation Report of the Committee of Experts on the European Charter for Regional or Minority Languages, Strasbourg, 9 December 2009. paras. 188 and 190.

21 Among others COMEX Armenia 2009. Application of the Charter in Armenia, 2nd Evaluation Report of the Committee of Experts on the European Charter for Regional or Minority Languages, Strasbourg, 23 September 2009 para. 30.; COMEX Austria 2018. Application of the Charter in Austria, 4th Evaluation Report of the Committee of Experts on the European Charter for Regional or Minority Languages, Strasbourg, 4 April 2018. paras. 32–35.; COMEX Croatia 2024. Application of the Charter in Croatia, 7th Evaluation Report of the Committee of Experts on the European Charter for Regional or Minority Languages, Strasbourg, 6 March 2024. para. 7.

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3. General remarks on the application of Article 10. ECRML

As it was mentioned above, the ECRML presumes that every speaker of a regional or minority language is able to use the state language.[22] At the same time, Article 10 extends the individual's right to use her/his mother tongue in the public sphere and States Parties demonstrate their commitment to ensure that their authorities use minority or regional languages with speakers in their administrative dealings. The primary purpose of Article 10 is to recognise and protect regional or minority languages as a language of the state administrative authorities in their – both oral and written – contacts with citizens. States taking obligations under this provision recognise the social, cultural and political value of a minority or regional language in the activities of administrative authorities, thus accepting these languages as an equally valid part of the identity of their speakers as citizens, as members of the political community of the state. In some cases, enabling a regional or minority language to be used in official acts of state authorities also contributes to the development of that language (by extending its vocabulary, etc.).

It is against this background that it may be understood why the ECRML attributes such a great importance to this provision that every State Party is obliged to commit to.

Under Article 10, the Charter offers various options for States Parties to undertake specific commitments related to the use of minority or regional languages in relations with administrative authorities and public services. These commitments may range for example from ensuring that the administrative authorities use the regional or minority languages to guaranteeing that speakers of regional or minority languages may validly submit a document in these languages (Article 10 (1)(a)(i-v)). The provisions of the article are exhaustive in covering the different public areas of language use. Paragraph 1 concerns the administrative authorities of the state, paragraph 2 tackles local and regional administrative authorities and paragraph 3 deals with entities that provide public services and services of general interest

22 Engbers, Jutta 2012. 'Article 10. Administrative authorities and public services' in A. N. López – E. J. Ruiz Vieytez – I. U. Libarona (eds.): *Shaping Language Rights. Commentary on the European Charter for Regional or Minority Languages in light of the Committee of Experts' evaluation*. Strasbourg, Council of Europe Publishing, 2012. 340.

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on behalf of public bodies.[23] Both paragraph 1) and 2) of Article 10 include different graduations. As Woehrling explains "the undertakings in subparagraphs i), ii), iii) and iv) are clearly alternatives, except where there are different languages or separate districts" leaving open for states to find the most suitable solutions for each case. This is why the commitment under subpara. i) is not well defined and remains rather broad in scope, while undertakings in subparas. ii), iii) and iv) "mark out more precise although more limited obligations for the state party".[24] As Poggeschi observes, very few countries have chosen to undertake subpara. i), which is not only the most general, but also the most demanding provision under Article 10(1) and unsurprisingly these States Parties are among those that are most compliant with language protection obligations.[25]

In addition, Article 10 (1) applies a double 'reasonableness' conditionality, first – like many other ECRML provisions – establishing a numerical requirement for minority language use (when it restricts the application of the provision to "administrative districts of the State in which the number of residents who are users of regional or minority languages justifies the measures"), and secondly it underlines that Parties shall undertake their obligations under Article 10 (1) "as far as this is reasonably possible". This is also echoed by the FCNM, which uses both "reasonably possible" (Article 10(2)) and "as far as possible" (Article 10(1)) expressions as acceptable restrictions on the application of minority language use in public administration. These clauses offer a great flexibility for state parties to limit 'administrative language rights' and leave them a wide margin of discretion in implementing this provision. Nevertheless, this should not overshadow the overall object and intent of the FCNM to protect minority languages: these restrictions do not mean that States Parties can limit their responsibilities to the minimum in this field. It is realistic to expect States to act and use their resources effectively for creating appropriate conditions for minority language use also in this domain.

The ECRML makes this clear when it requires State decisions regarding the implementation of Article 10 (1) to be taken "according the situation of each language". Reasonableness also entails consideration for the administrative and financial burden on the state, but in any case, the article requires

23 The rest of Article 10, para. 4. contains implementing provisions and para. 5. refers to the use of names that only exist in the regional or minority language.

24 Woehrling 2005, 183.

25 Poggeschi 2012, 180.

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appropriate and proactive protective measures. As Engbers rightly notes "a prognosis has to be made whether services would be used or are necessary to guarantee the protection chosen for the preservation and protection of that language".[26] This means that states are expected to take an objective assessment of the 'situation', i.e. governments should pay attention to the actual vulnerability of the language concerned, including also the point of view of the minority concerned. This provision requires a balanced and sensitive approach from States Parties that shall adopt appropriate tailor-made measures for each regional or minority language, and if necessary, for each administrative district.

In federal states, independently from the constitutional division of powers between the central government and the federal entities, the State, as a whole, must ensure effective implementation of its international obligations under the ECRML at the domestic level.[27] It is also noteworthy to underline that the Committee of Experts looks at the actual competencies of federal and central state authorities and even if e.g. in Germany or in Switzerland many central state functions are exercised by sub-state authorities, these are still expected to fulfil the undertakings under the ECRML.[28]

The ECRML extends administrative language rights to local and regional authorities as well (Article 10(2)). This is important, since these lower tiers of administration are the closest to the citizen and have a direct impact on citizens' everyday life. Regional and local authorities under their powers of self-government also have the duty to implement relevant minority language rights, and the state shall create the necessary legal framework to this end. For example, in its 2007 Opinion the COMEX "strongly urged" the Hungarian authorities to designate those local and regional authorities, on whose territory administrative language rights shall be applied, so that these authorities could take the necessary measures.[29] Even if in practice minority language use is tolerated at regional or local administration, the

26 Engbers 2012, 342.

27 COMEX Germany 2008. Application of the Charter in Germany, 3rd Evaluation Report of the Committee of Experts on the European Charter for Regional or Minority Languages, Strasbourg, 9 July 2008. para. 19.

28 COMEX Switzerland 2008. Application of the Charter in Switzerland, 3rd Evaluation Report of the Committee of Experts on the European Charter for Regional or Minority Languages, Strasbourg, 12 March 2008. para. 82.

29 COMEX Hungary 2007. Application of the Charter in Hungary, 3rd Evaluation Report of the Committee of Experts on the European Charter for Regional or Minority Languages, Strasbourg, 20 June 2007 para. 133.

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COMEX stresses the importance of creating a legal basis for this purpose.[30] If the division of competencies is unclear between the local or provincial and national authorities, it remains the central government's responsibility to adopt an appropriate language policy and legislative measures to offer clear guidance for local authorities in this matter.[31]

Article 10 (3) creates obligations regarding public services that are provided either by private enterprises or by legal entities that are subject to private law and operate separately from the state administration. This provision applies the same three preconditions as Article 10(1) and a separate decision shall be made on each language and each service. These decisions must be taken on the basis of objective 'reasonableness' and no other considerations, such as economic reasons, shall influence them. The provisions of Article 10(3) a-c for protecting minority language use decrease in services and offer alternative rules – fulfilling provision subpara. a) includes also the fulfilment of commitments under subparas. b)-c) and the provision in subpara. b) fully includes that in subpara. c). Neither of these provisions affect the use of the state language in public services.[32] In all cases it is important to identify the entities that are responsible for providing a specific service. This is why the COMEX considers it crucial to receive appropriate information from States Parties on the division of competences between local, regional and national administrative authorities and on which public services are in the competence of the different tiers of administration.[33]

4. Territoriality and language use in public administration

Language use in public administration is obviously related to the territorial organisation of the State. A key question in this regard is the territorial delimitation of the areas and administrative units where this provision can

30 COMEX Croatia 2001. Application of the Charter in Croatia, 1st Evaluation Report of the Committee of Experts on the European Charter for Regional or Minority Languages, Strasbourg, 20 September 2001. para 82. and COMEX Croatia 2005. Application of the Charter in Croatia, 2nd Evaluation Report of the Committee of Experts on the European Charter for Regional or Minority Languages, Strasbourg, 7 September 2005. paras 135–136.

31 COMEX Netherlands 2008. Application of the Charter in the Netherlands, 3rd Evaluation Report of the Committee of Experts on the European Charter for Regional or Minority Languages, Strasbourg, 9 July 2008. para 10.

32 Woehrling 2005, 195.

33 COMEX Croatia 2005, paras. 155–156.

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be applied. The ECRML clearly builds on the territoriality principle, but in respect of the use of minority languages in communication with public authorities, the territorial approach is a key element also in the effective implementation of FCNM.[34]

The ECRML under Article 7.1(b) requests that administrative areas be delimited accordingly to respect the promotion of regional and minority languages in the region. In this sense the Charter does not only require the appropriate territorial delimitation of administrative areas, but local authorities, local and regional governments shall take their own part in implementing the Charter properly. Regional and minority languages are "the cultural voices of the regions or areas where they are spoken."[35] As a matter of fact without the active contribution of local authorities, the Charter cannot be fully implemented.

Article 10 (1)-(2) makes it clear that the application of respective provisions depends on the number of minority language speakers in the administrative area concerned. But the entire ECRML is built on the territoriality principle as regional or minority languages are identified by their link to a given territory of a State where they are used by the local population. Article 1 distinguishes territorial and non-territorial languages, and a significant part of the ECRML provisions is not applicable to non-territorial languages.[36] The Explanatory Report states that "[t]he reason why the charter is mainly concerned with languages which have a territorial base is that most of the measures which it advocates necessitate the definition of a geographical field of application other than the State as a whole."[37] The Explanatory Report nonetheless adds that "[s]ince the terms used in the charter in this respect are inevitably fairly flexible, it is up to each state to define more precisely, in the spirit of the charter, the notion of regional or minority languages' territory". In fact, the Charter's spatial field of application, the definition of the geographical area where protective

34 See more on this Vizi, Balázs 2016. 'Territoriality and Minority Language Rights' in International *Journal on Minority and Group Rights* 23 (2016) 444–450.

35 Woehrling, Jean-Marie 2002. 'The Pivotal Role of Regional and Local Authorities in Relation to the Charter' in V.A., *From Theory to Practice – The European Charter for Regional or Minority Languages*. Strasbourg, Council of Europe Publishing, 2002, 46.

36 Andrássy, György and Vogl, Márton 2012. 'Article 1c. Non-territorial languages' in A. N. López – E. J. Ruiz Vieytez – I. U. Libarona (eds.): *Shaping Language Rights. Commentary on the European Charter for Regional or Minority Languages in Light of the Committee of Experts' Evaluation* Strasbourg, Council of Europe Publishing, 2012, 79–120.

37 ECRML ExRep, para. 33.

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measures for regional or minority languages are expected to be applied, is a legal, administrative question. (And the identification of the languages' territory does not affect the qualification of a language as "regional or minority language".) The ECRML leaves a great flexibility for states to define the areas where specific provisions for minority language use shall be applied. The Explanatory Report highlights the importance of the "number of people" justifying the protective measures, with the ECRML purposely avoiding establishing any fixed percentage of regional or minority language speakers for the application of ECRML provisions.

Objective criteria, a numerical or proportional requirement of language users in defining areas where specific language rights can be available is not only a political decision: for example providing access to public administration services in a minority language is also a logistical and budgetary issue that may create difficulties for governments. In addition to that, any purely statistical approach to establish the areas where protective measures may be justified by the number of minority language speakers may be problematic. Census alone – since in most cases declarations on language and identity are not compulsory – does not offer reliable data in this regard. The Committee of Experts recurrently underlined that "the results of the census should be complemented by collecting and assessing, in cooperation with the speakers, other data concerning the number of users of the regional or minority languages and their geographic distribution".[38] Instead, census results should be considered just as one indicator, among others, used to set and implement relevant policies and measures or to entitle rights that are dependent on thresholds.

Territoriality is not defined in ECRML, but the definition of regional or minority languages requires a clear reference to the territory where the language is spoken within the state. The Explanatory Report adds to this only that it shall be an area in which the language is spoken to the largest extent, even if only by a minority and which corresponds to its historical base.[39]

38 COMEX Romania 2023. Application of the Charter in Romania, 3rd Evaluation Report of the Committee of Experts on the European Charter for Regional or Minority Languages, Strasbourg, 15 June 2023. para 12. see also COMEX Poland 2021. Application of the Charter in Poland, 3rd Evaluation Report of the Committee of Experts on the European Charter for Regional or Minority Languages, Strasbourg, 30 September 2021. para 14.

39 ECRML ExRep, para. 36.

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Few states have made declarations on the concept of 'territory' under ECRML. Bosnia and Herzegovina and Serbia – in their respective declarations included in their instrument of ratification – limit these territories to those areas where regional or minority languages are in official use in accordance with their domestic laws. On the other hand, e.g. Denmark and Czechia have specified the administrative regions for the individual minority languages where they will apply the respective ECRML provisions. Slovakia and Romania stated that those municipalities are considered as territories under the ECRML where the speakers of a minority language reach a minimum 20 % percent of inhabitants in accordance with their domestic laws. The COMEX in its monitoring activity formulated a negative opinion on setting up strict thresholds and evaluates the ECRML's application in the areas where the languages affected are in reality spoken, independently from the practice of the state concerned.[40] The COMEX even hinted that State declarations on applying specific thresholds in a strict interpretation would not be permitted by the Charter.[41] The COMEX in its evaluation reports prefers a sociological approach to review the current situation of a regional or minority language in the actual area in which it is used. In this aspect the COMEX's flexible approach focuses on the evaluation of the sociological, socio-linguistic reality on the ground.[42] In its 2009 report on Austria the Committee considered the exclusion of the application of the Charter in Vienna highly problematic, while the number of recognised minority language speakers was substantial in the capital. In another case in regard to Sweden, the COMEX was deeply concerned with the exclusion of a territory where a minority language was traditionally spoken.[43] In fact, the COMEX is inclined to interpret the territory of

40 see COMEX Serbia 2009. Application of the Charter in Serbia, 1st Evaluation Report of the Committee of Experts on the European Charter for Regional or Minority Languages, Strasbourg, 6 May 2009. para. 29; COMEX Slovakia 2009. Application of the Charter in Slovakia, 2nd Evaluation Report of the Committee of Experts on the European Charter for Regional or Minority Languages, Strasbourg, 18 November 2009. paras. 12–13; COMEX Hungary 2007, para. 11. or more recently COMEX Romania 2023, para. 32.

41 COMEX Slovakia 2007, para. 42.

42 COMEX Austria 2009. Application of the Charter in Austria, 2nd Evaluation Report of the Committee of Experts on the European Charter for Regional or Minority Languages, Strasbourg, 12 March 2009 para 15.

43 COMEX Sweden 2009. Application of the Charter in Sweden, 3rd Evaluation Report of the Committee of Experts on the European Charter for Regional or Minority Languages, Strasbourg, 6 May 2009. paras. 11–14.

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each language with great flexibility, but could not accept the Hungarian government's approach that declared ECRML provisions applicable in the whole territory of the state,[44] arguing that there are no regions where the number of minority language speakers could justify the designation of specific administrative areas for the application of the Charter. The COMEX repeated in subsequent reports its concern that there was a clear need "to designate those local and regional authorities, on whose territory local and county minority self-governments representing Part III languages are active, as the authorities that will be obliged to take organisational measures to implement the obligations under Article 10."[45] Obviously, this is particularly important regarding the application of Article 10 (2) which provides for minority language use in communication with regional and local authorities. Without such a territorial-administrative specification, it is difficult, if not impossible to assess how existing local and regional practices respond to the real needs of minority language speakers.

States tend to combine legal and sociological factors in determining the spatial field of application, usually giving greater emphasis to legal aspects. It can be seen that in its practice the Committee of Experts just like the FCNM Advisory Committee prefers to look at the actual situation on the ground and usually applies the sociological method. This approach is more flexible to take into account the specific needs of the individuals living in a given area.

5. Practical approach in ensuring minority language use in public administration

5.1. Terminology and specific provisions

To understand how Article 10 should be implemented in practice, first the wording of State obligations must be clarified. While Article 10(1) states that "Parties undertake, as far as reasonably possible *to ensure*…" (emphasis added), when it comes to local and regional administrations under Article 10(2) "Parties undertake to *allow and/or encourage*…" (emphasis added) is

44 COMEX Hungary 2012, para. 132.

45 COMEX Hungary 2013. Application of the Charter in Hungary, 5th Evaluation Report of the Committee of Experts on the European Charter for Regional or Minority Languages, Strasbourg, 10 July 2013 para 1050.

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followed by an optional list of undertakings that follow under the respective paragraph. The expressions "allow and/or encourage" however were not intended to entail a lower level of commitment, it just was used to reflect the principle of local and regional autonomy.[46] There is no doubt that simply "allowing" in a passive sense is not enough, but depending on the specific case, active administrative or legislative action is required. It is important to see that the Charter requires a proactive approach from the governments, they are expected to provide an offer, and not wait for the speakers of a language to make demands.[47]

As it was mentioned above, Article 10 ECRML also uses different qualifiers (number of minority language speakers, situation of the language concerned and reasonability of the application of the relevant ECRML provisions) that offer a large margin of discretion for States Parties. Despite these 'escape clauses', the ECRML formulates rather precise commitments for States Parties: Article 10(1)(a) prescribes that minority language speakers may submit oral or written applications or documents and receive a reply in that language; Article 10(1)(b) requires authorities to make accessible administrative texts and forms in the regional or minority languages or in bilingual versions; Article 10(1)(c) stipulates to allow administrative authorities to draft documents in a regional or minority language; while under Article 10(2) the States Parties are expected to allow in regard to local and regional administrative authorities to draft documents in regional or minority languages and to use these languages in their assembly debates. In fulfilling these undertakings, Article 10(4) prescribes that States Parties shall provide translation or interpretation services and/or ensure appropriate recruitment and training of public servants, guaranteeing, where it is possible and/or assure the employment of public servants having knowledge of a regional or minority language to be appointed into the area in which that language is used (cf. COMEX Serbia 2009, para. 206).

5.2. External and internal use of minority languages

Article 10 differentiates between the internal and external use of minority language by public authorities. Article 10(1) comprises commitments

46 ECRML ExRep. para. 105.

47 ComMin Rec. Germany, 2006. Recommendation RecChL (2006) of the Committee of Ministers on the application of the European Charter for Regional or Minority Languages by Germany, adopted on 1 March 2006, paras. 1, 6 and 7.

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ensuring that minority language speakers may use their language in oral and written communication with authorities – depending on the specific provision undertaken by the State Party. Article 10(2)(a) allows the use of minority languages within the internal procedures and communications of regional or local authorities.

The external use of minority language by citizens in oral communication with authorities appears to be the least problematic in this aspect. Independently from the legal framework, the use of a minority language in oral communications may not pose challenges if there is an established local practice.[48] But the implementation of the ECRML requires state action to ensure a consistent approach in this field:[49] the monitoring reports of the Committee of Experts seemingly indicate that accepting requests in a minority language does not pose particular difficulties, problems arise when authorities must reply in a minority language. For example, in Romania, even if the 2019 Administrative Code specified the forms and types of administrative texts that shall be accessible also in minority languages, the lack of a relevant executive order hampers the effective use of these documents.[50]

The internal use of minority languages concerns executive bodies and assemblies within regional and local authorities (Article 10(2)(a)i)). The main scope of this provision is to elevate minority language use to a symbolic political level, not limiting it to the language speakers' contacts with the administration, but to ensure – at least in the case of assemblies – that elected representatives can perform their duties using their first language. Nevertheless, in practice, the use of minority languages in the debates in assemblies may pose various challenges: organizing and providing appropriate interpretation services can be costly, and local authorities may be indifferent towards extending the use of minority languages. In Hungary, even in those municipalities, where a relatively large number of minority language speakers live, the COMEX criticised the use of minority languages being limited to symbolic introductory remarks while the main oral contributions are made in the state language and assembly documents are also drawn up in the state language. The Committee of Experts encouraged the authorities to promote the oral and written use of minority languages by

48 See Poggeschi, Giovanni 2010. *I diritti linguistici. Un'analisi comparata.* Roma, Carocci Editore, 2010, 180.

49 COMEX Romania 2023, paras. 36–37.

50 COMEX Romania 2023, para. 35.

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local authorities in debates in their assemblies.[51] The COMEX considered that the legal obligation to translate into Hungarian the minutes of national minority self-government meetings was clearly a discouraging practice for the use of minority languages.[52] In the case of Finland, the COMEX repeatedly drew attention to the rare use of Sami in debates in local assemblies and noted that "[d]ue to a low level of awareness of the speakers and the shortage of funds, officials in local administration sometimes discourage speakers from using Sami".[53] More generally the COMEX observed that in regard to the use of minority languages in administration "[t]he representatives of Swedish, as well as Inari Sami, North Sami and Skolt Sami speakers agree that the lack of knowledge of the language rights, accompanied by insufficient funding, are the main problems".[54] In a different context, the lack of a strong, autonomous regional or local government level may hinder the full implementation of Article 10, even in states that have a firm tradition of minority protection. The Committee of Experts noted in its 3rd report on Denmark, that "the fact that Denmark has not chosen any undertakings under Article 10 paragraph 2 (local and regional authorities) is regrettable, considering the importance of regional and local authorities for the promotion of the German language.[55] Nevertheless, the last report of the COMEX underlined that "[t]he local administration has to consider the implementation of the undertakings of the Charter".[56]

5.3. Official documents

Drafting documents or issuing official documents in a minority language by administrative authorities seems to be a formal commitment, but in practice its effectiveness may be lower than formal legal provisions would

51 COMEX Hungary 2007, paras. 150–151.
52 COMEX Hungary 2007, para. 142.
53 COMEX Finland 2024. Application of the Charter in Finland, 6th Evaluation Report of the Committee of Experts on the European Charter for Regional or Minority Languages, Strasbourg, 7 March 2024., para. 65.
54 Ibid. para. 64.
55 COMEX Denmark 2011. Application of the Charter in Denmark, 3rd Evaluation Report of the Committee of Experts on the European Charter for Regional or Minority Languages, Strasbourg, 2 March 2011., para. 13.
56 COMEX Denmark 2023. Application of the Charter in Denmark, 6th Evaluation Report of the Committee of Experts on the European Charter for Regional or Minority Languages, Strasbourg, 15 November 2023., para. 24.

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actually allow. The availability of administrative forms in a minority language does not automatically mean that clerks will process such requests in the same way as they would do in the official language. For instance, in Croatia, the Committee of Experts evaluated the "emblematic use of regional or minority languages in official documents, for example in letterheads, seals and stamps"[57] as a good practice. But at the same time the COMEX also stressed that "the present undertaking goes beyond such an emblematic use and refers to the language of the main content of the document".[58] The Committee of Experts also found that clerks in some cases refused to issue bilingual identity cards arguing that they could only be issued in areas where the minority language concerned was in official use, although the legislation would have allowed the cards to be issued. In other cases, even in areas where a minority language was in official use, some clerks turned down such requests without any justification.[59] Not only the negligent or discouraging attitude of individual public servants may hamper issuing documents in a regional or minority language, but lack of awareness may have the same consequences. In its report on Hungary, the COMEX found that "the lack of sufficient demand was conditioned by a lack of tradition and that, nevertheless, no positive action had been taken to encourage the administrative authorities to draft documents in minority languages." The COMEX also noted with concern that it had not received any information from the Hungarian authorities on "information and encouragement measures vis-á-vis the users of such languages and state authorities." Consequently, the Committee of Experts encouraged Hungarian authorities "to promote the legal possibility to draft documents in a minority language more actively vis-á-vis relevant state administrative authorities, e.g. by means of ministerial decrees and circulars".[60]

Even if minority language speakers are aware of their rights, they may face uncomfortable experiences if they want to use their language in the public domain. Administrative deadlines in answering requests submitted in a minority language are more likely to be disregarded than if the procedure was initiated in the official language and other practical inconve-

57 COMEX Croatia 2008. Application of the Charter in Croatia, 3rd Evaluation Report of the Committee of Experts on the European Charter for Regional or Minority Languages, Strasbourg, 12 March 2008, para. 162.
58 ibid.
59 COMEX Croatia 2008, para. 139.
60 COMEX Hungary 2007, paras. 140–143.

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niences may also deter speakers from using their language.[61] In Austria, even if administrative forms are available in minority languages since 2015, in lack of linguistically competent staff, translation and interpretation is needed that discourages minority language speakers to use their language.[62] In Slovenia the Committee of Experts noted that "Hungarian speakers are in general reluctant to use Hungarian, for fear of being seen as 'troublemakers'".[63] Since the procedure to submit and receive official documents in a minority language is strictly formalised, such problems may be easily resolved if official forms are automatically available in minority languages, and in general, minority language use is made an integral part of the functioning of administrative authorities (e.g. on door signs, etc.).[64]

5.4. Staff training and language skills

It is not only the lack of appropriate legislation or a discouraging attitude of authorities that may make minority language use difficult in the public domain, but the lack of necessary language skills among public servants may create insurmountable difficulties in this regard. Based on Article 10(4)(b)-(c) it seems to be clear that in order to provide administrative services in minority languages, public servants must possess basic language skills. The Committee of Experts' general approach in this regard is well reflected in its comments on Sweden: "In the opinion of the Committee of Experts, a structured human resources policy, taking account of civil servants' oral and written proficiency in Sami, for recruitment as well as for in-house training, would be the most appropriate solution…".[65] The introduction of "adequate incentives for staff members of State and local administrations,

61 COMEX Sweden 2006. Application of the Charter in Sweden, 2nd Evaluation Report of the Committee of Experts on the European Charter for Regional or Minority Languages, Strasbourg, 27 September 2006., para. 120; see also COMEX Croatia 2024, para. 74.

62 COMEX Austria 2018, para. 33.

63 COMEX Slovenia 2007. Application of the Charter in Slovenia, 2nd Evaluation Report of the Committee of Experts on the European Charter for Regional or Minority Languages, Strasbourg, 20 June 2007., para. 94.

64 see e.g. COMEX Germany 2002. Application of the Charter in Germany, 1st Evaluation Report of the Committee of Experts on the European Charter for Regional or Minority Languages, Strasbourg, 5 July 2002., para. 147; COMEX Hungary 2007, para. 134.

65 COMEX Sweden 2006, para. 124.

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who learn a minority language to attain a level enabling them to use it in the context of their duties"[66] are also considered by the COMEX as a good practice.

5.5. Language use and public administration in a digital age

The increasing use of new technologies has not only changed public and private communication channels, but in many areas raised concerns on calcifying existing language hierarchies. At the time of drafting and adopting the ECRML these social-technological changes could not be taken into consideration. Nevertheless, today language use and language rights cannot be discussed under the ECRML without taking into account these technical developments. An in-depth analysis of the monitoring practice revealed that the COMEX has more and more become familiar with the challenges and opportunities of the internet for minority languages.[67] The Committee of Experts in 2019 published a report on the role of new technologies and new social media in the context of the ECRML.[68] The report sheds light also on the role of new media in the communication of public authorities with citizens: authorities often use Facebook, blogs, X or other platforms to communicate directly with citizens, and such practices "blur the border between media and administrative practice in a way that can reduce the functionality of the undertakings, if the state party applies a narrow interpretation" of its respective provisions.[69] The report also calls attention on the "de-territorialization" of administrations' communication platforms and thus "States should therefore pursue the objective of developing an adequate information and communication policy that also adequately covers the needs of regional or minority languages in their entirety".[70]

New info-technologies and digitalisation have impact also on public administration: electronic services have been used for long decades by

66 COMEX Hungary 2007, para. 164.
67 McMonagle, Sarah 2012. The European Charter for Regional or Minority Languages: Still Relevant in the Information Age? *Journal on Ethnopolitics and Minority Issues in Europe* Vol 11, No 2, (2012) 1–24.
68 Lainio, Jarmo 2019 (ed.). *New technologies, new social media and the European Charter for Regional or Minority Languages*. Report for the Committee of Experts, Strasbourg, Council of Europe.
69 Lainio 2019, 34.
70 Ibid. 35.

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public administration authorities, and there is a clear tendency to move towards a full digital governance.[71] In this regard the COMEX pays particular attention to the access to public administration services in regional or minority languages. In its 2024 Report on Finland, the COMEX noted with satisfaction the extension of online services operating in Swedish and Sami languages.[72] In respect to Denmark the COMEX mentioned in its report in 2023 that "instead of the use of a common approach throughout the central administration, the individual authorities seem to follow their own policies in respect of the use of German".[73] Consequently, authorities that had a well-developed IT infrastructure offered a lot of information and services also in German, while other authorities (e.g. Land Registry) did not accept documents in German (Ibid.). In this respect, there are several issues – from budgetary resources, to the extent of use of technological innovations in public administration – that may differ largely from state to state and that influence the fulfilment of Article 10. The overall level of digitalisation of public administration is an important question in this regard, especially if certain administrative services will be accessible via online platforms only. Based on the existing monitoring practice of the COMEX, it may be concluded that by applying a flexible approach in implementing the relevant ECRML provisions, the States can easily overcome these problems. It seems to be clear that in respect to the costs of developing and introducing online services in public administration, the costs of doing that in various languages is minimal.

6. Conclusions

This brief overview of the interpretation of ECRML Article 10 given by the Committee of Experts reveals that the use of minority languages with public authorities is very much part of a broader context of how state administration is organised, what financial and staff resources are available, etc. These conditions largely depend on political decisions and on how effectively these issues are addressed in domestic legislation. What seems

71 Cf. UN 2022. *United Nations E-Government Survey. The Future of Digital Government.* UN, New York. https://desapublications.un.org/publications/un-e-government-survey-2022 (last accessed on 13 December 2025)

72 COMEX Finland 2024, para. 59–60.

73 COMEX Denmark 2023, para. 23.

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to be evident is that the necessary legislative and practical steps in this field must be in line with the standards set by the ECRML and should be designed in cooperation with minority language speakers. Creating an appropriate legal framework, that takes into account the demands and needs of minority language speakers together with the local circumstances, is the first step in this regard.[74] Next, reliable and comprehensive statistical information is necessary to properly assess these minority needs, and implement legislative provisions for the use of minority languages in contacts with administrative authorities. Such information should not exclusively rely on census data, instead, more fine-tuned and inclusive data collection methods are needed. As a third element, public authorities are expected to pursue a pro-active, pragmatic and cooperative approach with regard to minority language use in communication with public administration. And finally, the allocation of appropriate human and financial resources is seen as a pre-condition for the full implementation of minority language use commitments made under this Article of the ECRML. Support for in-service and other language training aimed at guaranteeing the availability of staff with appropriate language skills, is as important in this regard as providing support for awareness-raising, and applying flexible practices to meet the demands of minority language speakers. The introduction of new online services in multiple languages, including minority languages, offers an opportunity for public authorities to provide the very same services for majority and minority language speakers in a rather cost-effective way.

Summing up the experiences of the implementation of the ECRML, in terms of the use of a minority language in the public domain, where it is justifiable and reasonable to do so, a state needs to respond to the language preferences of its population. In a very simple approach, it may be concluded that, in areas where minority language speakers reside, public authorities should provide more minority language use opportunities in public administration, where more minority language speakers live.

Even if these commitments may not seem to be very complicated to fulfil under the ECRML, it can be seen that their implementation varies greatly from State to State. Even where the possibility for the speakers to use their regional or minority language in their dealings with public administration is formally fulfilled, there are many examples that due to practical obstacles no use is made of the possibilities to use minority languages before public authorities. Apparently, there is a continuous need to adapt to

74 COMEX Croatia 2001, para. 62.

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demographic, technological, social and political changes and thus to adopt additional measures aimed at making the right to use minority language in public administration operational. These could be legislative initiatives, new policies or simple practical steps often dependent simply on the will of those concerned.

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The Protection and Promotion of Minority Language Media in the Context of the Charter (Article 11)

Robert Dunbar

The Language Charter is unusual and indeed unique in many respects. First, it is the only treaty in international law which is specifically directed at the protection of minority languages. Although its provisions benefit users of regional or minority languages, as the Explanatory Report to the ECRML makes clear, the ECRML "sets out to protect and promote regional or minority languages, not linguistic minorities" (para. 11). Conversely, minorities instruments, most notably the Framework Convention for the Protection of National Minorities (the 'FCNM') have provisions which benefit speakers of minority languages, but the protection of those languages is not their central concern. There is clearly a close relationship between the ECRML and minorities instruments, but the focus on the languages of minorities rather than minorities themselves has important implications, including in relation to how the ECRML should be interpreted, not least in relation to media.

Second, unlike the FCNM, the ECRML is not, strictly speaking, a human rights instrument. The ECRML creates obligations for states in relation to languages, but as the Explanatory Report notes, the ECRML "does not establish any individual or collective rights for the speakers of regional or minority languages" (para. 11). As we shall see in the next section of this chapter, below, its overriding purpose is described in the Explanatory Report as being cultural. However, as the Explanatory Report also notes, by creating obligations with regard to the status of these languages, and through the domestic legislation that will have to be introduced in order to comply with the ECRML, the treaty "will have an obvious effect on the situation of the communities concerned and their individual members" (para. 11).

Third, the ECRML has important structural differences from minorities (and international human rights) instruments. In Part II, it contains a number of objectives and general principles which apply in respect of all of a state's regional or minority languages, set out in a single article (Art. 7). These languages are defined in Article 1 of the treaty, and are objectively de-

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termined; the ECRML applies to any language which meets the definition, regardless of the views of the state on the matter (Article 2, paragraph 1). Part III of the ECRML contains a large number of more detailed and specific obligations, set out in sixty-five paragraphs and subparagraphs, in relation to the media (Art. 11), as well as education (Art. 8), judicial authorities (Art. 9), administrative authorities and public services (Art. 10), cultural activities and facilities (Art. 12), economic and social life (Art. 13), and transfrontier exchanges (Art. 14). Within each article, the obligations generally range from more demanding to less demanding, in terms of the levels of provision of minority language services. However, these Part III provisions only apply to those regional or minority languages designated by the state in its instrument of ratification, and states have a wide discretion as to which of those sixty-five paragraphs and subparagraphs apply: they are required to apply at least thirty-five for every language designated for the protection of Part III, at least three of which must be from Articles 8 and 12, and at least one from Articles 9, 10, 11 and 13 (Article 2, paragraph 2). There are nine paragraphs and subparagraphs in Article 11, on the media, and states are only required to apply one of these, although many states do, of course, apply more.

This flexibility is the result of the fact that the demographic—and broader sociolinguistic—situation of the regional or minority languages of Europe varies greatly, and that it would not be appropriate or even possible to apply the same obligations to each of them.[1] However, the choice of obligations should not be exercised arbitrarily by states: the Explanatory Report provides that, broadly speaking, the larger number of speakers of a particular regional or minority language and the greater their territorial concentration, the stronger of the Part III obligations should be chosen (para. 46). This flexibility is nonetheless unusual in the context of minorities standards such as the FCNM, and international human rights

1 In paragraph 41 of the Explanatory Report, it is noted that the flexibility with regard to the designation of languages for the protection of Part III and the obligations chosen under Part III is to enable the ECRML to be adapted to the variety of linguistic situations encountered in the various European states. In paragraph 44, the flexibility in the choice of Part III obligations is explained in more detail: "The aim of these options is to introduce a further element of flexibility into the charter so as to take account of the wide disparities in the de facto situation of regional or minority languages. It is clear that certain provisions which are perfectly well adopted to a regional or minority language practised by a large number of speakers are not suited to a minority language used only by a small group of persons."

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standards more generally, under which states are generally not free to pick and choose their obligations.

A fourth distinguishing feature is that the specificity and detail of the provisions of Part III of the ECRML are, in comparison with other international instruments, particularly stark in relation to media. In the FCNM, for example, the obligation of greatest relevance to minority language media is Article 9, paragraph 4, which provides that states which have ratified the treaty "shall adopt adequate measures in order to facilitate access to the media for persons belonging to national minorities and in order to promote tolerance and permit cultural pluralism". By contrast, as we shall see, Article 11 of the ECRML has detailed provisions regarding the use of minority languages on television, radio and in newspapers, among other things.

1. Protection and Promotion of Minority Languages

The framework for the interpretation of international treaties such as the ECRML is set out in Articles 31 to 33 of the *Vienna Convention on the Law of Treaties* of 1969 (the 'VCLT').[2] Article 31, paragraph 1 provides that a treaty must be interpreted "in good faith in accordance with the ordinary meaning to be given to the terms of the treaty in their context and in the light of its object and purpose". Paragraph 2 makes clear that the context encompasses the text of the treaty, including its preamble and annexes, among other things.

With respect to the ECRML, the Preamble provides very clear guidance as to the purpose of the treaty. It makes reference to the contribution which the protection of the historical regional or minority languages of Europe, some of which are in danger of eventual extinction, makes to the maintenance and development of Europe's cultural wealth and traditions. It also recognises that the protection and promotion of these languages represent an important contribution to the building of a Europe based on the principles of democracy and cultural diversity. The Explanatory Report, which, it has been argued, should be considered to form part of the context of the ECRML (Moring and Dunbar, 2008: 7), summarises the overriding purpose of the ECRML as being cultural: "It is designed to protect and promote regional or minority languages as a threatened

2 1155 UNTS 331, 8 ILM 679 (1969), 63 AJIL 875 (1969).

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aspect of Europe's cultural heritage" (para. 10). As the Explanatory Report also notes, what these languages have in common is "a greater or lesser degree of precariousness" (para. 10). Thus, the ECRML's provisions must be understood in light of this purpose, and in the context of the media, this raises the question of what role the media can play in the protection and promotion of regional or minority languages. This question is ultimately a sociolinguistic one, and therefore the interpretation and application of the ECRML should be informed by a sociolinguistic perspective.

There is broad agreement that establishing a presence for minority languages in the media is very important to the protection and revitalisation of such languages. The foundational text in relation to minority language revitalistion is Joshua Fishman's *Reversing Language Shift* (Fishman, 1991). Fishman proposes an eight stage model, called the 'Graded Intergenerational Disruption Scale', or 'GIDS', by which the degree of vulnerability of a minority language can be assessed, with languages at stage eight being most vulnerable and those at stage one being least so (Fishman, 1991: 87–114).[3] For each stage, Fishman outlines the sorts of interventions that can be taken to improve the prospects of the language. He makes clear that stage six, the attainment of intergenerational transmission of the language—its acquisition in early childhood within the home—and strengthening its use in the neighbourhood, is essential in any revitalisation effort. He does recognise that education through the medium of the minority language (stage four in the GIDS), expanding its use in the workplace (stage three) and its presence in the public administration and the mass media (stages two and one) are also important. Fishman was critical of an over-reliance on minority language education and media, which he has referred to as 'higher order props', when insufficient attention has been given by policy-makers to stage six initiatives (Fishman, 1991: 380), and he did express concerns about their potential impact in language maintenance efforts, given that minority language media are often, in his view, "very pale imitations" of majority language media, both in terms of quality and quantity (Fishman, 2001: 473).[4] Without question, both the quality and quantity of minority

3 Lewis and Simons have extended Fishman's GIDS somewhat, but have not fundamentally changed it: Lewis and Simons, 2010.

4 Indeed, he has claimed that some minority language activists have a "mass media 'fetish'", although he also recognised the potential of new media forms, or what he described as 'self-regulated communication technologies' to 'facilitate' the sort of processes of informal language use that are part of his Stage 6: Fishman, 2001: 482, note 5.

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language media are important issues, and ones to which, as we shall see, the Committee of Experts, the body created under the ECRML to oversee its implementation, has given attention. Aspects of Fishman's approach to the revitalisation of minority languages have been subject to some critical reassessment,[5] but it is still influential. In spite of his caution about over-reliance on media, he nevertheless recognised that they are a key element in language maintenance and revitalisation efforts.

Likewise, UNESCO has recognised the importance of minority language media in any language revitalisation strategy. The UNESCO Ad hoc Expert Group on Endangered Languages (UNESCO, 2003) included a minority language's presence in new linguistic domains and media as one of the eight factors that should be used in assessing the vitality of a minoritised language. They note the following:

> Schools, new work environments, new media, including broadcast media and the Internet, usually serve only to expand the scope and power of the dominant language at the expense of endangered languages. Although no existing domains of the endangered language may be lost, the use of the dominant language in the new domain has mesmerizing power, as with television. (UNESCO, 2003: 13)

Where the language is used in all or most of these domains, it suggests that the language is either 'dynamic' or 'robust/active'; where it is used in only some or a few of these domains, it is considered 'coping' or its vitality is 'minimal'. The UNESCO experts also note that the degree of presence of the language in the media must be borne in mind, an issue which, as we shall see, must also be addressed in relation to Article 11 of the ECRML. For example, they note that where an endangered language enjoys one new domain, broadcast media, including radio and television, but for only for half an hour per week, the very limited amount of broadcast time limits the exposure of speakers to the language in the media, with the result that the language could only be considered to be 'coping' in relation to this factor (UNESCO, 2003: 13).[6]

Mike Cormack has provided a more detailed analysis of the ways in which minority language media can contribute to the protection and re-

5 For a cogent summary of Fishman's model, and of critical assessments of it, see Baker and Wright, 2021: 118–122). See also Lewis and McLeod, 2021: 13–17, 21.

6 A similar assessment must, of course, be made in relation to the other seven factors they consider in their report before an overall assessment of vitality is arrived at.

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vitalisation of minority languages (Cormack, 2007). He notes that the relevance of media to minority languages is generally accepted, but that there is not a great deal of evidence about the actual effect of specific media on minority language vitality (Cormack, 2007: 52), a situation that has not changed greatly since then.[7] However, Cormack notes that the media can support minority languages in a number of ways. First, media have become central to the organisation of modern societies; they have become inescapable, and a failure to achieve some presence in the media marginalises a language. Second, media can help minority language speakers develop a sense of being part of a larger community. Third, a presence in the media is important in signifying to speakers that the language community is fully modernised and capable of participating in contemporary life. Fourth, much media content is language-based, and gives access to much more language input in the daily lives of speakers. Finally, media can provide economic support to minority language communities and attractive employment opportunities to speakers of those languages (Cormack, 2007: 53–5). Cormack also notes that the media can present challenges to minority languages. Media, particularly television, is expensive, and given the scarce financial and human resources that are often available for minority language maintenance interventions, there is a danger that the media may divert resources from other interventions that may have a more dramatic impact in terms of promoting actual use of the language, at lower costs; as we have seen above, this was also a concern noted by Joshua Fishman. Furthermore, given generally smaller audiences for minority language media, they may be perceived as uneconomic, and in the case of television, may be forced to appeal to a wider, non-minority language speaking viewership. And, Cormack notes that it is not at all clear how much the presence of a minority language in the media actually encourages people to speak and use that language (Cormack, 2007: 53, 55–58). Although Cormack was writing at a point when many so-called 'new media' forms were just emerging—such terminology will be explored, below—he highlighted that such new media created opportunities but also risks for minority languages (Cormack, 2007: 58–9).

Tom Moring has also pointed out that, in spite of a general agreement that minority language media are important for the maintenance and revi-

7 Part of the difficulty in determining the effects of media is that generally, the provision of minority language media is only one of many interventions being taken in respect of any given minority language.

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talisation of minority languages, we do not know a great deal about precisely how they impact on minority language use vitality (Moring, 2007: 17). He has, however, considered what sort of media provision might be necessary if the minority audience is not to move to majority language media. Moring makes use of three concepts: functional completeness, institutional completeness, and genre completeness. Genre completeness refers to the availability of a wide range of genres of material in each form of media. Institutional completeness refers to the availability of media platforms or outlets in the minority language for each type of media. He observed that people consume different forms of media—that different forms have fundamentally different characteristics which affect us in different ways and serve different senses and different cultural functions—and where certain forms are not available (or unsatisfactory in terms of volume and content), then people will turn to majority language media to satisfy their desire for that form of media. Although Moring was writing at a time when traditional or 'legacy' media forms—television, radio and newspapers—were dominant, his analysis can certainly accommodate new media forms as well, as the principle remains the same. Therefore, an aim of media policy for minority languages should be to achieve institutional completeness.

Even within a particular media form, people want different genres of programming or print content. Where certain genres are not available in a particular media form, people will once again turn to majority language media. Moring notes that in minority language television, certain genres are more common than others: news, programmes reflecting events in the language community, and children's programming. Media policy should therefore also aim at genre completeness.

The overarching goal is the achievement of functional completeness: this is essentially the concept of 'normalisation' as applied to media, the ability to live one's media life through minority language media without having to resort to majority language media (Moring, 2007: 18–26). Clearly, functional completeness is extremely difficult to attain for even the strongest of the regional or minority languages protected by the ECRML—indeed, institutional and genre completeness are unattainable for many if not most, particularly in the much more complex current media environment, discussed further, below. However, these concepts are very useful in helping to deal with some of the difficulties in understanding how the provisions of the ECRML in relation to media, and in particular those in Article 11, should be interpreted and applied, and these will be explored in the next section of this paper.

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Finally, given developments in information and communication technology and new media forms, increasing attention has been given to their impact on regional or minority languages. There is widespread agreement that, just as a presence in 'old' media such as television, radio and newspapers is important, the presence of minority languages in 'new' media is important for their maintenance and revitalisation. In the context of the emphasis he had placed on Stage 6 on the GIDS, Joshua Fishman argued that initiatives in support of language maintenance and revitalisation must strive to provide a 'physical breathing-space' for speakers, a 'demographically concentrated space' where the regional or minority language is the predominant means of communication, 'unharassed' by the majority language and its speakers (Fishman, 1991:58). While recognising the challenges that minority languages face in establishing a presence in social media, scholars now point to the potential of social media in fostering virtual networks of users of minority languages to create 'digital breathing spaces' (Cunliffe, 2021, esp. at 82–88).

The ECRML is, of course, a legal document, and it can only be applied in accordance with its provisions. However, as we shall see, many of its provisions in relation to media (as well as in respect of other areas) require interpretation. For example, in many instances in relation to the media, states are required under the ECRML to 'encourage' and/or 'facilitate' certain things, and in determining whether a state has met such obligations, consideration of the purpose of the ECRML seems relevant. Reference is made to 'adequate provision' of radio and television programmes, or the provision of such programmes and of newspaper articles 'on a regular basis'. As has been noted in respect of all such terms, they should be interpreted, and applied,

> in a way that contributes most effectively to the protection and promotion of the regional or minority language in question, and that ensures "as far as reasonably possible" their use in the media. Thus, ambiguities should be resolved in a way that is as favourable as possible to the regional or minority language in question. (Moring and Dunbar, 2008: 9)

Furthermore, since consideration of the purpose of the ECRML is relevant in resolving ambiguities, given that its purpose is, as noted, closely tied to sociolinguistics, sociolinguistics brings an important perspective to bear in understanding what is likely to be an interpretation that will be most favourable to regional or minority languages.

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2. The Contents of Article 11: A Treaty for an Analogue World

The ECRML was drafted in the late 1980s and early 1990s and was opened for signature on 5 November, 1992. The media provisions in Article 11 of the ECRML reflect the media landscape of that time, which was essentially restricted to so-called 'old' or 'legacy' media: analogue television, analogue radio and newspapers.

The drafters of the ECRML accepted the common wisdom that minority language media are essential in order to achieve the overriding purposes of the treaty. The Explanatory Report notes that "the time and space which regional or minority languages can secure in the media is vital for their safeguard", and that in contemporary society, "no language can keep its influence unless it has access to the new forms of mass communications" (para. 107).

Subparagraphs 1 a, b and c deal with television and radio broadcasting, and offer states a range of options with regard to minority language provision. Subparagraph 1 a applies to the extent that radio and television carry out a 'public service mission'; in the Explanatory Report, it is noted that such a mission can be carried out by a public or private broadcasting body, and that it involves the provision of a broad range of programmes including the consideration of minority tastes and interests, and note that the state can make provision, for example in legislation or in the broadcaster's specifications—an ambiguous term that may be understood as broadcasting licences—for the broadcasting of programmes in a regional or minority language (para. 110). What seems to be crucial is that the state has the power to regulate media content of broadcasters. Under subparagraph 1 a, there are three options available to states: to ensure the creation of at least one 'radio station' and one 'television channel' in regional or minority languages (subparagraph 1 a i); to 'encourage and/or facilitate' the creation of one such 'radio station' and 'television channel' (subparagraph 1 a ii); or, to make 'adequate provision' so that broadcasters offer 'programmes' in regional or minority languages' (subparagraph 1 a iii).

Subparagraph 1 b focuses on radio alone. Unlike subparagraph 1 a, it makes no reference to a public service mission, and is meant to apply "where broadcasting is conceived as a purely private-sector function" (Explanatory Report, para. 110) and therefore, presumably, the state does not have the power to regulate content. Subparagraph 1 b provides two options: to 'encourage and/or facilitate' the creation of at least one 'radio station' in the regional or minority languages (subparagraph 1 b i); or, to 'encourage

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and/or facilitate' the broadcasting of 'radio programmes' in the regional or minority languages 'on a regular basis' (subparagraph 1 b ii). The reference to encouraging and/or facilitating is presumably due to the fact that the state does not regulate the content of these broadcasters.

Subparagraph 1 c focuses on television alone. It also makes no reference to a public service mission and therefore applies where television broadcasting is a purely private-sector function. There are once again two options available to states: to 'encourage and/or facilitate' the creation of a 'television channel' in the regional or minority languages (subparagraph 1 c i); or, to 'encourage and/or facilitate' the broadcasting of 'television programmes' in the regional or minority languages 'on a regular basis'.

Newspapers are covered in subparagraph 1 e. The ECRML assumes that print media is essentially a private-sector function (Explanatory Report, para. 110), and therefore the provisions of subparagraph 1 e resemble those of subparagraphs 1 b and 1 c, with two options available for states to choose: to 'encourage and/or facilitate' the creation and/or maintenance of at least one 'newspaper' in the regional or minority languages (subparagraph 1 e i); or, to 'encourage and/or facilitate' the publication of 'newspaper articles' in regional or minority languages 'on a regular basis' (subparagraph 1 e ii).

The other provisions of Article 11 that are of some importance for our discussion are subparagraphs 1 d and 1 f. Subparagraph 1 d requires states which have chosen this obligation to 'encourage and/or facilitate' the production and distribution of 'audio and audiovisual works' in the regional or minority languages. The Explanatory Report provides no commentary which would help clarify what sorts of things 'audio and audiovisual works' would cover. At the time the ECRML was drafted, it is likely that these terms would be expected to include compact discs, vinyl records, cassette tapes, and VCR tapes—DVDs only began to appear in 1996. Under subparagraph 1 f i, states commit themselves to covering the additional costs of those media which use regional or minority languages. Alternatively, under subparagraph 1 f ii, states can apply existing measures for financial assistance also to audiovisual productions in regional or minority languages; once again, what might constitute an 'audiovisual production' is not clear.

Other paragraphs and subparagraphs of Article 11 are also of significance, but of less relevance to the discussion in this chapter. Article 11, paragraph g deals with support for the training of journalists and other staff using regional or minority languages. Article 11, paragraph 2 requires states to guarantee the freedom of direct reception of radio and television broadcasts in regional or minority languages from neighbouring countries, and that

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no restrictions will be placed on the free circulation of information in the written press in a language used in identical or similar form to a regional or minority language of the state. And Article 11, paragraph 3 requires states to undertake to ensure that the interests of users of regional or minority languages are represented or taken into account within any body or bodies which have been established to guarantee the freedom and pluralism of the media.

The subparagraphs of Article 11 on which are the focus of our attention—subparagraphs 1 a, b, c, d and e—present a variety of challenges of interpretation and application, many of which have just been highlighted in the discussion of the contents of these provisions. These are, however, the sorts of ambiguities that are inherent in all treaties and in domestic legislation, and they have been explored by scholars[8] and have to a significant extent been addressed by the Committee of Experts.

For example, paragraphs a, b and c make reference to 'radio stations' and 'television channels'. In most cases, what constitutes a minority language station or channel would be obvious. However, where a station or channel also broadcasts programming in the majority language as well as in the regional or minority language, can it still qualify? The Committee of Experts has clarified that this does not mean that the Article 11, subparagraph 1 a i or 1 a ii commitment has not been satisfied, and that broadcasting solely through the medium of the regional or minority language is not essential. What is important is that the station or channel was created expressly for the purpose of broadcasting programming in the regional or minority language to users of that language and that a significant amount of the programming, although not necessarily a majority, is in the minority language: the Committee is generally reluctant to be prescriptive about a minimum number of hours would be required, which is understandable, given that the situation of regional or minority languages differs quite considerably, but quite small numbers of hours per day—in one case less than an hour per day of television programming in the regional or minority language—would be unacceptable. The degree to which programming in the regional or minority language is broadcast in peak viewing times may also be relevant (Dunbar and Moring, 2012: 382–3). Where there has been a complete switch from analogue to digital programming, where technology such as iplayers are available, and where, consequently, traditional linear viewing patterns have for many users changed, the presence of programming in

8 See, in particular, Moring and Dunbar, 2008, and Dunbar and Moring, 2012.

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peak viewing times may be less important now that it once was. However, the Committee of Experts has consistently considered the position of the minority within the minority. Where, for example, there is still analogue programming, the committee has been critical of the availability of programming in regional or minority languages solely in the digital format. It can be expected that the committee would be similarly attentive to established viewing patterns informed by previous practices developed in the age on linear programming. The committee has consistently placed emphasis on the real access of users of regional or minority languages to radio and television broadcasting in those languages (Dunbar and Moring, 2012: 383).

In considering whether obligations in relation to television and radio broadcasting have been fulfilled, Moring's concept of 'genre completeness' is very useful. Even where a state has committed to the creation of a television channel or a radio station (under Article 11, subparagraph 1 a i or 1 a ii), it is not clear that the channel or station provides a sufficiently wide range of programmes to satisfy the condition of genre completeness. In relation to Scottish Gaelic, for example, the United Kingdom ratified Article 11, subparagraph 1 a ii, committing itself to encouraging and/or facilitating the creation of at least on Gaelic television channel. The Committee of Experts found that there was a high percentage of repeat programmes and a limited range of genres available on BBC Alba, the channel which has been created in satisfaction of subparagraph 1 a ii, and that these are significant problems. They found that speakers had indicated that this would have negative implications for viewership, and they would benefit from an increase in new content and greater variety in Scottish Gaelic.[9] In spite of this, the Committee of Experts concluded that, on this occasion, the United Kingdom had fulfilled its obligation under subparagraph 1 a ii; however, the committee does consider these issues carefully. 'Genre completeness' is not, of course, mentioned in the ECRML provisions on media, and it would therefore be inappropriate to read the concept into the treaty. However, in trying to determine whether a state has satisfied an obligation, some consideration of the purpose of the treaty is, as noted earlier, relevant, and where concepts such as genre completeness can help in understanding how that purpose can be advanced in a particular set of circumstances, they would also, it is suggested, be relevant and useful.

9 Sixth evaluation report of the Committee of Experts on the United Kingdom and the Isle of Man, MIN-LANG(2024)9, para. 79.

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Genre completeness is even less likely to be satisfied where the commitment under subparagraph 1 a is paragraph iii, to make 'adequate provision' so that broadcasters offer programmes in regional or minority languages. What constitutes 'adequate provision' is not clear, although in practice the Committee of Experts considers whether there is a 'regular and predictable' presence of a regional or minority language on public service mission television or radio. The focus, however, appears to be on actual broadcast hours and programme scheduling, rather than content, and in many cases it is not clear whether the offer of such programming would satisfy the condition of genre completeness. With regard to Slovakia, for example, the Committee of Experts found that Slovak Radio broadcast between seventeen and twenty-five hours per year in Polish in the years 2012 through 2015, between one and two hours per year in Bulgarian in the years 2011 through 2014, and between no and two hours per year in Croatian in the years 2011 through 2014. The Committee of Experts noted that no children's programmes were broadcast in any of these languages, which once again indicates an awareness that genre completeness is an issue for consideration in assessing implementation of media commitments. On this occasion, the Committee concluded that the presence of these languages was too low.[10]

With regard to Article 11, subparagraph 1 e i, reference is made to encouraging and/or facilitating the creation of a 'newspaper' in a regional or minority language, but how frequently must a periodical appear, and what sort of content must it have, in order to be considered to be a 'newspaper'? The Committee of Experts' settled practice is that, in order to satisfy the subparagraph, the periodical must published daily or at least weekly, and must actually convey news.[11] The committee has welcomed the publication of newspapers in digital format, something that contributes to a greater presence of regional or minority languages in 'new' media. Indeed, they have noted that in some cases, not only is the digital format widely accepted by different demographic groups within the language community, but, because such a version can in some cases be easily translated, it can be

10 Fourth Evaluation Report on the Slovak Republic, ECRML (2016)2, para. 690, 692.

11 For example, Fifth evaluation report of the Committee of Experts on Serbia, MIN-LANG(2023)3, para. 59; Third evaluation report of the Committee of Experts on Poland, MIN-LANG(2021)15, para. 54; Second evaluation report of the Committee of Experts on the Slovak Republic, ECRML(2009)8, para. 136; Second evaluation report of the Committee of Experts on Armenia, ECRML(2009)6, para. 186.

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read by non-speakers.[12] However, the Committee of Experts is concerned where a newspaper is only available in a digital format; they have noted that an online newspaper may be sufficient to satisfy the ECRML commitment (assuming that it is published with the necessary frequency), but in general the offer of print and digital versions has to be balanced to cover the needs of all age groups.[13] Again, an awareness of the diversity of patterns of media consumption, and the differing needs of different demographic groups within the language communities is at work here, and is something that should generally be considered in the monitoring process in respect of all commitments in the subparagraphs of Article 11 that we have been examining.

3. An Analogue Treaty in a Digital World

It has been over thirty years since the ECRML was opened for signature. Since 1992, the arrival of digital technology, the explosion of new media, facilitated by the internet, and, more recently, rapid advances in artificial intelligence (AI) have completely transformed the media landscape. These developments have raised the question of whether the media provisions of the ECRML, conceived of in an analogue world, are still fit for purpose in this new digital age. These changes raise challenges in the interpretation and, particularly, in the application of the treaty that are of a different nature to those considered above, namely, the sort of interpretive issues which apply in most legal instruments with regard to the meaning of provisions which are sometimes, of necessity and frequently by design, vague.

These changes are a challenge not only for the ECRML but for other international instruments of relevance to linguistic minorities. The period in which the ECRML was being drafted was also when many of the most important of these international legal instruments were being drafted, and although provisions on the media in instruments such as the FCNM are not as detailed as those of the ECRML, they were also conceived of in that analogue world. The transformation of the media landscape has implications for them, as well. Some institutions involved with the oversight and application of these instruments have sought to respond. For example,

12 For example, Sixth evaluation report of the Committee of Experts on Denmark, MIN-LANG(2023)23, para. 28.

13 Third Evaluation Report on Poland, ECRML (2021)15, para. 54.

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in 2019, the High Commissioner on National Minorities (the 'HCNM') of the Organization for Security and Co-operation in Europe (the 'OSCE') responded to changes in the media landscape by revising guidelines on the use of minority languages in the broadcast media which had been developed under the auspices of the HCNM in 2003 (OSCE, 2003; OSCE, 2019). The Committee of Experts of the ECRML has also responded. In 2016, the committee formed a working group under the direction of Jarmo Lainio, then Vice Chair of the committee, to investigate the impact of new technologies, the internet, new social media and the role of digitisation on its work of monitoring the ECRML, and the working group reported in 2019 (Lainio et al, 2019). More recently, the Secretariat of the Committee of Experts has considered the impact of developments in AI on the implementation of the ECRML (Council of Europe, 2022); as the report indicates, AI will impact on most provisions of the ECRML, such as in education, the provision of public services, and so forth, but the report also considers the impact of AI on the media provisions of Article 11.

Some changes which have so profoundly transformed the media landscape were underway even before the ECRML was concluded. By the 1980s, the expansion of cable networks and the deregulation of television markets led, in many countries, to the growth in the number of television channels available, creating a much more competitive marketplace in which a significant number of privately-owned channels, many of which catered to particular interests and audiences, challenged the position of publicly-owned and public service broadcasters. This trend picked up pace in the 1990s and subsequently, and has coincided with and indeed has been fostered by the rise of neo-liberalism and globalisation, which have, among other things, impacted the ways in which media, and television in particular, have been funded (Lainio et al, 2019: 18–19). As McGonagle and Moring have noted, the progressive liberalisation which has been in train since the 1980s has "loosened States' grip on the organs of mass communication", leading to "the emergence and consolidation of powerful non-State, commercial actors" (McGonagle and Moring, 2024: 513). The result has been that consumers have a much greater choice of programming, but that television market, in particular, has become much more fragmented.

In the new millennium, the development of the internet and of digital technology has created an even greater range of media options for consumers, resulting in profound challenges for 'old' or 'legacy' media such as television, radio, newspapers and other print forms. By the middle of the first decade of the twenty-first century, interactive websites had appeared

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which allowed for the possibility of user-generated content, resulting in the emergence of a diverse range of 'new' media, including social media platforms such as LinkedIn, Facebook, Twitter (now X) and Instagram, video-sharing sites such as YouTube, as well as blogs and wikis. What distinguishes these from the 'old' or 'legacy' media is that, where users of the old media were passive receivers of information, with these 'new' media forms users can contribute as well as receive information, and engage in online discussions. Furthermore, the emergence of digital technology has meant that in some jurisdictions, analogue broadcasting has been completely replaced by digital broadcasting. Digital technology has also led to the emergence of video streaming services such as Amazon Prime Video, Netflix, Paramount+, Disney+ and Apple TV+, the use of which was significantly enhanced during and after the Covid 19 pandemic (Nagy and Willis, 2025: 11). With AI has come the development of language translation technology, the impact of which on the media is only beginning to be felt.

The 2019 report prepared for the Committee of Experts (Lainio et al, 2019) provides a clear picture of the implications of these changes for minority language media, and for the media provisions of the ECRML themselves. The report notes an overall reduction in the proportion of broadcast media being produced and distributed by public sector organisations, with public service broadcasting in general and public broadcasting in particular representing a smaller percentage of the overall broadcast landscape. The report notes the growth in the number of radio stations and television stations, the proliferation of specialist or niche broadcasters, and the increasing presence of commercial broadcasters—in particular of global brands such as the streaming services—in the digital environment (Lainio et al, 2019: 19). These developments present massive challenges for minority language radio stations and television channels of the sort referred to in Article 11 of the ECRML. As the report notes, minority language radio and television has historically been rooted in public broadcasting or public service broadcasting and has, given the relatively smaller viewership that exists for minority language broadcasters, depended largely on state support in order to operate. Minority language broadcasters have also generally not been able to develop niche or specialist television channels (ibid).

Indeed, in terms of television and radio, the 'gold standard' for regional or minority languages has been a station or a channel, usually funded solely or primarily by the state; the 2019 report noted that there is, in relation to broadcasting in regional or minority languages, "a continued dependence

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on the traditional model of a single, 'generalist' channel rather than the contemporary model of a suite of generalist, diverse and niche channels" (ibid). Even so, such channels are comparatively rare, and this itself speaks to the challenges that minority language broadcasting faces. For example, of the twenty-five states which have ratified the ECRML, only four have ratified Article 11 1 a i, which, as noted above, commits a state, where radio and television carries out a public service mission, to creating a radio station and a television channel in the regional or minority languages,[14] and only five have ratified Article 111 1 a ii, which requires states to encourage and/or facilitate the creation of such a station and channel.[15]

Minority language audiences are no less diverse in terms of tastes than majority language ones, but as regards television in particular, it is increasingly challenging, given the ongoing fragmentation of the market, for a single channel to serve them, particularly when public funding is also being squeezed. As we have already seen in relation to Scottish Gaelic, for example, the Committee of Experts has noted both the absence of some important genres and the pressure on funding. While most states do make some commitment with regard to radio or television broadcasting in relation to the regional or minority languages which they have designated for the protection of Part III of the ECRML, they generally opt for the obligation, where radio and television carry out a public service mission, to make adequate provision so that broadcasters offer programmes in regional or minority languages (Article 11, subparagraph 1 a iii), or in relation to private sector broadcasting, the obligation to encourage and/or facilitate the broadcasting of radio programmes (Article 11, subparagraph 1 b ii) or of television programmes (Article 11, subparagraph 1 c ii) in regional or minority languages on a regular basis. A recurrent theme in Committee of Experts monitoring is that that the number of hours of such programming is insufficient, or broadcast an insufficiently regular intervals, or is not available at times that are accessible to most users, or is largely limited to some news programming or coverage of manifestations of the traditional

14 Slovenia, in respect of Italian and Hungarian; Spain, in respect of the co-official languages of six autonomous communities (i.e. Basque, Catalan, Valencian (Catalan) and Galician); Switzerland, in respect of Italian; and the United Kingdom, in respect of Welsh.

15 Hungary, in respect of Romani; the Netherlands, in respect of Papiamento (Papiamentu); Poland, in respect of all of the fifteen languages it has designated for the protection of Part III; Romania, in respect of Hungarian; and the United Kingdom, in respect of Scottish Gaelic.

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culture of the speakers of the regional or minority languages (Dunbar and Moring, 2012: 386). Thus, for the overwhelming majority of regional or minority languages covered by the ECRML, Moring's concept of 'genre completeness', even as regards these two media forms, radio and television, is far from being achieved and, given current trends in the media landscape, unlikely to be achieved in the future.

The challenges for newspapers are even more stark. Even the largest daily newspapers in widely-spoken majority languages such as English have experienced sharp declines in circulation. Now, virtually all such newspapers have online editions, and a few have in fact ceased producing 'hard' copies altogether. As noted earlier, the Committee of Experts has for some time had to consider what constitutes a 'newspaper' for the purposes of the relevant provisions of the ECRML (Article 11, subparagraph 1 e i and ii) in terms of frequency of publication. As also discussed above, the committee has also considered the degree to which digital versions accessible online can satisfy those provisions of Article 11.

It is also important to note that in the new media landscape, patterns of media consumption have changed. Generally, 'old' or 'legacy' media such as radio, television and newspapers play a smaller role in the lives of very many people, including users of regional or minority languages. Younger people, in particular, increasingly rely on social media and on-demand streaming services as sources of information and entertainment (Lainio et al, 2019: 18, 24). However, it is important to remember that legacy media still play an important role in the lives of many people, particularly older people. In addition to this 'demographic divide' in patterns of media consumption, the pace of technological change, and with it patterns of media consumption, differ in different parts of Europe (ibid: 24).

Social media presents opportunities but also significant challenges for regional or minority languages. Social media are participatory and allow for the creation of user-generated content. In principle, users of minority languages can therefore themselves enhance minority language content in these media. As we have seen, minority language media scholars such as Daniel Cunliffe have noted the potential of social media to allow for the creation of 'digital breathing spaces'. In practice, however, large languages enjoy an enhanced presence in social media. Many users of minority languages will choose to communicate through majority languages, both to enhance the reach of their contributions but also because many in their social networks will not be users of their minority language (Cunliffe, 2021: 74, 78). Machine translation technology may help address this problem

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for some regional or minority languages, as a social media post or posted material in the language may, through the application of such technology, become accessible to non-users of the language. However, for many regional or minority languages, such technology is not yet sufficiently developed to make an impact (Lainio et al, 2019: 21–22, 24–25). And in any case, regional or minority language content can easily be missed or be hidden on social media: recommendation functions, often driven by algorithms, can have a negative impact on the availability, accessibility, visibility, findability, and prominence of material in regional or minority languages (McGonagle and Moring, 2024: 510). Streaming services are generally provided by major multinational corporations, and tend to be dominated by content that is in larger languages of wider communication, and particularly English.

While it is true that these new media forms did not exist at the time that the ECRML was being drafted and are therefore not reflected in the treaty itself, this may not ultimately be a significant obstacle to the application of the treaty to them. Perhaps the biggest challenge is that new media platforms are provided largely by private sector actors with multinational operations, and such actors will always be more difficult to regulate than public institutions. Simply put, the ECRML creates obligations for states, but not for private actors. With regard to 'old' or 'legacy' media, where provided by the private sector, as is the case for most newspapers and also a considerable amount of radio and television broadcasting, the ECRML only requires states to 'encourage and/or facilitate' the creation of radio stations, television channels or newspapers, or to 'encourage and/or facilitate' broadcasting of radio or television programmes on privately-owned stations or channels, or the publication of articles in privately-owned newspapers on a regular basis. This is because, as the Explanatory Report notes, with regard to private sector activity, encouraging and/or facilitating is all that the state can do (para. 110). In practice, the form that such support and/or facilitation has generally taken is through government subsidy.

With regard to the ECRML, existing provisions have proven somewhat more adaptable to this changed media environment that might have been expected (Láncos, 2024: 11–12). Digital television and radio and online newspapers can, as we have seen, all be considered under the relevant paragraphs and subparagraphs of Article 11 (1 a, 1 b, 1 c, and 1 e). For example, the Committee of Experts has made clear that, in light of the changes that have taken place in the media environment since the entry into force of the ECRML, it has taken a more flexible approach to subparagraphs 1 a, 1 b and

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1 c, and has confirmed that it will consider not only digital but also other online media content under Articles 11.1.bii and 11.1.cii of the Charter.[16] Spain has concluded agreements with international streaming platforms for the dubbing of films and programmes into the official languages of the autonomous communities (e.g. Catalan, Basque, Valencian), and this has been considered in the context of Article 11, subparagraph 1 c i; although the Committee of Experts found that the offer of such programmes remains limited, they nonetheless concluded that the subparagraph was satisfied.[17]

Also, several other provisions of the ECRML could clearly be used to consider new media. One is Article 11 1 d, which requires states to encourage and/or facilitate the production of audio and audiovisual works in regional or minority languages. Certain types of new media content, including user-produced content, might fit within the terms 'audio and audiovisual works'. The Committee of Experts has noted that Article 11 1 d covers new media forms such as podcasts and social media.[18] In its most recent evaluation report on Czechia, the Committee of Experts made the following comments:

> It must be stressed that the importance of Article 11.1.d has grown in recent years as many people, especially children and young people, prefer new media to television and radio. This generation is crucial to the maintenance or revival of regional or minority languages. Therefore, the Committee of Experts encourages the authorities to design, in co-operation with the representatives of the users of German, Polish and Slovak (including youth), a policy for the production and distribution of audio and audiovisual works in these languages, with particular emphasis on new and social media.[19]

Article 12, which deals with 'Cultural activities and facilities', is also relevant. Subparagraph 1 a requires states to encourage types of expression and initiative specific to regional or minority languages and foster different means of access to works produced in such languages. The Explanatory Report notes that the expression 'different means of access to works' may cover "publication, production, presentation, diffusion, transmission, and

16 Third Evaluation Report on Poland, ECRML (2021) 15, para. 85.
17 Sixth Evaluation Report on Spain, ECRML (2024)17, paras. 37, 78, 99, 120, 139, 156, 204, 249, 285.
18 Fifth Evaluation Report on Serbia, MIN-LANG(2023)3, para. 56, Fifth Evaluation Report on Czechia, MIN-LANG(2024)4, para. 79.
19 Fifth Evaluation Report on Czechia, MIN-LANG(2024)4, para. 80.

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so on" (para. 115). This provision, as clarified by the Explanatory Report, also seems to be sufficiently broad as to cover support for the production of new media content, including user-produced content, in regional or minority languages. Subparagraphs 1 b and 1 c require states to foster access to access in other languages to works produced in regional or minority languages, and to foster access in regional or minority languages to works produced in other languages, "by aiding and developing translation, dubbing, post-synchronisation and subtitling activities" seems sufficiently broad to encompass measures of governmental support for the development of AI applications such as machine translation and speech-recognition technology. Article 13, paragraph 1 includes a number of provisions aimed at measures which discourage or restrict the use of regional or minority languages in economic or social life, but in subparagraph 1 d there is a general obligation on states to "encourage and/or facilitate the use of regional or minority languages by means other than those specified" in the other subparagraphs in paragraph 1. This is a provision of potentially very wide application, and seems to be sufficiently broad as to apply to state support for the production of social media content and, arguably, measures to increase content in regional or minority languages on streaming services. Given the cross-border nature of contemporary media, Article 14, regarding transfrontier exchanges, is also relevant, particularly paragraph b, which is of potentially very wide application, which commits states to facilitating and/or promoting co-operation across borders for the benefit of regional or minority languages. And Part II of the ECRML should not be forgotten. Article 7, requires states to base their policies, legislation and practices on a number of objectives and principles. Subparagraph 1 d is particularly expansive. It refers to the facilitation and/or encouragement of the use of regional or minority languages in speech and writing, in public and private life. Once again, this provision is surely sufficiently broad as to apply to state support for the production of social media content and, arguably, measures to increase content in regional or minority languages on streaming services.

Finally, it must also be remembered that radio and television content, and newspapers, whether print editions or online, continue to be relevant to users of regional or minority languages. While the 2019 report to the Committee of Experts was somewhat pessimistic about the future of these media forms—they noted that within the foreseeable future (5–12 years from 2019) all undertakings concerning the printed press (Article 11, subparagraph 1 e) "could turn out to be obsolete in some parts of Europe",

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and that those relating to radio and television (Article 1, subparagraphs 1 a to c) "may become partly obsolete as the terms 'channel' and 'station' lose their meaning" (Lainio et al, 2019: 22–23), this may overstate the case somewhat. Many young people still access these media forms. And, with media convergence, broadcasters and print media have become producers of content for new media. The Report to the Committee of Experts notes, for example, that radio stations produce more text-based information and video content for dissemination online, the written press includes audio and audiovisual material in their communication strategies addressed to their readers and audiences, and that all media forms "now use social media to engage with their audiences and the traditional division between producer and consumer has become softer" (Lainio et al, 2019: 19–20).

4. Conclusions

Over three decades have passed since the ECRML was adopted as a Council of Europe treaty and opened for signature and ratification. Since that time, the media landscape has been completely transformed by the liberalisation and global integration of markets and by major technological change. In spite of the threat in recent months of trade wars between major trading partners, it is unlikely that the former will be significantly reversed, and it is very likely, given new developments in AI, that the latter will continue to gather pace. Both trends have posed very significant challenges to television and radio broadcasting and the publication in print in regional or minority languages, and while the various new media which have emerged over those three decades present some opportunities for users of regional or minority languages, they also raise challenges.

Although the provisions of the ECRML reflect the analogue world in which they were drafted, it does appear that the relevant provisions of the treaty, both in Article 11, on media, and in other articles, are sufficiently malleable to allow states to report on all aspects of their media policies, including in relation to new media, and to allow the Committee of Experts to consider all media forms in their monitoring work. As the 2019 report for the Committee of Experts noted, "[t]he text of the Charter in a dynamic interpretation is adequate to cope with the challenges arising from the changed media landscape" (Lainio, 2019: 48; see also Láncos, 2024: 11–12; Nagy and Willis, 2025). It has also been noted that the Committee of Experts has already considered new media, and the challenges to old or

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legacy media in their monitoring work (Lainio, 2019: 48; Láncos, 2024: 8–11; Nagy and Willis, 2025: 13–19). In their monitoring, the Committee of Experts has shown an awareness that legacy media still form an important part of the media landscape for many users of regional or minority languages, something that is particularly true of older demographic groups and in parts of Europe where the pace of adoption of new media forms and digital technology has been more uneven. With media convergence, legacy media can also play a significant role in infusing new media with content. Therefore, Article 11, subparagraphs 1 a, b, c and e are still of fundamental importance. It has, however, been noted that a more holistic approach to monitoring is needed, with a significantly stronger focus on new/digital media and especially social media (Nagy and Willis, 2025: 19). To a considerable extent, the Committee of Experts is dependent upon whether and how states which are parties to the ECRML report on media developments and initiatives, and fuller and more consistent reporting by states would be helpful. As has already been noted, however, much new media activity takes place beyond the reach of the state; the challenge is to identify how the state 'encourages and/or facilitates' the use of regional or minority languages in new media. It should also be emphasised that concepts such as functional, institutional and genre completeness should be borne in mind. In this regard, much depends on the approach states take to ratification of Part III commitments; as states are only required to choose one paragraph or subparagraph in Article 11, there will be gaps in state provision for and reporting on certain forms of media. But where even where a 'weaker' commitment is made—for example, the commitments under Article 11, subparagaphs 1 a iii, 1 b ii, 1 c ii and 1 e ii to 'make adequate provision' for or to 'encourage and/or facilitate' broadcasting of programmes or publication of newspaper articles in regional or minority languages—it is important to consider the degree to which there is a sufficiently broad range of genres being represented in programming or in publications. The 2019 report prepared for the Committee of Experts on new technologies and new social media (Lainio, 2019) was an important step, but as that report recommended, it is time for the Committee of Experts to prepare a document setting out its monitoring principles, based in part on monitoring that has already been done. Such a document should, however, be comprehensive, and not focus merely on new media. Through it, the Committee of Experts would be able to help states by highlighting issues that they should consider in preparing their state reports. Such a document would also be able to highlight good practices, thereby providing

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states, and users of regional or minority languages themselves, with useful ideas about how media, both 'new' and 'old', can better contribute to the achievement of the central purpose of the ECRML, the maintenance and revitalisation of Europe's rich store of regional or minority languages.

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Cultural activities and facilities (Article 12)

András Bethlendi

1. Introduction

When we consider a language that its speakers regard as a fundamental and inseparable part of their identity, we are referring to something that goes beyond its practical role as a means of communication. Not by accident, and with a view to addressing the definitional gap in international law, Skutnabb-Kangas and Phillipson propose defining 'mother tongue' as the language with which a person identifies, even if they no longer speak it.[1] This 'endo-definition,' based on self-identification, reveals the relevance of language beyond instrumentality. The linguistic dimension of a culture is not merely a hermeneutic code, an instrument of communication for those who identify with it; it is an intrinsic constituent of that culture – at once cause and consequence of a meaningful way of life. It is therefore significant that Article 12 of the European Charter for Regional or Minority Languages addresses cultural activities and facilities.

Although the Charter is the first international treaty to explicitly address access to minority culture, it did not emerge ex nihilo; its adoption was preceded by several decades of European policy-making and legislative development. The Explanatory Report cites Recommendation 285 (1961), pointing out that the Parliamentary Assembly recommended that the Committee of Ministers introduce an article in the Second Protocol to the Convention for the Protection of Human Rights and Fundamental Freedoms (commonly known as the European Convention on Human Rights). This article was intended to safeguard the rights of national minorities to enjoy their own culture, to use their own language, to establish their own schools, and to receive teaching in the language of their choice.[2] In this context, it

1 Skutnabb-Kangas, T & Phillipson, R (2023). Introduction: Establishing Linguistic Human Rights, In: Tove Skutnabb-Kangas & Robert Phillipson (Eds.), The Handbook of Linguistic Human Rights and Robert Phillipson, (pp. 4–7). Oxford: John Wiley & Sons, Inc.

2 The draft article proposed: "Persons belonging to a national minority shall not be denied the right, in community with the other members of their group, and as far as

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is clear that the Charter seeks to remedy the legal gap left by the failure to adopt the draft article.[3]

This chapter analyses the significance of Article 12 of the ECRML. It examines the text of the Charter, provides a comprehensive overview of the conclusions of the Committee of Experts (COMEX) and the Committee of Ministers, and offers a synthesis of the undertakings assumed by States Parties under Article 12. It also explores the values, principles and abstract goals that underpin Article 12, emphasising its role in the shift from ethnocentric, culturally exclusivist paradigms to inclusive approaches that recognise linguistic diversity and cultural pluralism.

2. An in-depth analysis of Article 12

Article 12, the subject of this chapter, is rarely subject to criticism in evaluation reports, recommendations by COMEX and the Committee of Ministers, or academic studies.[4] Broadly speaking, commitments under Article 12 are assessed more positively by COMEX compared to other areas like education (Article 8), judicial authorities (Article 9), administrative authorities and public services (Article 10), or media (Article 11). This is evidenced by the fact that most ratifying states fully or largely fulfil the COMEX expectations concerning Article 12. Among the 25 ratifying states, 22 have made commitments under Part III, with Cyprus only assuming obligations under Part II for Armenian and Cypriot Maronite Arabic, while Liechtenstein and Luxembourg have not designated any regional or minority languages for protection.[5] Of the remaining 22 states, notably seven – Croatia, Finland, Montenegro, the Netherlands, Norway, Slovenia, and Switzerland – were found to be fully compliant under Article 12 in COMEX's latest evaluation

compatible with public order, to enjoy their own culture, to use their own language, to establish their own schools and receive teaching in the language of their choice or to profess and practise their own religion." It was never adopted.

3 It is important to recall that whereas the ECHR would have guaranteed rights directly, the ECRML reaches any potential minority linguistic and cultural rights only indirectly, through state undertakings. Accordingly, the ECRML cannot be regarded as a legal instrument capable of fully compensating for the non-adoption of the ECHR article.

4 Craig, E. (2012). Article 12: Cultural activities and facilities. In A. Nogueira López, E. J. Ruiz Vieytez, & I. Urrutia Libarona (Eds.), Shaping language rights: Commentary on the European Charter for Regional or Minority Languages in light of the Committee of Experts' evaluation (pp. 425–443). Strasbourg: Council of Europe Publishing., p. 430.

5 Secretary General of the Council of Europe. (2023). Application of the European Charter for Regional or Minority Languages (2021–2022): Report by the Secretary

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reports. Furthermore, five states – Austria, Denmark, Romania, Spain, and Sweden – were assessed as largely compliant, with only a limited number of 'partly fulfilled' findings in the most recent evaluation reports.

2.1. The accessibility of culture – Commitments under Article 12.1 a), (b) and (c)

Article 12 addresses the field of cultural activities and facilities. These include, for example, the preservation and dissemination of traditions; protection and care of historical monuments; the activities of museums; sites of national remembrance; war graves and cemeteries; Holocaust memorials and their protection zones; creative and artistic activities; folk culture and artistic handicrafts, publishing, bookselling, libraries and readership; cultural education; art exhibitions; and audio-visual policies, in particular as regards press, radio, television and cinema. Other areas covered are amateur art movements; regional and socio-cultural organisations and associations; international cultural exchanges; performance and entertainment activities; restitution of cultural assets (including return of cultural assets unlawfully removed from the territory of the state); and participation in the development of aesthetics of public space in terms of architecture, urban planning, spatial planning,[6] minority theatres[7] and other areas.

As with media (Article 11.1) and economic and social life (Article 13.2), in the field of cultural activities and facilities, States Parties are expected to commit themselves to the extent that public authorities are competent, have power, or play a role. The first three undertakings Article 12(1), are as follows:

1. *With regard to cultural activities and facilities – especially libraries, video libraries, cultural centres, museums, archives, academies, theatres and cinemas, as well as literary work and film production, vernacular forms of cultural expression, festivals and the culture industries, including inter alia the use of new technologies – the Parties undertake, within the territory in which such languages are used and to the extent that the public authorities are competent, have power or play a role in this field:*

General of the Council of Europe to the Parliamentary Assembly, Communication (Doc. 15743, 13 April 2023). Council of Europe.

6 Poland, 4th periodic report, 2023, p. 61.

7 Hungary, 8th periodic report, 2024, p. 65.

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a) *to encourage types of expression and initiative specific to regional or minority languages and foster the different means of access to works produced in these languages;*
b) *to foster the different means of access in other languages to works produced in regional or minority languages by aiding and developing translation, dubbing, post synchronisation and subtitling activities;*
c) *to foster access in regional or minority languages to works produced in other languages by aiding and developing translation, dubbing, post-synchronisation and subtitling activities;*

The first subparagraph of Article 12(1) focuses on making culture created in regional and minority languages widely accessible. It is a general requirement to encourage the typical forms of cultural expression in regional or minority languages. The term 'works' encompasses publications, productions, presentations, diffusions, transmission, and related activities. The phrase "to foster the different means of access" refers to standard methods of cultural promotion.[8] This commitment under subparagraph a) has been undertaken by all ratifying States Parties for all languages covered by Part III of the Charter. According to COMEX reports, if the state provides financial support for the promotion of a given language – such as funding cultural events, activities, NGOs, or book publishing – it is sufficient for this undertaking to be considered 'fulfilled'.[9] However, where minority language representatives express concerns regarding insufficient funding, significant delays in its distribution[10], or decreased support for cultural activities (Committee of Experts, 2024, 6th Report on Spain, para. 226, regarding the Aranese language), COMEX typically records the undertaking as only 'partly fulfilled'.

Article 12(1)(b) aims to disseminate this culture beyond linguistic borders by aiding and developing translation, dubbing, post-synchronization, and subtitling activities. Subparagraph (c) seeks to promote the accessibility of works created in other languages for speakers of minority or regional

8 ECRML Explanatory Report, para. 115.
9 Committee of Experts, 2022, 7th Report on Germany, para. 86, regarding the Danish language; Committee of Experts, 2023, 3rd Report on Romania, p. 48, regarding the Croatian language.
10 Committee of Experts, 2019, 7th Report on Hungary, para. 2.5.1, regarding the German language.

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languages.[11] According to COMEX reports, cultural exchange must occur broadly, encompassing multiple genres, to fully meet the state's commitments under subparagraphs (b) and (c). If the state does not perform all activities listed – translation, dubbing, post-synchronization, and subtitling – for a given language, its fulfilment is considered only 'partly fulfilled'.[12] Commitments under Articles 12(1)(b) and (c) are particularly significant because, without state involvement – specifically in aiding and developing translation, dubbing, and post-synchronization from and into regional or minority languages – the native languages of very small communities or minorities without a kin-state would become economically unsustainable.[13] Without state support, the broad accessibility of culture created in those languages or enabling access to major cultural achievements produced in other languages, both of which are critical to the viability and status of regional or minority languages, would otherwise be impossible.[14] It is apposite to recall Will Kymlicka's concept of 'societal culture', referring to a culture *"which provides its members with meaningful ways of life across the full range of human activities, including social, educational, religious, recreational, and economic life, encompassing both public and private spheres. These cultures tend to be territorially concentrated, and based on a shared language."*.[15] It is apparent that Article 12(1), like the Charter as a whole, is deeply committed to protecting and supporting the potential of 'societal culture' for all linguistic communities, even if they do not enjoy the privileged status of an official language.

It is worth noting that large language models, a family of AI-driven language technologies, now enable high-quality automated translation[16] and seamless linguistic transitions between almost all European official

11 Committee of Experts, 2023, 3rd Report on Romania, p. 65, regarding the Croatian language). „Articles 12.1.b and 12.1.c are fulfilled as the periodical report provides information about translation and simultaneous translation of work from Hungarian into Romanian and from other languages into Hungarian at conferences, meetings and other cultural events. The Romanian authorities facilitate the dissemination of Hungarian through cultural activities abroad (example of the Hungarian State Theatre in Cluj-Napoca/Kolozsvár/Klausenburg)."

12 Committee of Experts, 2018, 2nd Report on Romania, paras. 77, 92, 105.

13 Committee of Experts, 2023, 5th Report on Serbia, paras. 89, 92, 94–98.

14 ECRML Explanatory Report, para. 116.

15 Kymlicka, Will, 1995, Multicultural citizenship. Oxford University Press. p. 76.

16 Gerken, M. (2022). Facilitating the implementation of the European Charter for Regional or Minority Languages through artificial intelligence (MIN-LANG(2022)4). Strasbourg: Council of Europe Secretariat of the European Charter for Regional or Minority Languages.

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languages and relatively widely used languages protected by the ECRML. The rapid technological advancements in translation are likely to call into question states' resource-based excuses for failing to provide certain services in protected, non-official languages. However, the costs of translating literary or folkloric works will most likely remain significant, even with the increasing prevalence of AI.

2.2. Encouraging participation in cultural activities – Commitments under Article 12(1)(d), (e), and (f)

Subparagraphs (d), (e), and (f) aim to encourage the participation of regional or minority languages, their speakers, and representatives of linguistic communities in organising cultural activities. According to subparagraph (d), parties should undertake *"to ensure that the bodies responsible for organising or supporting cultural activities of various kinds make appropriate allowance for incorporating the knowledge and use of regional or minority languages and cultures in the undertakings which they initiate or for which they provide backing."* Such bodies may include both public and private organisations.[17] Under subparagraph (d), states must ensure that these organisations integrate the knowledge and use of regional or minority languages into their activities. However, this does not require states to directly achieve this objective themselves. Instead, they must 'ensure' through guidance and supervision that this aim is pursued.[18] Based on COMEX reports, fulfilling this commitment requires states to adopt a structured approach[19], provide practical examples of how organisations responsible for cultural activities incorporate the given language[20], and ensure that no significant criticism is raised by language users regarding these measures (Committee of Experts, 2024, 6th Report on the United Kingdom, para. 91).

Subparagraph (e) emphasises the importance of staff competent in both the protected minority or regional language and the majority language(s) for cultural organisations:
"e) to promote measures to ensure that the bodies responsible for organising or supporting cultural activities have at their disposal staff who have a full

17 Craig, 2012, p. 428.
18 ECRML Explanatory Report, para. 117.
19 Committee of Experts, 2021, 3rd Report on Poland, paras. 80, 86, 87, 89, 92.
20 Committee of Experts, 2006, 2nd Report on Germany, para. 451.

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command of the regional or minority language concerned, as well as of the language(s) of the rest of the population."

Here, the use of the verb 'ensure' indicates that the state's responsibility does not end with mere encouragement to promote the involvement of individuals who speak the relevant languages. The state must ensure that individuals proficient in the respective language are employed in relevant institutions and organisations.[21]

Subparagraph (f) is the only commitment under the Charter that explicitly encourages the participation of speakers of minority or regional languages in decision-making processes:

"f) to encourage direct participation by representatives of the users of a given regional or minority language in providing facilities and planning cultural activities."

The fact that this crucial pillar of minority advocacy – participation – is addressed exclusively in the context of cultural activities highlights the "cultural approach" of the Charter's problem-solving strategy.[22] According to COMEX reports, the obligations of States vary depending on whether the cultural bodies are an integral part of the state administration or not. In the first case, 'to encourage' implies that direct participation should be secured in organisations.[23] In the second case, 'to encourage' means that the state must provide incentives for participation.[24] While subparagraph (f) is the only provision in the Charter that explicitly promotes the involvement of minority or regional language speakers in decision-making, the Charter has nonetheless enhanced their representation across all levels of state authority, already in the first decade of its application.[25]

21 Committee of Experts, 2006, 2nd Report on Germany, para. 309; Committee of Experts, 2024, 6th Report on the United Kingdom, para. 91.

22 Secretary General of the Council of Europe. (2007). Application of the European Charter for Regional or Minority Languages: Biennial report by the Secretary General to the Parliamentary Assembly, September 2007, Communication (Doc. 11442, 24 October 2007). Council of Europe., p. 3.

23 Committee of Experts, 2001, 1st Report on Croatia, para. 102.

24 Committee of Experts, 2006, 2nd Report on Germany, para. 454.

25 Benedikter, T., Zabielska, K., & Lantschner, E. (2008). Europe's ethnic mosaic: A short guide to minority rights in Europe (T. Benedikter, Ed.). EURAC Research. p. 119.

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2.3. The role of public collections, terminological services and AI in strengthening regional or minority languages – Commitments under Article 12(1)(g) and (h)

Subparagraphs (g) and (h) address areas such as public collections and terminological services, which States typically provide by default for official languages:

> *"g) to encourage and/or facilitate the creation of a body or bodies responsible for collecting, keeping a copy of and presenting or publishing works produced in the regional or minority languages;*
>
> *h) if necessary, to create and/or promote and finance translation and terminological research services, particularly with a view to maintaining and developing appropriate administrative, commercial, economic, social, technical or legal terminology in each regional or minority language."*

Regarding subparagraph (g), the *Explanatory Report* notes that in certain cases, it may be necessary to impose a legal duty on public-collection bodies to perform these tasks.[26] As for subparagraph (h), the promotion of translation and terminological research services is considered fully achieved only if the translation efforts encompass administrative, commercial, economic, social, technical and legal domains.[27] It should be noted that without an adequate terminological framework, the use of minority or regional languages in either the judiciary or public administration becomes practically unfeasible. For instance, the availability of translation services during legal proceedings loses its practical value if court-appointed translators are unable to provide accurate translations due to the lack of proper terminology. Probably this phenomenon can be observed in Romania: according to official figures, the practice of requesting authorization for interpreters or translators in minority languages during legal proceedings virtually disappeared between 2010 and 2018. In 2010, shortly after the ratification of the Charter, there were 883 such requests across 10 minority languages; by 2018 the number had fallen to 20. For the German language, the number fell from 586 to 7, and for Hungarian, from 164 to only 2.[28]

26 ECRML Explanatory Report, para. 118.

27 Committee of Experts, 2023, 3rd Report on Romania, p. 44; Committee of Experts, 2024, 6th Report on the United Kingdom, para. 91.

28 United Nations CERD, 2022, 20th-22nd Report submitted by Romania, par. 87.

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Additionally, the COMEX Communication of 16 March 2022, emphasized the role of artificial intelligence (AI) in regional or minority language promotion:

> *"[T]he Committee of Experts welcomes the development of AI applications using regional or minority languages. This requires the gathering of natural language data, which is of particular importance for the documentation of less-widely used languages. It needs to be borne in mind that AI constitutes an addition to the learning and use of regional or minority languages. Particular attention must be paid to developing and/or including appropriate administrative and legal terminology in each regional or minority language. Once developed, AI applications facilitate the daily use of regional or minority languages, disseminate such languages to larger audiences, raise their visibility and prestige, and encourage more people to learn, use, and transmit them to the next generations"*[29]

2.4. Access to culture in non-traditional areas – Commitments under Article 12(2)

Considering that members of linguistic minorities often relocate from their traditional historical areas due to economic or political processes, Article 12(2) extends the commitments of paragraph 1 to such regions, provided the number of regional or minority language speakers justifies it. The paragraph sets out an obligation that is difficult to enforce, stating: *"if the number of users of a regional or minority language justifies it, to allow, encourage and/or provide appropriate cultural activities and facilities in accordance with the preceding paragraph."* In this context, "allow" implies the absence of restrictive measures, "encourage" suggests state support for private organisations, and "provide" indicates a more accountable obligation for public institutions.[30] According to COMEX, a structured implementation of this undertaking requires identifying territories where the language is not traditionally used.[31] The commitment is also deemed fulfilled if the state merely refrains from imposing restrictive measures.[32]

29 Gerken, 2022, p. 22.
30 Craig, 2012, p. 429.
31 Committee of Experts, 2015, 3rd Report on Montenegro, paras. 126, 200.
32 Committee of Experts, 2002, 1st Report on Germany, para 165.

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2.5. From ethnocentrism to cultural pluralism – Commitments under Article 12(3)

The final paragraph of Article 12 holds significant importance as it encourages the state to integrate the regional or minority languages used within its territory into its foreign cultural policy activities. This represents a departure from state-language-centric linguistic ideologies characteristic of European nationalisms.

Linguistic ideologies are beliefs, values, and social constructs about the nature, use, and role of language within a community. These perspectives shape which languages or language varieties are considered 'valuable' or 'appropriate' and influence the extent to which they are supported or marginalized. In the context of the ECRML, linguistic ideologies are crucial because the Charter seeks to challenge the state-language-centric ideologies prevalent in European nationalism and promote the recognition of regional and minority languages as cultural assets. Such ideologies affect state language policies and determine the symbolic and practical support provided to regional or minority languages.

A state's cultural diplomacy functions as a cultural identity card on the international stage, and embracing minority cultures in this manner sends a symbolic message of recognition and respect for regional or minority languages and their speakers – both to the outside world and to the state's majority and minority populations. This undertaking constitutes a practical application of the principle expressed in Article 7(1)(a) of Part II of the Charter, which recognizes "regional or minority languages as an expression of cultural wealth".[33] To fulfil this commitment, states should promote their regional or minority languages and cultures at the international level, including in countries other than the minority's kin state.[34] Examples include showcasing these languages and cultures through international exhibitions, European Capital of Culture projects, multilingual place-names in promotional materials for tourism and diplomacy, and language courses delivered through cultural institutes.[35] As François Grin emphasises, the underlying ideology of the Charter is the belief that linguistic diversity forms a vital

33 ECRML Explanatory Report, para. 120.
34 Committee of Experts, 2012, 1st Report on Romania, paras. 475, 602.
35 Committee of Experts, 2023, 3rd Report on Romania, p. 44; Committee of Experts, 2024, 6th Report on Spain, paras. 304, 457, 594, 716.

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part of cultural heritage and that it is both meaningful and necessary to allocate symbolic and tangible resources to support and preserve it.[36]

3. Analysis of the Committee of Ministers' recommendations

Every monitoring cycle concludes with the **Committee of Ministers' recommendations** on the application of the ECRML. These recommendations provide essential guidance on which issues related to the Charter the Council of Europe's member states consider most urgent to address. The standard formulation of these recommendations states: "*The Committee of Ministers [...] Recommends that the authorities of [name of the state] take account of all the observations and recommendations of the Committee of Experts and, as a matter of priority: [the list of recommendations].*" To date, 145 full monitoring cycles have concluded with recommendations from the Committee of Ministers, encompassing more than 500 individual recommendations to member states.

An analysis of these recommendations reveals that among the ten possible commitments under Article 12 (12(1)(a)-(h), 12(2), and 12(3)), only two commitments (12(1)(a) and 12=(1)(f)) have received specific recommendations, with a total of fifteen recommendations. Of these, thirteen relate to paragraph 12(1)(a): to encourage production, reproduction and dissemination of cultural works.

The requirements for fulfilling paragraph 12(1)(a), as identified by the Committee of Experts, emphasize two critical aspects: first, states must provide financial support to promote the given language, whether through funding cultural events, activities, NGOs, or book publishing; second, representatives of the language community must not be put in a position where they are forced to express significant concerns regarding insufficient funding or delays in its distribution. Based on these criteria, the Committee of Ministers has repeatedly urged states to provide adequate funding/to establish a scheme for financing/to secure long-term financial support to the establishment and/or continued existence for cultural activities and facilities/national minority associations in order to ensure the promotion of the minority languages. Armenia, Bosnia and Herzegovina, Croatia, Germany, Hungary, Serbia, and Ukraine were specifically advised to provide

36 Grin, F. 2003: *Language Policy Evaluation and the European Charter*. Fo Regional or Minority Languages. Palgrave Macmillan. 14.

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adequate funding, establish financial schemes, or secure long-term support for cultural activities and minority language associations. This recommendation was issued to Armenia on three occasions.[37]

Similarly, under Article 12(1)(a) both Hungary and Serbia were, as a matter of priority, recommended to empower the self-governing minority entities within their jurisdictions. Hungary was encouraged to improve the conditions for the transfer of educational and cultural bodies and institutions to minority self-governments[38], while Serbia was recommended to strengthen the capacity of the national councils of national minorities to effectively promote the use of minority languages in public life.[39]

Two recommendations addressed Article 12(1)(f), concerning direct participation by representatives of language users in providing facilities and planning cultural activities. The recommendation to Germany specifically focused on the Romani language, advising the state to *"develop further measures to promote Romani and the culture of which this language is the expression, in cooperation with the speakers"*.[40] In the case of Croatia, the Committee of Ministers issued a broader recommendation to *"create institutional mechanisms that encourage direct participation of the users of regional or minority languages in planning, funding, and organising cultural activities and in the field of the mass media"*.[41]

Although only 15 recommendations were directly linked to specific commitments under Article 12, an additional 20 recommendations were identified as being indirectly connected to it through the Charter's broader value commitments and linguistic ideology. These recommendations consistently

37 Committee of Ministers, Recommendation CM/RecChL(2014)2, para. 5; Recommendation CM/RecChL(2017)2, para. 5; Recommendation CM/RecChL(2020)6, para. 6), to Bosnia and Herzegovina also three times (Committee of Ministers, Recommendation CM/RecChL(2013)6, para. 3; Recommendation CM/RecChL(2016)4, para. 3; Recommendation CM/RecChL(2022)4, para. 4), to Croatia once (Committee of Ministers, Recommendation RecChL(2001)2, para. 8), to Hungary twice (Committee of Ministers, Recommendation RecChL(2004)4, para. 5; Recommendation CM/RecChL(2007)4, para. 6), to Serbia once (Committee of Ministers, Recommendation CM/RecChL(2023)4, para. 4), and to Ukraine on three occasions (Committee of Ministers, Recommendation CM/RecChL(2010)6, para. 5; Recommendation CM/RecChL(2014)1, para. 6; Recommendation CM/RecChL(2018)6, para. 6.

38 Committee of Ministers, Recommendation RecChL(2004)4, para. 5; Recommendation CM/RecChL(2007)4, para. 6.

39 Committee of Ministers, Recommendation CM/RecChL(2023)4.

40 Committee of Ministers, Recommendation CM/RecChL(2014)5, para. 6.

41 Committee of Ministers, Recommendation RecChL(2001)2, para. 3.

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encourage states to take measures to raise awareness and promote tolerance in society toward minority languages and cultures, emphasizing their role as integral components of the state's heritage.[42]

4. Closing remarks

Article 12 of the Charter is undoubtedly one of its least scrutinized sets of commitments. Both the COMEX evaluation reports and the recommendations of the Committee of Ministers, as well as scholarly works discussing the Charter, tend to address Article 12 with limited scope and detail. In my view, the relative lack of attention surrounding the commitments under Article 12 is not due to a lack of interest in the field of cultural activities and facilities on the part of COMEX or the experts. Instead, it is likely because the states that are willing to ratify the Charter generally embrace its spirit, which inherently leads to the partial fulfilment of the commitments under Article 12. Put differently, the recognition of regional or minority languages as values deserving protection – a core principle of the Charter – inevitably results in the realisation of Article 12 commitments. It is no coincidence that Article 12(3) can be viewed as a concrete implementation of the baseline protection outlined in Article 7(1)(a). The strong connection between Article 12 and the Charter's overarching values is also likely why COMEX, the Committee of Ministers, and scholarly literature seldom feel the need to analyse it in depth or hold states more strictly accountable for their commitments in this domain. Instead, the commitments in Article 12

42 Denmark: Recommendation CM/RecChL(2007)6, para. 2; Recommendation CM/RecChL(2014)6, para. 3; Recommendation CM/RecChL(2017)4, para. 2; Recommendation CM/RecChL(2024)1, para 1.
Finland: Recommendation CM/RecChL(2018)5, para. 4; Recommendation CM/RecChL(2024)4, para. 4.
Poland: Recommendation CM/RecChL(2011)4, para. 1;Recommendation CM/RecChL(2015)6, para. 1; Recommendation CM/RecChL(2022)2, para. 1; Recommendation CM/RecChL(2023)6, para. 4.
Serbia: Recommendation CM/RecChL(2009)2, para. 1; Recommendation CM/RecChL(2013)3, para. 5; Recommendation CM/RecChL(2016)3, para. 5; Recommendation CM/RecChL(2019)2, para. 5.
Slovakia: Recommendation CM/RecChL(2007)1, para. 4; Recommendation CM/RecChL(2013)2, para. 6; Recommendation CM/RecChL(2016)2, para. 6; Recommendation CM/RecChL(2019)5, para. 5;
Sweden: Recommendation RecChL(2006)4, para. 7.
United Kingdom: Recommendation CM/RecChL(2024)6, para. 3.

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seem to align so closely with the Charter's ethos that they are perceived as naturally fulfilled in states that have ratified the Charter.

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The protection and promotion of regional and minority languages in economic and social life (Article 13)

Petra Lea Láncos

1. Introduction

The Language Charter is aimed at protecting and promoting languages traditionally spoken in the territory of the Contracting Parties, through foreseeing commitments for the Signatories in the field of, among others, social and economic life. In this respect, the ECRML may be considered an outlier in the field of international agreements, for, as Dunbar explains, "our existing international instruments tend not to be particularly clear with regard to the impact of economic and broader social policy on the viability of minority language communities, and that relevant treaty bodies have generally not considered such impact to any considerable extent".[1] Indeed, Part II of the Charter and Article 13 are meant to safeguard and improve the vitality of protected languages in the specific context of economic and social life, a context where communication takes place on a daily basis.

This chapter explores the relevance of economic and social life as a context for the use of regional or minority languages, the flexible structure of the Charter in general and the commitments under Article 13 in particular. Finally, it assesses the practice of the COMEX in respect of the protection and promotion of regional and minority languages in the ambit of economic and social life, with special attention to its development over the past quarter of a century.

1 Robert Dunbar, The uneasy relationship between language issues and socio-economic participation: Linguistically sensitive approaches to participation. In: Kristin Henrard (ed.) The Interrelation between the Right to Identity of Minorities and their Socio-economic Participation, Brill 2013., p. 205–206.

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2. Economic and social life as the context of regional and minority language use

In this chapter, I try to answer the question why economic and social life are important for the preservation and vitality of regional and minority languages, exploring economic and social life as the context of communication and the (increasing) impact of economic policies on protected languages. These considerations are also the reason why the ECRML foresees obligations of the States Parties not merely in the cultural field and education, but also in the realm of social and economic life.

In Woehrling's words, the ECRML follows an understanding of languages as culturally valuable and worthy of protection "against a background of open borders, movements of population, economic globalisation and standardisation of cultures".[2] According to Article 2 paragraph (2) ECRML, States Parties must choose a minimum of one commitment from Article 13. This appears to depreciate regional and minority language use in the social and economic sphere, when compared with education (Article 8) and cultural activities and facilities (Article 12), from which States Parties must undertake at least three commitments.[3] Then again, communication in social and economic life is less amenable to regulation, pertaining as they do primarily to the private sphere,[4] where freedom of expression, freedom of enterprise and the principle of non-intervention prevail.[5] This may explain why the drafters of the ECRML were satisfied that a single undertaking in the field of economic and social life would suffice to achieve progress in the protection and promotion of regional and minority languages.

Meanwhile, it is worth noting that economic and social life are important areas of everyday language use: we purchase goods and services every day,

2 Jean-Marie Woehrling, Regional or minority languages – A critical commentary. Council of Europe Publishing, 2006. p. 20.

3 In fact, while certain commitments (sub-paragraphs) under Article 13 ECRML may be considered as alternatives ranging from weaker to stronger commitments (paragraph 1, subparagraphs c and d), others are complementary and may be undertaken cumulatively.

4 cf. Explanatory Report, para 121.

5 Cf. Iñigo Urrutia Libarona, 'Article 13. Economic and social life', in (2011) Alba Nogueira, Eduardo J. Ruiz Vieytez, Iñigo Urrutia Libarona (eds) Shaping language rights. Commentary on the European Charter for Regional or Minority Languages in light of the Committee of Experts' evaluation. Regional or minority languages, No. 9, Council of Europe Publishing, p 448.

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go to work, or possibly receive health and care services etc.[6] In this respect, Grin notes that "people often reveal a preference for accessing various goods and services in their native language, even if they are fluent in another language".[7] Urrutia Libarona emphasizes the relevance of economic and social life as a context for language use by noting: „the use of a language in social and economic circles is perhaps the primary means of measuring its vitality. The vitality of a language does not depend only on its legal status or recognition, but also, and above all, on its penetration and use in the economic, industrial, commercial and social spheres. In fact, the bulk of communication between regional or minority language speakers occurs in environments other than contacts with the public authorities."[89] Since most of our encounters and communication outside our family takes place in the fields of economic and social life, these contexts become extremely relevant for the survival or vitality of regional or minority languages, for "in multilingual communities people met and talked in everyday life, creating a linguistic dynamic that reinforced the strongest languages."[10]

A further reason for promoting the use of protected languages in the ambit of social and economic life is that the greater the use of regional and minority languages in the field of social activities and in particular, economic transactions, the higher the social prestige of that language. This in turn also indicates a higher economic value of, and employment oppor-

6 Gerard-René de Groot, European Charter for Regional and Minority Languages, p. 125.

7 GRIN, François. Translation and language policy in the dynamics of multilingualism. In: International journal of the sociology of language, 2017, vol. 2017, n° 243, p. 155–181. doi: 10.1515/ijsl-2016–0051, 170.; p. 34–35. Thomas Benedikter, 'Europe's Ethnic Mosaic – A short guide to minority rights in Europe. Eurac, 2008, p. 34–35.

8 See the reflections of L. A. Grenoble and L. J. Whaley (2006), Saving languages. Cambridge: Cambridge University Press, pp. 18 and 125. In the same sense see L. Hinton and K. L. Hale (2001), The green book of language revitalization in practice. San Diego: Academic Press, p. 3. For an historical point of view see X. Irujo and I. Urrutia (2010), A legal history of the Basque language. Donostia: Society for Basque Studies, in toto.

9 Iñigo Urrutia Libarona, 'Article 13. Economic and social life', in (2011) Alba Nogueira, Eduardo J. Ruiz Vieytez, Iñigo Urrutia Libarona (eds) Shaping language rights. Commentary on the European Charter for Regional or Minority Languages in light of the Committee of Experts' evaluation. Regional or minority languages, No. 9, Council of Europe Publishing, p. 446.

10 Morales-Gálvez, S. (2017). Living together as equals: Linguistic justice and sharing the public sphere in multilingual settings. Ethnicities, 17(5), 646–666. https://doi.org/10.1177/1468796816667143.

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tunities in the regional or minority language. The knowledge and use of, and even the learning of such languages shall yield benefits to its speakers.[11] An upswing in the use of these languages in social or economic activities will lead to a growth in their prestige, and vice versa: declining use and „their loss of linguistic legitimacy contributes to their diminished social and economic status".[12]

Taking the opposite perspective, Dunbar emphasizes that social and economic life is not just the context of, but may also be a threat to regional or minority language use: "[f]or many minority language communities in Europe, the forms that economic integration into the national – and international – economy have taken have generally had a negative impact on the vitality of their language".[13] Dunbar cites pressures of technological development and the economy, with opportunities in transport aiding migration and brain drain resulting in language shift – a common trajectory in regional and minority language communities.[14] From this perspective, intervention by the state in the sphere of economic and social activities may be necessary to counteract tendencies fuelling language loss, among others, to live up to the requirement of "resolute action to promote regional or minority languages in order to safeguard them" under Article 7.1c ECRML.

Grin explains that language policy intervention may be economically beneficial for a multilingual society, contributing to general welfare. Indeed, lack of information on possible economic opportunities creates market failure, where economic actors are prevented from making rational decisions on purchase, sale, borrowing or lending.[15] A commitment such as that foreseen under Article 13.1c opposing practices discouraging the use of protected languages in connection with economic and social activities can

11 Ricento T (2014) Thinking about language: What political theorists need to know about language in the real World. Language Policy 13(4): 351–369, p. 361.

12 Cf. Woehrling, Jean-Marie Woehrling, Regional or minority languages – A critical commentary, p. 46; Robert Dunbar, The uneasy relationship between language issues and socio-economic participation: Linguistically sensitive approaches to participation. In: Kristin Henrard (ed.) The Interrelation between the Right to Identity of Minorities and their Socio-economic Participation, Brill 2013., p. 209–210.

13 Robert Dunbar, (2013) The uneasy relationship between language issues and socio-economic participation: Linguistically sensitive approaches to participation. In: Kristin Henrard (ed.) The Interrelation between the Right to Identity of Minorities and their Socio-economic Participation, Brill 2013., p. 205–206.

14 Dunbar, (2013) 208–209.

15 François Grin, Language Policy Evaluation and the European Charter for Regional or Minority Languages, Palgrave 2003.

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ensure that regional or minority language speakers use their language in commercial transactions, participate in economic life and drive economic growth.

Finally, I close this section with a survey of the impact of safeguarding and promoting the use of regional and minority languages in economic and social life. In fact, it has the triple effect of preserving the vitality of these languages, enabling the participation of speakers in the economy and society, while at the same time ensuring the necessary protection for vulnerable groups. I have referred to this first effect above, indicating that much of our everyday dealings take place in the context of the workplace, the market or in social situations. As the COMEX noted in its 5th evaluation report on Armenia, "the use of these languages by the private sector could make an important contribution to maintaining them as languages with functions in all fields of daily life".[16] As far as the second effect is concerned, language policy intervention for the benefit of regional and minority languages enables or improves speakers' participation in the economy and the society of the States Parties, empowering speakers, fostering inclusion and driving economic growth.[17] Finally, promoting the use of regional or minority languages in certain business or social situations can protect certain vulnerable groups. For example, several languages protected under the ECRML are spoken mainly by an elderly demographic, who are in a vulnerable position when receiving treatment or care in hospitals, retirement homes etc. For them to be fully informed about their treatment or to be able to communicate with nursing staff, it is vital that they can use their native tongue.[18] Ensuring the use of regional or minority language in

16 Fifth evaluation report on Armenia (2 July 2020), para 58.

17 Cf. Láncos Petra Lea, The role of language technologies in promoting the participation of linguistic minorities in social, political and economic life. Foreign Policy Review 2021/02, doi.org/10.47706/KKIFPR.2021.2.73 – 87. 77–78.

18 „[O]lder people with dementia tend to lose the language they have acquired as adults, and that their well-being will increase when they are cared for by Finnish-speaking staff and decreases when the staff only speak Swedish. Håkan Jönson, Tove Harnett & Magnus Nilsson (2018) Ethnically profiled nursing home care in Sweden – from culture to lifestyle, European Journal of Social Work, 21:2, 235–246, DOI: 10.1080/13691457.2017.1288087, p. 239. Describing 'culturally congruant' care homes in Sweden, Heikkilä et al noted in their case study that „[t]he Finnish language provided the framework for all the care given at the home. Because the Finnish language was used in every situation, language did not become an obstacle for the residents and they were capable of expressing their wishes and preferences." Heikkilä K, Sarvimäki A, Ekman SL. Culturally congruent care for older people:

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such precarious situations empowers speakers by enabling them to make informed decisions.

3. The Charter as a tool for protecting and promoting regional and minority languages

3.1. Flexibility of the Charter

The structure of the Charter allows States Parties to decide which languages spoken traditionally in their territory they wish to protect under Part III and thus, under Article 13. This is coupled with the à la carte approach of the Charter, which is meant to accommodate States Parties, affording them sufficient room for manoeuvre in making their commitments. As the Explanatory Report to the Charter emphasizes, "[t]his flexibility takes account of the major differences in the de facto situations of regional or minority languages (number of speakers, degree of fragmentation, etc). It also has regard to the costs entailed by many of the provisions and the varying administrative and financial capacity of the European States."[19] As such, the Charter allows States Parties to primarily adapt undertakings to the situation of the individual regional or minority languages,[20] taking into consideration the size (headcount) of the language community, their proportion to the speakers of the official language, whether or not speakers are located in a specific geographical area (where the language is traditionally spoken or not), the vitality of the language, possibly the speakers expressed wishes and needs etc. At the same time the drafters of the ECRML were also mindful of the varying economic and other capacities of the prospective States Parties in making their commitments. Foreseeing alternative commitments of varying strength and providing for a minimum of commitments from under each Article under Part III, States have the opportunity to ratify, protect and promote languages traditionally spoken in their territory while

Finnish care in Sweden. Scand J Caring Sci. 2007 Sep;21(3):354–61. doi: 10.1111/j.1471 – 6712.2007.00480.x. See further: Fredrica Nyqvist, Emilia Häkkinen, Alexandre Renaud, Louise Bouchard, Cynog Prys, 'Social Exclusion Among Official Language Minority Older Adults: A Rapid Review of the Literature in Canada, Finland and Wales', Journal of Cross-Cultural Gerontology (2021) 36:285–307.

19 ECRML Explanatory Report, para 23.

20 Gerard-René de Groot, European Charter for Regional and Minority Languages, 119.

https://doi.org/10.5771/9783748956785 https://www.inlibra.com/de/page/agb - Open Access - (cc) BY

also staying within their respective financial means and other capacities.[21] However, economic downturns and budget cuts notwithstanding,[22] and in spite of the difficulties in attracting personnel speaking or teaching the protected language(s), States Parties may not withdraw from individual commitments made or reduce the 'strength' of their undertakings. This is to ensure that the level of the protection or promotion of regional or minority languages is at least constant or successively increased.

Not only is the Charter flexible when it comes to determining the protected regional and minority languages or the respective commitments chosen, States Parties may extend their ratifications of the ECRML over time. Such a 'dynamic enlargement' of States' ratifications is meant to successively increase the protection and promotion of regional and minority languages through the inclusion of new vernaculars or the commitment to more ambitious or new undertakings,[23] "ideally in conformity with the wishes of [the] speakers".[24]

3.2. Generality and specificity of language protection

States Parties must enumerate the languages traditionally spoken in their territories and according to the situation of these languages – but at their discretion – determine which of these languages fall under the general pro-

21 Iñigo Urrutia Libarona, 'Article 13. Economic and social life', in (2011) Alba Nogueira, Eduardo J. Ruiz Vieytez, Iñigo Urrutia Libarona (eds) Shaping language rights. Commentary on the European Charter for Regional or Minority Languages in light of the Committee of Experts' evaluation. Regional or minority languages, No. 9, Council of Europe Publishing, p. 336.

22 As Crnić-Grotić notes, „[a]wareness and tolerance of minority languages and their speakers is an important issue that is negatively affected by difficult economic and political circumstances all over Europe. It is the responsibility of states parties to promote awareness and tolerance among the majority population as an important prerequisite for the protection and promotion of regional and minority languages as the living languages in their communities." Vesna Crnić-Grotić, (2015). Developments in the Field of the European Charter for Regional or Minority Languages in 2013. European Yearbook of Minority Issues Online, 12(1), 223–243. https://doi.org/10.1163/9789004306134_009, p. 242.

23 Santiago J. Castellà Surribas, Articles 18 to 23. Final provisions. in Alba Nogueira Lopez – Eduardo J. Ruiz Vieytez Inigo Urrutia Libarona (eds): *Shaping language rights – Commentary on the European Charter for Regional or Minority Languages in light of the Committee of Experts' evaluation*. Regional or Minority Languages, No. 9, Council of Europe Publishing, p. 540.

24 Gerard-René de Groot, European Charter for Regional and Minority Languages, 119.

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tection of Part II of the Charter ('Part II languages'), und which languages shall be protected also under Part III, which foresees various selectable commitments ('Part III languages'). Part III contains Articles from which States Parties must choose a minimum number of commitments each for Part III languages, without being obliged to select the same number or type of commitments for each of their Part III languages. Articles in Part III refer to commitments in areas considered most relevant for safeguarding and promoting regional and minority languages and their use, including education, judicial and administrative contexts, as well as public services, media, cultural activities, economic and social life and transfrontier exchanges with neighbouring states (typically kin states).

To understand the principles and objectives underlying the commitments enumerated in Part III, we must consider Part II of the Charter and its Article 7. These are, in Grin words, the ECRML's 'central credo', foreseeing objectives and principles for States Parties in respect of all regional or minority languages spoken in their territory. Article 7.c prescribes "The need for resolute action to promote such languages", while 7.d requires „The facilitation and/or encouragement of the use of such languages, in speech and writing, in public and private life". More general in their reach than the commitments listed under Part III, these objectives and principles provide for a positive approach of the States Parties towards regional or minority languages spoken in their respective territories, with the ambition of going beyond a mere obligation of non-discrimination. Indeed, Article 7.d obliges States Parties to take action for the use of the protected languages "both orally and in writing" in public and private life, and as a facet of the latter, also economic and social life.[25] This is where Part II provisions underpin further commitments of States Parties selected at their own discretion, under Article 13 ECRML.[26] At the same time, they also set the baseline for the protection and promotion of regional and minority languages, in respect of which Article 13 ECRML commitments must go beyond when it comes to Part III languages.

3.3. Protection under Article 13 ECRML

Possible commitments in economic and social life are structured in two paragraphs, with a total of 9 selectable undertakings in Article 13 of the

25 cf. Explanatory Report, para 62.
26 Urrutia, 450.

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Charter. States Parties must select a minimum of one commitment (sub-paragraph) applicable to each of their Part III languages.

1 With regard to economic and social activities, the Parties undertake, within the whole country:
   a. to eliminate from their legislation any provision prohibiting or limiting without justifiable reasons the use of regional or minority languages in documents relating to economic or social life, particularly contracts of employment, and in technical documents such as instructions for the use of products or installations;
   b. to prohibit the insertion in internal regulations of companies and private documents of any clauses excluding or restricting the use of regional or minority languages, at least between users of the same language;
   c. to oppose practices designed to discourage the use of regional or minority languages in connection with economic or social activities;
   d. to facilitate and/or encourage the use of regional or minority languages by means other than those specified in the above sub-paragraphs.
2 With regard to economic and social activities, the Parties undertake, in so far as the public authorities are competent, within the territory in which the regional or minority languages are used, and as far as this is reasonably possible:
   a. to include in their financial and banking regulations provisions which allow, by means of procedures compatible with commercial practice, the use of regional or minority languages in drawing up payment orders (cheques, drafts, etc.) or other financial documents, or, where appropriate, to ensure the implementation of such provisions;
   b. in the economic and social sectors directly under their control (public sector), to organise activities to promote the use of regional or minority languages;
   c. to ensure that social care facilities such as hospitals, retirement homes and hostels offer the possibility of receiving and treating in their own language persons using a regional or minority language who are in need of care on grounds of ill-health, old age or for other reasons;
   d. to ensure by appropriate means that safety instructions are also drawn up in regional or minority languages;

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e. to arrange for information provided by the competent public authorities concerning the rights of consumers to be made available in regional or minority languages.

Commitments selectable under Article 13 are structured around various dimensions. Similarly to other Part III Articles, the one governing economic and social life also foresees provisions of various 'strength', offering alternative commitments along a scale from 'weaker' to 'stronger', more ambitious undertakings of the States Parties. As such, while States Parties must only select a minimum of one commitment from Article 13, they may reasonably select one subparagraph from paragraph 1 – which vary in 'strength' – and one or several commitments from paragraph 2 – which vary in their subject matter. It is worth noting, that where a state chooses both a weaker and a more ambitious commitment under the same category, according to its consistent practice, the COMEX will only evaluate the fulfilment of the 'stronger' commitment.[27]

As far as their geographical scopes are concerned, commitments under paragraph 1 of Article 13 apply throughout the entire territory of the state, while commitments selectable under paragraph 2 only refer to those territories of the state, "in which the regional or minority languages are used".

A further dimension of Article 13 provisions are the incentivising, regulatory and prohibitive commitments – as the Explanatory Report explains, the subparagraphs include undertakings to 'eliminate measures to ban or discourage the use of such languages in economic and social life and proposes, on the other hand, a number of positive measures'.[28] In fact, the first three subparagraphs under Article 13.1 give flesh to the general requirement of non-discrimination,[29] while other subparagraphs in this Article can be achieved through positive action by the States Parties. Commitments undertaken in the ambit of economic and social life may apply to realm of the private sphere, the public sector or both spheres, with the leeway of the States Parties depending on whether it is governing the internal regulations of state-owned or private companies (paragraph 1.b), and whether it is

27 Gerard-René de Groot, European Charter for Regional and Minority Languages, 119. This was not always the case, for example, in the 1st evaluation reports on Denmark and Finland the COMEX evaluated both Article 13.1.a and c commitments. Meanwhile, in its 2nd evaluation report on Denmark and Finland, respectively, the COMEX switched to solely evaluating the fulfilment of Article 13.1.c.

28 Explanatory Report, para 121.

29 Explanatory Report, para 122.

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guaranteeing regional or minority language use in public or private social care facilities (paragraph 2.c).

Finally, certain commitments under Article 13 are of a more general language preservation purpose, affirming the dignity of regional and minority language speakers and attempting to improve the vitality of these vernaculars. Meanwhile, other commitments are meant to compensate for the vulnerability of speakers in precarious situations, empowering them in situations where they are faced with a work contract, receiving care, reading safety instructions or receiving information as consumers.

4. General approach of the COMEX to Article 13

In light of the laconic wording of the Charter and the merely three paragraphs in the Explanatory Report elaborating on Article 13, the COMEX played an important role in devising the requirements for the fulfilment of the commitments selectable in relation to the protection and promotion of regional and minority languages in economic and social life.

The 'weakest' undertaking in Article 13 foresees merely the elimination of legislation prohibiting or limiting – without justifiable reasons – the use of protected languages in documents related to economic and social life. This commitment is already fulfilled when the COMEX finds that there is no prohibiting legislation in place in the States Parties, with the caveat that there may be justifiable reasons for limiting the use of the protected languages when it comes to documents used in economic and social life. This caveat requires that limiting legislation be justified by legitimate grounds and be proportionate to the aim pursued.

As far as the undertaking in Article 13.1b is concerned, in its early evaluation reports, the COMEX seemed to take a lax approach: while the commitment foresaw the prohibition of clauses in internal regulations of companies or private documents excluding or restricting the use of protected languages, at least between users, the COMEX was satisfied that it "has not been informed of any practices designed to discourage the use of regional or minority languages in connection with economic and social activities."[30] Meanwhile, this undertaking may only be effectively enforced through national legislation prohibiting such clauses. The COMEX took up

30 1st evaluation report on Armenia, 14 June 2006, para 147.

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this approach in its 2nd evaluation report on Croatia, noting, that "there had to be a specific prohibition of the insertion in internal regulations of companies and private documents of any clauses that would exclude or restrict the use of a regional or minority language."[31] Similarly, in the case of Article 13.1.c, fulfilment of the commitment requires that "authorities (…) guarantee with *specific measures* that practices that would discourage the use of regional or minority languages in connection with economic and social activities would be opposed".[32]

Based on the evaluation reports, States Parties have been hard put to delimit commitments they had undertaken in the economic and social sphere from those relating to cultural activities. For example, in the first monitoring period, Austria reported that it "provides stimuli to economic and social life regarding the use of the Burgenland-Croatian language by supporting projects of the Burgenland-Croatian speakers in the framework of the ethnic group promotion scheme."[33] However, the COMEX pointed out that while general measures to promote a protected language may have indirect effects on the use of such language in economic and social life, these cannot be considered as a fulfilment of undertakings under Article 13 ECRML. To cite another example regarding the confusion surrounding the scope of economic and social life, in the first years of its evaluation,[34] in respect of its commitment under Article 13.1d, Armenia kept reporting on activities it had conducted which the COMEX considered to be actions related to cultural activities. In fact, Article 13.1d is more complex than those preceding it, since this commitment is less precise and may be designed and fulfilled by the States Parties in various ways. Under Article 13.1d States Parties must facilitate and/or encourage the use of regional or minority languages by means other than those specified in the above sub-paragraphs. According to the consistent practice of the COMEX, while the States Parties' room for manoeuvre under this undertaking is broad, it nevertheless "requires positive measures to be taken, and anticipates the creative use of incentives and other measures to promote greater use of minority languages in the public, private and voluntary sectors".[35] In fact, an "exclusively passive attitude permitting the use of the languages" under

31 2nd evaluation report on Croatia, 26 November 2004, para 187.
32 1st evaluation report on Croatia, 20 September 2001, para 106; italics by me.
33 1st evaluation report on Austria, para 194.
34 2nd and 3rd evaluation report on Armenia.
35 Dunbar, 225.

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this commitment does not suffice, instead, a "clear policy to promote the use of the languages" through legislation, funding etc. must be in place.[36] In fact, in its early evaluation reports the COMEX supported States Parties by providing examples of measures "to facilitate and/or encourage the use of the regional or minority language on buildings, the oral use of the language in public areas, such as in railway stations or airports, use of bilingual brochures in tourism, giving rewards to companies that are actually using the regional or minority language, initiating a campaign of bilingualism etc."[37] In its 3rd evaluation report on Austria, the COMEX considered the undertaking fulfilled by the initiatives of "the Farmer's Educational Community in Southern Carinthia, which engages in improving the language skills of farmers, offering for example language courses on specific technical terms, and technical excursions to Slovenia".[38] Another example would be the Danish government's support for the Landwirtschaftlicher Hauptverein für Nordschleswig, a German association providing agricultural assistance to its members.[39]

An example for the interpretative practice of the COMEX relates to the substance commitments. Article 13.2a foresees that States Parties include in their financial and banking regulations rules allowing for the use of regional or minority languages „in drawing up payment orders (cheques, drafts, etc.) or other financial documents". In light of the wording of the paragraph the COMEX concluded that "the list of documents contained in [the Article] is open-ended, rather than exhaustive", with the commitment covering also other documents related to social and economic life, including employment contracts, registrations, statutes of associations, unions and companies etc.[40]

An important aspect is the delimitation of the protection guaranteed under Article 10.3 and Article 13 (Articles 13.1c or 13.2b or c) ECRML in the ambit of public services. Socio-economic activities referred to in Article 13 may namely be related to public services as well, with the commitments foreseeing non-discrimination or active support for the use of the protected language. This undertaking must be fulfilled irrespective of the status of the

36 Urrutia 337–338.
37 1st evaluation report on Armenia, 2006 June 14.
38 3rd eval report on Austria, para 344. Interestingly, the 4th evaluation report on Austria does not include a paragraph on the evaluation of the fulfilment of Article 13 ECRML.
39 1st evaluation report on Denmark, para 107.
40 Urrutia, p. 461.

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provider, be they private or public institutions.[41] As Urrutia notes, "Articles 10.3 and 13 of the Charter must be interpreted in a complementary manner, or else one will exclude the other".[42] In this respect, States Parties cannot excuse their non-fulfilment by citing the division of competences between public and private sectors, as emphasized by COMEX. In its initial state report, Germany claimed that "direct nursing and other care of persons in need of nursing and care is not a public-sector responsibility but carried out mostly by private-sector and free non-profit-making institutions, which, it is claimed, makes it impossible to lay down any requirements as regards the use of Low German".[43] However, the COMEX did not accept this argument and found that Germany had failed to fulfil its commitments under Article 13.2b regarding Low German. This is reasonable, since the vulnerability of health service or care recipients shall be the same, no matter the ownership structures of the care facilities offering the service. As such, the regime governing the linguistic requirements they must adhere to, must also be the same.

Article 13.2c foresees that social care facilities offer the treatment in regional or minority languages, which requires proactive measures from the side of the States Parties. Besides legislation prescribing the offering of care and treatment in such facilities in the protected languages, this commitment may, in particular, require capacity building, i.e. the training of nursing staff in the use of regional or minority languages. In its 1st evaluation report on Finland, the COMEX noted that while there was a salary bonus in place for social care staff with the necessary language skills, this did not result in an increase of staff speaking Sami in social care facilities – which also meant, that further positive action was necessary to ensure the fulfilment of the undertaking.[44] An example would be that proposed to Finland, where the COMEX stated that "authorities should continue undertaking concrete measures such as targeted recruitment and language courses to ensure the effective use of Swedish in social and health care facilities, in particular in regions known to be problematic".[45] In the more recent evaluation reports, the COMEX considered awareness raising

41 cf. Dunbar, 224.
42 . Urrutia 340–341.
43 1st evaluation report on Germany, 4 December 2002, para 286.
44 1st evaluation report on Finland, 20 September 2001, para 195.
45 Evaluation by the Committee of Experts of the Implementation of the Recommendations for Immediate Action contained in the Committee of Experts' fifth evaluation report on Finland, 7 October 2020, para 69.

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for the use of Low German in social care facilities, information and training possibilities, as well as an "activity book in Low German for work in retirement homes" as elements in the fulfilment of the undertaking, but called for the implementation of a more structured approach.[46]

In its 2nd evaluation report on Armenia, the COMEX recalled that "according to the undertaking chosen by Armenia, measures have to be taken to ensure that staff (doctors, nurses, etc) in hospitals or retirement homes have the necessary skills to serve persons who are in need of care in their regional or minority languages."[47] Therefore, the COMEX noted that notwithstanding the economic situation in Armenia, efforts had to be made to fulfil the commitment also for Assyrian, Greek, Kurdish and Yezidi. Similarly, while the COMEX acknowledged that the Danish government's support for the social services of the speakers of German partly fulfilled this commitment, systematic efforts must be made to ensure care and treatment in the protected language in social care facilities, notwithstanding the government's claim that "members of the German-speaking minority are bilingual and many social care facilities have staff members who understand German."[48] Indeed, even where nursing staff and doctors speaking the protected language are available at social care facilities, certain practices must be opposed to ensure the fulfilment of this commitment. For example, the COMEX noted in its 2nd evaluation report on Denmark cases of "doctors of German origin refusing to speak German for fear of being reprimanded".[49] This sheds light on an important aspect of the COMEX's on-the-spot visits: it is apparent that the Experts can only gain real insight into the implementation of the Charter, in case they meet a diverse mix of speakers' representatives. In particular, the inclusion of more elderly or female speakers' representatives is beneficial when it comes to evaluating Article 13.2.c. These speakers' representatives may have more information on whether social care facilities ensure care in the protected language to those in their own language persons using a regional or minority language who are in need of care on grounds of ill-health, old age or for other reasons.

While States Parties may have undertaken commitments under Article 13 ECRML, some do not provide information in their state report on their

46 7th evaluation report on Germany, 15 June 2022, para 40.
47 2nd eval report on Armenia: 23 September 2009, para 223.
48 1st evaluation report on Denmark, 26 May 2004, para 108.
49 2nd evaluation report on Denmark, para 110.

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fulfilment. In the case of Bosnia-Hercegovina, the COMEX stated in its 1st and 2nd evaluation report that it had received no specific information on the fulfilment of the States Parties' undertakings under Article 13. Therefore, when the third state report of Bosnia-Hercegovina also lacked information on actions taken to fulfil the relevant commitments, the COMEX interpreted the "repeated lack of information about the implementation as an indication that this undertaking is not fulfilled".[50]

5. Outlook: Economic and social life in the face of new technologies

Since the introduction of the tables on fulfilment of commitments regarding the different languages, the analysis of the undertakings by the COMEX has become shorter. This may be explained by the fact that the evaluation reports of the COMEX have reflected a consistent practice, yielding sufficient information regarding the requirements of each undertaking. However, the shrinking justifications of the COMEX make it more difficult to understand the situation of the different protected languages and the development in the fulfilment of the respective commitments, including those under Article 13 ECRML.

The ECRML was drafted on the cusp of the digital revolution, where language technologies, such as machine translators were just starting to be developed. Meanwhile, an array of language technologies have emerged, which can empower regional and minority language speakers by facilitating their full participation in economic and social life: machine translation will render contracting across languages safe and cheap, by lowering translation costs and risks emerging from translation errors. In addition, accessing services, for example in health care within the official language context may be ensured through interpreting apps and devices, chatbots etc.[51] It remains to be seen how digital signage, translating and interpreting applications and devices will change the reality of linguistic interactions in the social and economic sphere and how the availability of these solutions will be evaluated by the COMEX. In particular, since the purpose of the ECRML is not merely to ensure non-discrimination of regional and

50 3rd evaluation report on Bosnia-Hercegovina, para 51.

51 Láncos Petra Lea, (2021) 'The role of language technologies in promoting the participation of linguistic minorities in social, political and economic life', *Foreign Policy Review* 2021/02, doi.org/10.47706/KKIFPR.2021.2.73 – 87, p. 75.

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minority language speakers, but to promote their languages, ensuring their vitality and survival. In fact, language technologies may also lead to a further disenfranchisement of regional and minority language speakers, in case the development of these technologies bypasses certain languages by reason of the speakers' low headcount and the lack of economic viability for developing the necessary corpora and technologies. By contrast, in the case of those regional and minority languages that are considered by language technologies, language technologies may not yield the desired results, since certain protected languages under the ECRML are used mainly by elderly speakers, who are not necessarily confident in using language technologies. But even if speakers are willing and able to use these technologies, they will enable them to access new cultures, including the possibility of language learning, making cultural and linguistic assimilation and language shift imminent.[52]

52 Láncos (2021) 83.

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Transfrontier exchanges: Best Practices (Article 14)

Viola Heutger

1. Introduction

Article 14 on transfrontier exchange of the European Charter for Regional or Minority Languages has so far received comparatively limited attention in the academic discourse, despite the practical initiatives reflected in the national reports.[1] Article 14 addresses transnational exchange, and many national reports from countries that protect their languages under Part III of the Charter list initiatives conducted transnationally. The activities carried out under Article 14 primarily foster cross-border cooperation through educational, cultural, and institutional exchanges between communities sharing the same regional or minority language. According to the policy of the Charter, only initiatives from official institutions receiving state funding are included in these reports. As one reviews the national reports, it becomes evident that numerous actions have been taken that offer inspiration for future transnational cooperation and show significant potential for further partnerships. Next to the listed activities in the national reports, there are several pioneers in collaboration that do not find their entry into the national reports, as States Parties do not fund them, nor are they carried out by official institutions.

What is the underlying rationale of Article 14 in conjunction with Article 7 of the European Charter for Regional or Minority Languages? While the provision undoubtedly fosters cultural exchange, its significance extends further. It seeks to address the structural vulnerability of small minority languages, particularly those fragmented across national borders due to historical or political "divide and rule" practices. In such contexts, the dispersion of language communities across multiple states often impedes the development of consistent and high-quality educational and cultural resources. By encouraging transnational cooperation, the Charter enables

1 Peter Hilpold, 'Bilateral Protection Agreement(s) in Minority Rights: History, Current Position, and Perspectives', in: F. Palermo et al. (Eds.), *Globalization, Technologies and Legal Revolution, Liber Amicorum in Memory of Sergio Ortino*, Nomos: Baden-Baden 2012, p. 501–510.

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the pooling of limited resources for the production of teaching materials, literature, and audiovisual media. Although this mechanism may have limited relevance for regional languages that enjoy official status in other jurisdictions, it is of critical importance for lesser-used languages spoken by relatively small communities in more than one country.

While I was working on this chapter, the Kingdom of the Netherlands took two significant steps towards the protection of Papiamentu, a Caribbean language that has been spoken for centuries within the Kingdom. On 22 January 2024, following the extension of the European Charter for Regional or Minority Languages to the Caribbean Netherlands, Papiamentu on Bonaire was recognised under Part III of the Charter, requiring active promotion of the language in areas such as education, administration, justice and culture. Subsequently, on 1 July 2024, Papiamentu in the European Netherlands was recognised as a non-territorial language under Part II of the Charter, providing general protection but not the more extensive obligations associated with Part III.[2] These developments present new opportunities and challenges for the interpretation and practical application of the Charter.

I am curious as to why, so few civil society activities related to transfrontier exchange are funded by the Charter's States Parties. It would be wonderful to provide an overview of the entire range of activities conducted in States Parties under Article 14 of the Charter, however, the Charter restricts itself by only acknowledging official initiatives since the Charter can only govern signatories' undertakings. Article 14 could become a point of pride for all reporting States Parties and a rich source of best practices, as it demonstrates the full potential of a language that transcends state borders.

From a Dutch perspective, I have explored this subject, looking first into the encouragement of Frisian speakers. At present, there is no longer a university chair dedicated to Frisian studies in the Netherlands.[3] The Fryske Akademy is at the moment the central point for research on the Frisian

2 https://www.government.nl/latest/news/2024/01/29/papiamento-on-bonaire-now-officially-recognised-under-the-european-charter-for-regional-and-minority-languages.

3 'Hoort een hoogleraar Fries niet gewoon op de RUG Campus Fryslân in Leeuwarden te zitten?', *Friesch Dagblad*, 23 Feb. 2023. A parttime interim professor was appointed in 2023, 'Toch weer een hoogleraar Fries op universiteit Groningen', NOS Nieuws, 8 Feb. 2023. On 10 Juli 2025, a document was signed by the Dutch minister of interior affairs, the province of Friesland and the University of Groningen to reinitiate university-level education and research in Frisian.

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Language in the Netherlands.[4] To maintain interest in Frisian language research, it is crucial to have many academics, researchers, and learners of Frisian who pose questions and seek answers. In Flensburg, Germany, the *Institut für Frisistik und Minderheitenforschung*[5] is quite active, and Saterfreesch is researched at the University of Oldenburg, offering the potential for more transfrontier exchange in the field of academic research on the Frisian language. Furthermore, there are numerous speakers of Papiamentu[6] in the Netherlands and abroad. However, the question of whether and where we need a university chair for Papiamentu has yet to be addressed, as the protection under Part III of the Charter requires not only protection but also support. There is a wealth of literature in Papiamentu, including well-known songs and poetry, but no scientific government-funded research in the parts of the Netherlands where the Charter is applicable.

2. The Promotion of Transfrontier Exchanges under Article 14

In the regularly published national reports, States Parties are required to provide information about the protected languages in general, as well as on Part III. Article 14 is not included in the Charter's choice menu of Part III of mandatory provisions (Art. 2.2). It is therefore somewhat overlooked, as States Parties are not obligated to actively opt in. Additionally, some aspects of Article 14 are already addressed in Article 7.1. However, according to the drafters' intentions, Article 14 will apply to all States Parties that have implemented Part III of the Convention.

For the preparation of national reports, meetings are typically held with public administration at both local and regional levels, often involving representatives of national minorities and public media, who can provide information on transfrontier exchanges in the meaning of the Charter that had taken place during the reporting cycle.

4 https://www.fryske-akademy.nl/nl/.

5 https://www.uni-flensburg.de/friesisch. Additionally, the North Frisian Institute is researching the North-Frisian language: https://www.nordfriiskinstituut.eu/.

6 https://www.thedailyherald.sx/islands/papiamentu-recognised-in-european-netherlands-under-european-charter.

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3. Reflections on the term transfrontier exchange

The topic of this contribution is cross-border cooperation, referred to in the Charter as transfrontier exchange. The term transfrontier exchange fits the scope of the Charter better than the term cross-border, as it encompasses not only languages spoken in neighbouring countries but also those such as Yiddish, Romani, and Lemko, which are used across a wide geographic area and are typically non-territorial languages. These languages are not limited to two adjacent countries; they are spoken in various regions around the world. While two countries that share a common border can evolve activities cross-border, the term transfrontier is broader and does not imply a shared physical state border.

It is worth noting that it depends on the specific group of speakers within a country, whether they identify as a minority or, in the case of Yiddish speakers, as members of a particular community. Representatives of the Jewish community in some countries show little interest in being recognized as a national minority; instead, they derive their identity from their religious affiliation. However, they often participate as permanent guests or observers in actions related to the Charter.[7] Therefore, it is important to identify the needs and interests of language speakers in a given country and to include them in the decision-making process, suiting their demands and needs.

The importance of transfrontier exchange can also be found in Article 2(5) of the United Nations Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities, acknowledging the right of individuals from linguistic minorities to maintain connections with citizens of other countries who share their language. While most countries do not explicitly reject this right in their laws, very few explicitly affirm it. However, several nations, such as Lithuania, Poland, and Latvia, have recognized the importance and legitimacy of this right for minority groups through treaties.[8]

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7 E.g. see Czech Republic, Fifth Periodical Report on the Implementation of the Undertakings Arising from the European Charter for Regional or Minority Languages in the Czech Republic, report from Czechoslovakia, p. 21.

8 Comparable in Article 23 of the Central European Initiative Instrument for the Protection of Minorities, Article 17 of the Framework Convention for the Protection of National Minorities, Article 14 of the Treaty Between the Republic of Lithuania and the Republic of Poland on Friendly Relations and Good Neighbourly Cooperation and

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Article 14 of Part III elaborates on the concept introduced in Part II, Article 7, Paragraph 1.i. It is emphasised in Article 7 that it is essential for people who communicate in the same regional or minority language to have opportunities for cultural exchanges and to foster their relationships. Such interactions are vital for the collective preservation and enhancement of their linguistic heritage.[9] Article 7, Paragraph 1. i, introduces an additional aspect: the need for relationships among groups speaking the same or similar regional or minority languages to extend beyond national borders, particularly when these groups are dispersed across multiple states. By definition, regional or minority languages are used by a relatively small number of speakers within the respective state. To foster mutual cultural enrichment, these groups may need to access cultural resources available across borders from other communities that speak the same or a similar language. This is especially pertinent when a regional language in one state aligns with a prominent cultural language, or even the national language, of another state, as transnational cooperation can facilitate the regional community´s engagement with cultural activities in that more widely spoken language. States must acknowledge the legitimacy of such transfrontier relations, refraining from viewing them as questionable in terms of the loyalty expected from their citizens or as potential threats to their territorial integrity. A language group is likely to feel more integrated within the state of which it is a part, if its identity is recognized and if cultural interactions with neighbouring communities are not obstructed. It was acknowledged by the drafters of the Charter that, in some instances, transfrontier cooperation could pose challenges to territorial integrity. However, as European nations grow closer, this presents an opportunity for these countries to leverage a "cultural factor" to foster better mutual understanding.[10] The implementation and actions by States Parties based on Article 14 of the European Charter for Regional or Minority Languages should be analysed alongside treaties concluded based on the Council of Europe Outline Con-

Article 15(2) of the Treaty Between the Republic of Poland and the Republic of Latvia on Friendship and Cooperation.

9 Explanatory Report to the European Charter for Regional or Minority Languages, Strasbourg, 5 Nov. 1992.

10 Explanatory Report to the European Charter for Regional or Minority Languages, Strasbourg, 5 Nov. 1992.

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vention on Transfrontier Cooperation between Territorial Communities or Authorities, established in Madrid on May 21, 1980.[11]

While it is encouraged that such transfrontier cooperation should generally flourish, paragraph b emphasizes that this is especially important where the same regional language is spoken on both sides of the border.[12] Obstacles to cross-border joint cultural events include administrative requirements imposed on the travel of minors, which also impose a financial burden.[13] In certain situations transfrontier exchange may also serve as an effective and more economical means to fulfil commitments made under other articles of the charter; for instance, making available higher education in a regional or minority language as outlined in Article 8, paragraph 1.e, through a bilateral agreement facilitating arrangements for students to attend suitable institutions in a neighbouring country.

4. Language protection in overseas countries

As mentioned above, the Charter protects languages that are also spoken outside of Europe, such as Yiddish. Therefore, it can be confusing to refer to it as a purely European piece of legislation. We refer to it as a European Charter; however, some CoE member states possess overseas territories far beyond the European continent.

European languages are more widely distributed than a map might suggest. Languages such as the already mentioned Yiddish, Romani, and Lemko are also spoken in various parts of the world. Furthermore, other languages entered Europe during the age of colonization. For example, Papiamentu[14] is spoken by a significant population in the Netherlands and on three islands in the Caribbean: Aruba, Bonaire, and Curaçao.[15] Bonaire

11 Initial periodical report submitted to the Secretary General of the Council of Europe in accordance with Article 15 of the Charter by Spain, 2002, p. 137.

12 Explanatory Report to the European Charter for Regional or Minority Languages, Strasbourg, 5 Nov. 1992.

13 Article 1:234 of the Curaçao Civil Code stipulates that a minor may not travel without the consent of his or her parent(s) or guardian. For each travel permit Naf. 50,- fees are charged. The costs for obtaining the necessary birth certificate are Naf. 20,- plus for the necessary extract of Naf. 10,-.

14 https://www.coe.int/en/web/european-charter-regional-or-minority-languages/-/netherlands-ecrml-protection-extended-to-the-papiamentu-language.

15 See the article 'Papiamentu, a minority language on the threshold of recognition', by Bastiaan D. van der Velden in this book.

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is part of the Netherlands in Europe, and since July 1, 2024[16], Papiamentu[17] has been protected and promoted on Bonaire under both Part II and Part III of the Charter.[18] Papiamentu is spoken on three islands in the Caribbean and by approximately 250,000 people in the Netherlands. In the European mainland part of the Netherlands, Papiamentu is protected under Part II of the Charter. In the Dutch notification of the territorial application of Part III on Bonaire, Article 14 was not included. Only those articles that are part of the choice menu are explicitly mentioned. Despite the omission of Article 14 in the notification, comparable obligations will still be applicable, as it is an integral section of art. 7 of Part II of the Charter. The question arises as to how far Article 7 could apply to transfrontier cooperation of speakers of Papiamentu in various countries and territories of the Kingdom of the Netherlands.

Curaçao and Aruba, two states within the Kingdom, also recognize Papiamentu or Papiamento, as it is spelled on the island of Aruba. There is a strong interest in transfrontier cooperation from Bonaire. As long as not all parts of the Kingdom adhere to the Charter, it remains unclear how any cooperation within the Kingdom of the Netherlands—between the Netherlands in Europe and Bonaire, Curaçao, and Aruba—should be classified. The Kingdom is only responsible for the nationality act, national defence and international relations, all other domains are organised by the individual countries. All citizens have the same nationality, but there are four currencies in the Kingdom, five civil codes, and at least four different language regimes.

The text of the Charter does not provide a clear answer concerning the extent to which we can discuss transfrontier cooperation as envisioned by the Charter, or interregional collaboration between two regions within a federative state. The primary objective of the Charter is the protection and preservation of a language. To fulfil this intention, a broad interpretation of the Charter is recommended. Consequently, it is essential to consider transfrontier cooperation not only between different states but also to promote interregional exchanges in federative states, as these also entail crossing borders.

16 National slavery remembrance day in the Kingdom of the Netherlands.

17 https://www.rijksoverheid.nl/actueel/nieuws/2024/07/01/erkenning-papiaments-onder-handvest-in-europees-nederland.

18 https://english.rijksdienstcn.com/education-culture-science/news/2024/july/4/papiamentu-in-the-netherlands-recognised-under-charter.

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Will the transfrontier exchange be covered by Article 14 of the Charter only when these regions are in different states, or will it also apply when they are distinct regional entities within a kingdom or federation? Will a notification of territorial application by a specific State Party exclude the application of Article 14 within parts of the State Party concerned? Or will any cooperation among the various parts of such a State Party be regarded as international transfrontier cooperation?

The question must be addressed regarding the applicability of the Charter in regions outside Europe that maintain strong administrative ties to European countries. Bonaire serves as a recent example of this emerging aspect of the Charter. Can we consider it a transfrontier exchange when the primary connection between two countries is the open sea? Or when the populations of these countries share the same passport, despite their significant political and administrative autonomy? Are these states encompassed by the signing authority of their former colonizing power and regarded as a single national entity according to the Charter, collaborating on an interregional level? Alternatively, are these countries and regions considered international partners engaged in transfrontier collaboration? And would they be better protected if recognized as cooperating nations? The Charter itself does not provide a definitive answer. The expansion of its territorial scope to include Bonaire opens the dialogue for a broader interpretation of the Charter, to guarantee the Papiamentu speaking citizens of Bonaire access to information, communication and cultural exchange with those who speak the same language in the United States, Venezuela, neighbouring islands and in Europe.

5. Article 14 of the Charter: Transfrontier Exchanges for Regional and Minority Languages

In Part III of the Charter, strategies are outlined to promote the use of regional or minority languages in the public sphere. Article 14 focuses on transfrontier exchanges, stating that the involved parties commit to implementing existing bilateral and multilateral agreements with nations where the same language is used. If necessary, they will work to establish such agreements to encourage interactions among speakers of the same language. These interactions may encompass culture, education, information, vocational training, and lifelong learning. To support regional or minority

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languages, cross-border collaboration will be facilitated, particularly among regional or local authorities in areas where the same language is spoken.[19]

5.1. Transfrontier Cooperation and Language Preservation

Transfrontier cooperation plays a crucial role when a regional language in one state corresponds to a major cultural language or the national language of another state. Such cooperation enables the regional community to benefit from cultural activities conducted in the more widely spoken language. States need to recognize the legitimacy of these relations and not view them with suspicion regarding the loyalty that each state expects from its nationals, nor should they perceive them as a threat to their territorial integrity.[20] Furthermore, any support for promoting speakers of a regional or minority language protected by the Council of Europe Charter aligns with the European Union's policy of plurilingualism, which extends beyond the borders of the EU and seeks to provide solutions for various specific language uses in different contexts.[21]

5.2. International Treaties and Cooperation

Article 14 emphasizes the importance of utilizing existing international treaties, such as the European Outline Convention on Transfrontier Co-op-

19 Article 14 – Transfrontier exchanges
The Parties undertake:
a. to apply existing bilateral and multilateral agreements which bind them with the States in which the same language is used in identical or similar form, or if necessary to seek to conclude such agreements, in such a way as to foster contacts between the users of the same language in the States concerned in the fields of culture, education, information, vocational training and permanent education;
b. for the benefit of regional or minority languages, to facilitate and/ or promote co-operation across borders, in particular between regional or local authorities in whose territory the same language is used in identical or similar form.

20 https://rm.coe.int/collected-texts-charter-3e-edition-gbr/1680acca81, retrieved on June 7th 2024. Explanatory note, 3rd edition, collected texts, p.59, nr. 125.

21 See under 3.1.3. and 3.2. in Languages for democracy and social cohesion Diversity, equity and quality Sixty years of European co-operation, 2014, https://rm.coe.int/languages-for-democracy-and-social-cohesion-diversity-equity-and-quali/168069e7bd.

https://doi.org/10.5771/9783748956785 https://www.inlibra.com/de/page/agb - Open Access - (cc) BY

eration between Territorial Communities or Authorities.[22] The cooperation envisioned may encompass various areas, including school partnerships, teacher exchanges, mutual recognition of diplomas and qualifications, joint organization of cultural activities, circulation of cultural assets (such as books, films, and exhibitions), and the transfrontier activities of cultural organizations (including theater companies and lecturers).[23]

In the next section, I will highlight best practices that could inspire future cooperative initiatives. States Parties report on their activities in their national reports, and some initiatives appear to have a significant impact on users of specific languages. These initiatives aim to preserve regional or minority languages and ensure their vitality for future generations.

6. Best Practises

6.1. Transfrontier mother-tongue teaching in the neighbouring countries

To sustain transfrontier bilingualism, it is crucial to offer structured language instruction both within and beyond the formal education system. Ideally, such language courses should be integrated into the regular school curriculum to ensure continuity and accessibility. In Austria, for example, mother-tongue instruction in Slovak is provided in the regions of Burgenland and Lower Austria. When offered as elective subjects, these courses can serve as an effective incentive for students to participate in cross-border exchanges and maintain their linguistic heritage.

22 Madrid, 21.V.1980, https://rm.coe.int/1680078b0c. The Council of Europe, with its member states as signatories to this Convention, aims to promote greater unity and cooperation among its members. This objective is primarily pursued through administrative agreements. The Council ensures the involvement of Europe's territorial communities and authorities in achieving this aim. The potential significance of collaboration between these entities, particularly at borders, is acknowledged in areas such as regional, urban, and rural development, environmental protection, enhancement of public facilities and services, and emergency mutual assistance. Historical experiences demonstrate that cooperation among local and regional authorities in Europe enhances their effectiveness, especially in improving and developing border regions. The Convention is dedicated to fostering such collaboration to contribute to the economic and social advancement of border regions and to cultivate a spirit of unity among the peoples of Europe.

23 https://rm.coe.int/collected-texts-charter-3e-edition-gbr/1680acca81, retrieved on June 7th 2024. Explanatory note, 3rd edition, collected texts, p.59, nr. 126.

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Beyond the classroom, language acquisition can also be supported through lifelong learning initiatives, which provide additional opportunities for mother-tongue education to adults and out-of-school youth. Such programs can enhance cross-border mobility and cultural exchange by improving access to employment, education, and public life in the neighbouring country or region. A similar approach is found in the German-Danish border region, where both countries support bilingual education and community-based language courses to reinforce minority language use across national borders.[24]

6.2. A university chair in a minority or regional language

A significant opportunity to preserve a language is to provide education and research at the university level, integrating the study of that language into a broader curriculum.[25] Transfrontier collaboration could facilitate the recruitment of sufficient students to support such a university chair in one or the other States Parties. Transfrontier collaboration could preserve language research on an academic level. Joint degrees or double degrees belong to the options next to the funding of a joint chair. This does not remove the obligations of the States Parties to promote academic education and research in their own country. Contributing to transfrontier research by providing funding to a joint chair in another country could help to ensure the preservation of the own minority or regional language. Furthermore, online education could be a tool for transfrontier classes and serve as an academic education that is resilient in the long term.

6.3. A place to meet

The transfrontier use of a language is encouraged by creating a location where speakers of regional and minority languages can meet, with the focus on practicing specific languages. At such a location, not only can

24 Fifth evaluation report Austria, 2023, p. 7 and https://denmark.dk/people-and-culture/history/the-german-minority.

25 For example, one may study in higher education the language Frisian in the Netherlands, https://www.uva.nl/en/discipline/languages/languages/frisian.html, or in Germany https://www.uni-flensburg.de/friesisch.

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the language be practised, but furthermore, minority issues in general can be addressed. E.g. the special representative of the Region of Southern Denmark participates in DialogForumNorden, a forum for minorities and minority issues in Schleswig-Holstein, in which the German minority in Denmark is represented, amongst others.[26]

6.4. Music

Music unites people and fosters friendship. Through both the creation and enjoyment of music, activities are conducted that promote a sense of community and belonging.[27] Concerts provide an ideal environment for gathering, as music cultivates shared experiences. Polish Institutes abroad are very active in the promotion of music.

Music is a powerful medium for expressing and preserving regional and minority languages. Songs in these languages can foster cultural pride and awareness.[28] Additionally, music in minority and regional languages can make them more accessible and enjoyable to a broader audience.[29] Music transcends language barriers, enabling people from diverse backgrounds to connect and communicate. This inclusivity makes it an ideal tool for promoting regional and minority languages.

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26 https://www.region.de/region/de/ueber_uns/organisation/netzwerkgruppen/dialog_forum_norden.php and see also for the speakers and researcher of the Frisian language: https://www.fryske-akademy.nl/en/.

27 See Fourth periodical report presented to the Secretary General of the Council of Europe in accordance with Article 15 of the Charter, Republic of Poland, p. 95 ff.

28 Hilda de Windt Ayoubi, 'Papiamento and Guene/Gueni: The Importance of Translation and Poetry for the Development and Conservation of Mother Tongue: Papiamentu I Guene/Gueni: E Importansia di Tradukshon i Poesia pa Desaroyo i Konservashon di Lenga di Mama', In: Translingualism, Translation and Caribbean Poetry: Mother Tongue Has Crossed the Ocean. Amsterdam University Press; 2022: p. 35–54. Rose Mary Allen, 'Music in Diasporic Context: The Case of Curaçao and Intra-Caribbean Migration', Black Music Research Journal, vol. 32, no. 2, 2012, pp. 51–65. JSTOR, https://doi.org/10.5406/blacmusiresej.32.2.0051. Accessed 22 Aug. 2024.

29 L.P. Grijp, 'Dialectmuziek en regionale identiteit', In L. Grijp (editor), Een muziekgeschiedenis der Nederlanden (p. 806–812). (Een muziekgeschiedenis der Nederlanden). Amsterdam University Press 2001. L.P. Grijp, 'Eigenheimers en meezingers. De muzikale taalkeuze van Nederland', In J. Stroop (editor), Waar gaat het Nederlands naartoe? Panorama van een taal (p. 45–52). Bert Bakker 2003. Louis Peter Grijp, 'Singing in Dutch Dialects: Language Choice in Music and the Dialect Renaissance', in: Reframing Dutch Culture, Routledge 2007.

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6.5. History

Historical subjects are excellent for discussion in a transnational setting, as many countries share similar historical events and challenges.

Discussing historical events, such as post-World War II migration flows[30], affects multiple countries and provides a common ground for people from different regions to connect. A shared history fosters mutual understanding and empathy, making it easier for individuals to relate to one another.[31] Sharing history in regional or minority languages helps preserve and promote these languages, ensuring that the cultural narratives and experiences of minority groups are not lost and continue to be passed down through generations.[32] In this topic, we also observe how the Framework Convention plays a complementary role to the Charter. Article 12 of the FCNM emphasizes the importance of fostering knowledge of the culture, history, language, and religion of both majority and minority groups. Additionally, Part II, Article 7 of the Charter mandates that the state must provide appropriate forms and means for the teaching and study of regional or minority languages at all relevant stages. Additionally, in Part III, Article 8.1(g) of the Charter requires states to make arrangements to ensure the teaching of the history and the culture that is reflected by the regional or minority language.

7. Challenges and obstacles in transfrontier exchange

7.1. Geo-blocking and Cross-Border Information and Language Flow

The digitization of broadcasting and the characteristics of digital communication on the internet have intensified the issue of geo-blocking. Digital

30 See for a cooperation with Slovakia, the Fifth Periodical Report on the Implementation of the Undertakings Arising from the European Charter for Regional or Minority Languages in the Czech Republic, p. 62 and 63.

31 Ridanpää, J. (2018) Why save a minority language? Meänkieli and rationales of language revitalization. Fennia 196(2) 187–203. https://doi.org/10.11143/ fennia.74047, p. 188, 193.

32 Protection and promotion of regional or minority languages: promising practices across Europe 2015–2020 del Council of Europe Secretariat of the European Charter for Regional or Minority Languages, https://rm.coe.int/promising-practices-2021-rev-en/1680a3a81d, p. 34. History as an expression of cultural wealth.

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developments are moving at a rapid pace, which can sometimes be difficult to follow in the context of Comex reporting. The 1992 Explanatory Report does not yet address the most recent developments, such as geo-blocking on the internet. In 2008, researchers discussed the Comex evaluations pertaining to the provisions outlined in Article 14, found that the evaluations have notably omitted any mention of the internet. This was already in 2008, is somewhat unexpected, given that the internet operates as a cross-border entity in numerous respects. Moring and Dunbar contend that Article 14, in conjunction with Articles 7 and 12, will gain significance as technological advancements continue to evolve.[33] It is important to clarify that this assertion does not imply that the authors' premise is flawed; rather, it acknowledges the dual role of the internet as both a facilitator and an obstacle to transfrontier exchanges. Furthermore, references to the internet are evidently contingent upon the pertinent information provided by state authorities and gathered during on-site evaluations, as well as the assessment methodologies employed by the Committee of Experts.

Geo-blocking, or geolocking refers to technology that limits access to online content based on the user's location. It restricts the sharing of information across national borders, impacting the free flow of content and limiting access to information in different countries.[34] The OSCE developed in October 2003 Guidelines on the use of Minority Languages in the Broadcast Media.[35] The Guidelines state that there must be unrestricted access to cross-border broadcasts, whether received directly or through retransmission or rebroadcasting, and these cannot be restricted based on language.[36]

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33 Tom Moring and Robert Dunbar, The European Charter for Regional or Minority Languages
and the media. Regional or Minority Languages, No. 6. Council of Europe, Strasbourg, 2008, p. 10.

34 Elin Haf Gruffydd Jones, Jarmo Lainio (editor), Tom Moring, Fatma Resit, New technologies, new social media and the European Charter for Regional or Minority Languages, 2020, page 36–37.

35 Tarlach McGonagle, 'Regulating minority-language use in broadcasting: international law and the Dutch
national experience', 16 Mediaforum (No. 5, May 2004), p. 155–160.

36 The presence of foreign broadcasts in a minority language does not relieve the State of its responsibility to support the production of domestic broadcasts in that language, nor does it warrant a decrease in the broadcast time allocated to that language.

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Nationally broadcasted regional language television series can be an important accelerator for the popularity and visibility of regional languages. I do not want to go into the modalities in which these television series are shown in the minority language, sometimes in the regional language, or dubbed into an official language, or subtitled, but the popularity in and outside Germany of 'Neues aus Büttenwarder', for example, and the possibility of watching it digitally at any time, for example on YouTube, contribute to a the wider acknowledgement of this language.[37] The Dutch national television networks NOS and NPO operate a national streaming platform, but its content is only accessible within the Netherlands in Europe. As a result, a significant portion of the content viewers are accustomed to watching on these platforms, or even the platforms themselves, becomes unavailable when travelling abroad, including countries within the EU or the Caribbean islands part of the Netherlands. Only a small selection of programs is available on BVN.[38] One such program is the TV series in Lower Saxon titled 'Van jonge Leu en Oale Groond' (About Young People and Old Soil), which was produced on behalf of RTV Oost. It was broadcast in 2007 on Nederland 2, and from May 2008, KRO broadcasted the second season. The Lower Saxon language used in this series has its counterpart in Low German used in Germany. In the language variant used in the province of Brabant, the TV series 'Undercover' and 'New Kids' were produced and broadcast on Dutch national television. Series are not available in Belgium, where comparable dialects are used. Geo-blocking divides markets along national lines, hindering cross-border participation and the exchange of information. The European Union has taken steps to address unjustified geo-blocking; however, some television programs remain inaccessible outside specific national borders.[39] Reda states that: 'It is self-evident that geoblocking constitutes a form of discrimination of

37 The episodes 'Neues aus Büttenwarder' were initially all produced in High German and then dubbed into Low German in the studio by the original actors. Paul Barz, 'Hochdeutsch nur im Notfall: Die Kult-TV-Serie ‚Neues aus Büttenwarder' wird platt gemacht', *Die Welt,* 16 May 2014.

38 https://www.bvn.tv/, Dutch television worldwide.

39 Promoting cross-border content availability while respecting copyright rights is crucial for an open and interconnected digital landscape according to the European Unions digitalization strategy.

https://doi.org/10.5771/9783748956785 https://www.inlibra.com/de/page/agb - Open Access - (cc) BY

content, differentiating the offer based on geographic boundaries.'[40] The facilitation of access to information is also evident in the Framework Convention for the Protection of National Minorities (FCNM). Articles 10 and 11 recognize the right to use a minority language in both private and public settings, as well as the right to display information in that language. Additionally, Part II, Article 7(d) of the Charter emphasizes the facilitation and encouragement of the use of regional or minority languages in both speech and writing, in public and private life.

7.2. Geo-blocking is not explicitly addressed in the national or COMEX reports, which primarily document measures undertaken and progress achieved. This leaves scope for further research into how digital barriers, such as geo-blocking, may affect the promotion and preservation of regional and minority languages. Limits of the national reports

The national reports do not present a comprehensive view of transfrontier exchanges, as they focus solely on initiatives conducted or funded by national institutions. Much more is happening that is not captured in these reports, and, regrettably, this wealth and vitality of the regional and minority languages remain in the shadows. This information remains unknown to us because it is carried out by local NGO's and private entities and, consequently, is not included in the national reports.

In August 2024, a concert was organized in Kerkrade by the Curaçaoan singer Amos "AmoreusZ" Balentin. Balentin was *Tumbakoning*, the winner of a music contest during the period of carnival, several times. This concert not only showcases the vibrancy of the language but also sparked lively discussions on the Papiamentu language Facebook forum "Antianonan di Heerlen i Bisendario", with 1700 members, where fans engaged in conversations in Papiamentu and sought the last available tickets. This Facebook forum, focusing on regional events in the region of Heerlen, is an important source of information for Papiamentu speakers in the diaspora. It addresses questions about searching for housing, offers Caribbean food, and announces Papiamentu language church services in the region or the

40 Julia Reda, 'Geoblocking: At Odds with the EU Single Market and Consumer Expectations', Petr Szczepanik a.o. ed., Digital Peripheries The Online Circulation of Audiovisual Content from the Small Market Perspective, Springer 2020, 84.

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place where a 'trucki pan' for fast food can be found, all in their "dushi idioma"[41], their sweet language.

The University of Aruba, within the framework of the Kingdom exchange among the countries of the Kingdom of the Netherlands[42] and the Erasmus+ program, has not only provided lessons in academic subjects but has also offered all participants a course in Papiamentu.

As these initiatives fall outside the scope of the Charter, they are not reflected in the reports. Similarly, many other successful activities are not captured by the official reporting process. It is therefore important to recognise that the reports provide only a partial picture of the actual use of regional and minority languages. In reality, language use may be far more vibrant and diverse than the reports indicate.

8. Findings

The text of Article 14, along with its interpretation thus far, does not provide a clear definition of what is meant by the term "transnational". The context of the used term suggests the sharing of regional and minority language resources, and at the same time, it does not specify the involved parties. The recognition of Papiamentu in Bonaire and the Netherlands highlights the urgent need to clarify the meaning of transfrontier cooperation. Does it solely refer to collaboration between foreign states, or does it also encompass interregional cooperation among states and regions within, for instance, the Kingdom of the Netherlands?

Transfrontier bilingualism is becoming increasingly important for language preservation, and the application of this concept should be interpreted in the broadest sense to ensure a high level of protection. It plays a crucial role in safeguarding languages. Actively promoting cooperation between regional and local authorities on a more structured basis, particularly in the field of education, is essential. We already have some successful initiatives in this area, and there is ample opportunity for further development. In this context greater emphasis should be placed on education in the mother tongue and lifelong learning.

States Parties should reconsider the approach that limits national reports to activities conducted or funded solely by national or local authorities.

41 See papiamentu.info.

42 Starting from 2024 for students from the Netherlands coming to Aruba.

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This focus on governmental cooperation overlooks the significant contributions of private and community-based initiatives. Civil society activities play a crucial role in the preservation and future of regional and minority languages, and they deserve to be collected, evaluated, and included in the national reports on the Charter and funded by States Parties. Incorporating non-governmental activities would provide a clearer picture of the integration of regional and minority languages both locally and globally. Community engagement is essential, yet it often remains invisible and inaccessible in current reports. There is a wealth of transfrontier exchange activities that currently lack a comprehensive database to document them. Given the challenges in establishing new reporting protocols, it is advisable for States Parties to begin funding non-governmental activities. This funding could later facilitate the identification of these activities as collaborative efforts, as requested in Article 14 of the Charter, and allow for their inclusion in national reports. In the long term, a new reporting system should be developed to reflect the diversity of engaged groups, foundations, and individuals. Concrete projects and collaboratively planned activities are necessary to bridge cross-border cooperation with citizens on a more tangible level.[43] Funding for smaller initiatives should be supported through accompanying measures and guidance for planning, initiating, monitoring, and evaluating such projects.[44] Currently, there is no regulation allowing funding requests to be submitted in regional or minority languages. The decision regarding the language used in materials supporting specific language users is left to the discretion of States Parties. Non-binding policies could foster the establishment of best practices. Such support would encourage institutions and non-governmental organizations to maintain contact, strengthen their connections, and facilitate collaboration. It is essential to actively promote cooperation between regional and local authorities on a more structured basis. Despite the limitations of the Charter, which primarily emphasizes governmental cooperation while neglecting private and community-based activities, community engagement remains vital. These civil society initiatives are invaluable for the preservation and future of regional and minority

43 Brigitta Busch, Policy report on the Austrian region of Burgenland, A policy paper for EUROREG Funded under Sixth Framework Programme (Priority 7: Citizens and governance in knowledge based society) [Contract number: FP6–506019], p. 5.

44 Brigitta Busch, Policy report on the Austrian region of Burgenland, A policy paper for EUROREG Funded under Sixth Framework Programme (Priority 7: Citizens and governance in knowledge based society) [Contract number: FP6–506019], p. 7.

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languages, and they merit collection, evaluation, and publication in the national reports on the Charter.

Although Article 14 of the European Charter for Regional or Minority Languages sets out important provisions on transfrontier exchanges, its practical impact remains limited. This can be attributed, in part, to its unique legal position: unlike other provisions in Part III of the Charter, Article 14 is not included in the catalogue of provisions from which States Parties must select upon ratification (cf. Article 2(2) of the Charter). As a result, States are not required to make an explicit commitment to its implementation, which has led to it being frequently overlooked in practice.

This is reflected in the periodic national reports submitted by States Parties under the Charter's monitoring mechanism. These reports often refer to relevant actions under the broader provisions of Article 7 (general objectives and principles), while neglecting to address Article 14 in detail. This marginalization is problematic, given that Article 14 underscores the importance of transfrontier cooperation in supporting regional or minority languages that are spoken across national borders—an issue of increasing relevance in today's interconnected and mobile societies.

In the context of globalization and evolving concepts of citizenship, the cross-border use of minority languages is a crucial factor in their maintenance and development. It allows speakers to form wider linguistic communities, facilitates the sharing of educational and cultural resources, and reinforces linguistic identity beyond national confines.

Given these dynamics, it is timely and necessary to reinvigorate the discussion on the implementation of Article 14. Greater emphasis should be placed on promoting and monitoring this provision within the Charter's framework, to ensure that it fulfills its potential in enhancing the vitality and transnational presence of regional and minority languages.

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The Implementation of the Language Charter in Spain

Xabier Arzoz

1. Introduction

On 5 November 1992, Spain signed the Language Charter. Ratification, however, was delayed until 2 February 2001. Since then, the Committee of Experts of the Charter has already completed six monitoring cycles regarding Spain's application of the Charter. The first monitoring cycles referred to periods of three-years, sometimes carried out with some delay. In 2018 two innovations were incorporated: the extension of monitoring cycles to five years, and the tool of the recommendations for immediate action. The first set of recommendations for immediate action concerning Spain were adopted with the occasion of the Committee of Experts' fifth evaluation report. The sixth monitoring cycle concerning Spain for the period 2019–2023 was completed at the end of 2024.[1] The experience gained through that monitoring should allow us to reflect on the implementation of the Charter in Spain.[2]

In this chapter, the implementation of the Charter will be analysed from the perspective of the way and extent to which it has advanced the protection of regional or minority languages in Spain. It will be argued that the Charter's contribution to the real advancement of regional or minority languages in Spain, albeit limited, is not irrelevant, more politically than legally, and in any case bigger than what some might have initially considered.

Assessing the implementation of the Charter in Spain is not an easy task for several reasons. First, the number of languages and the territories concerned. Part III of the Charter apply to four languages in a total of six out

1 The reports of the Committee of Experts can be downloaded at www.coe.int/minlang.

2 I published an initial assessment of the implementation of the Charter in Spain in the volume *The European Charter for Regional or Minority Languages: Legal Challenges and Opportunities* edited by R. Dunbar and G. Parry and published by the Council of Europe (Council of Europe Publishing 2008). Several notions concerning the Spanish linguistic model and the ratification terms have been drawn from that publication.

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of the seventeen autonomous communities into which Spain is divided.[3] Part II applies potentially to five further autonomous communities and two autonomous cities in North Africa (Ceuta and Melilla). Second, Spain has opted to ratify a high level of protection from Part III. If this aspect is added to the previous one, this chapter should assess compliance with more than sixty commitments in seven different territories or languages. And third, due to the decentralization carried out after 1978, autonomous communities enjoyed broad competences regarding the use and protection of their regional or minority languages on their territory and can conceive different language policies. This obliges to distinguish different language acts and policies. At the same time, central authorities retain important legislative competencies in the field of the administration of justice, media law and public administration.

In this context, it is more appropriate to offer a qualitative than a quantitative assessment of the implementation of the Charter, distinguishing between Part III and Part II obligations and commitments, which are under the responsibility of either autonomous communities or state institutions: this second differentiation does not derive from the Charter, but from the Spanish constitutional law.

The Charter is relevant in Spain also from another perspective. It is the only international treaty available to directly or indirectly protect collective needs, that is, needs that are specific to persons belonging to certain groups with ethno-cultural differences. Spain also ratified the Framework Convention for the Protection of National Minorities (FCNM), which is to some extent the 'twin' instrument of the Charter; though Spanish authorities consider that it is not applicable to, say, the Basque, Catalan and Galician, but only to the Roma people. Certainly, this stance does not necessarily bind the Advisory Committee on the FCNM.[4] Nevertheless, this Advisory Committee has never monitored the fulfilment by Spain of that

3 Basque in Basque Country and Navarre, Catalan/Valencian in Balearic Islands, Catalonia and Valencian Community, Galician in Galicia, and Occitan in Catalonia.

4 In its Fourth Opinion on Spain adopted on 3 December 2014, the Advisory Committee devoted paragraphs 10 to 15 to the scope of application of the Framework Convention. It considered following groups as potentially interested in the protection of the Framework Convention: 'Basque-speakers living in southern Navarre, Catalan-speakers living in Murcia and Galician-speakers living in Asturias or Castile and León' and 'speakers of Aranese, Oliventine Portuguese and Tamazight'. The Advisory Committee underlined that they all 'receive considerably less support for the protection of their languages and cultures' and that, therefore, 'it may therefore be especially beneficial for them to enjoy additional protection under the Framework Convention'.

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instrument regarding groups other than the Roma people. Therefore, the Charter Committee of Experts has not so far developed any theoretical or practical interlinkages with any other international instruments and/or monitoring bodies when it comes to monitor Spain.

To understand the impact of the Charter upon Spanish law and the legal and political difficulties in implementing it, it is important to know the legal and political context and even the conceptual frame into which the Charter fits. Therefore, I will start giving an overview of the Spanish linguistic model. Second, I will address the terms and the model of the ratification of the Charter by Spain, which raise interesting issues that the Charter mechanism seems not to have foreseen. Third, I will discuss some aspects of the implementation of the Charter, in particular the use of regional or minority languages in courts, in education and in public administration, which are the areas where deficits are more visible. The use of regional or minority languages in courts and in state public administration is a significant aspect of the implementation of the Charter in Spain, since this is the main area for which the state is solely responsible, rather than the autonomous communities. Finally, conclusions will be drawn from the implementation experience.

2. The Spanish linguistic model and the Charter

Since 1978, the protection of regional or minority languages is constitutionally enshrined in Spain. Article 3(3) of the Constitution of 1978 declares that '(t)he richness of the linguistic modalities of Spain is a cultural patrimony which will be the object of special respect and protection'.[5] The constitutional 'linguistic model' has two basic aspects. The first aspect is unilingualism at the central state level: Castilian is the official language of Spain. This implies that the characteristics of the traditional unitary state may be largely preserved and that the whole panoply of state institutions continues to operate only in one language. The second aspect is formal

5 For an exploration of the implications of a very much neglected constitutional provision see X. Arzoz, 'Lenguas y modalidades lingüísticas en la Constitución Española: ¿dos regímenes jurídicos diferenciados?', in A. Milian Massana (ed.), *El plurilingüisme a la Constitució espanyola* (Barcelona: Institut d'Estudis Autonòmics 2009), 61–122. Similarly, A. López Basaguren, 'The Spanish Constitution: problems in applying the Charter', in *Minority Language protection in Europe: into a new decade* (Council of Europe Publishing 2009), p 133: 'a constitutional provision which, at the domestic level, has had a limited, or even non-existent, practical effect'.

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bilingualism at the regional level in certain autonomous communities. Several regional or minority languages have been given official status (so-called 'co-official languages') within their geographical areas, in addition to the official language of the state.

Unlike some federal states, under Spanish constitutional law and language legislation passed by autonomous communities, all authorities located in a bilingual territory are deemed to abide by the co-official status of the respective language: the co-official status has territorial character.[6] Consequently, six officially bilingual territories corresponding with six autonomous communities have emerged, while an extended and continuous territory remains Castilian-speaking only. In contrast, languages and linguistic modalities that are spoken in other autonomous communities are merely protected in a non-rights-based approach: the languages are not considered official, and their speakers do not generally enjoy linguistic rights, although the relevant autonomous communities may facilitate some uses of them in specified social settings.

However, the constitutional framework leaves open many options. There is no common ('federal') legislation on the use of co-official languages. The linguistic model and the territorial model are intrinsically linked. Spain is a decentralised state divided into 17 autonomous communities with legislative and executive competencies shared between these two levels of government. The legislation on and the protection of co-official languages are issues generally devolved to the relevant autonomous communities. The power to legislate on the extent and legal effects of the co-official status is a competence of so-called horizontal character: on the one hand, public authorities belonging to any level of government (regional, local, central) located in a bilingual autonomous community are obliged to comply with the language legislation and subordinate legislation in accordance with their respective powers and duties; on the other hand, the specific competencies of the central government cannot restrict the exercise of that legislative power.[7]

All autonomous communities possessing a co-official language have passed a Language Act, with two common purposes: establishing the legal scope of the co-official status and advancing the official and social use of the relevant language. Moreover, most autonomous communities have

6 Spanish Constitutional Court, Judgments 82/1986, 214/1989 and 56/1990.

7 J. Vernet, E. Pons, A. Pou, J. R. Solé and A. M. Pla, *Dret Lingüístic* (Valls: Cossetània 2003), 97–101.

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declared the respective language as 'autochthonous' in the sense of the language indigenous to their territory: it is conceived as their 'own language' (*lengua propia*), an expression that recalls the phrase used in Article 27 ICCPR.[8] This symbolic recognition was intended to have far-reaching practical effects, which go from justifying special promotion through to grounding a sort of priority in the actual language use of the autonomous authorities.[9]

Nevertheless, since 2010 the Constitutional Court's case-law has categorically excluded any legislative priority given to an official language over the other, be it purely symbolical: furthermore, it has deprived the notion of 'autochthonous language' of any legal consequence. More generally, the case-law has gradually narrowed the interpretation of the content of the official status of languages other than Castilian.[10]

The central state has taken the view that, because of the devolution of powers to the autonomous communities and because these have the power to determine an appropriate language policy in respect of those powers, it has no further responsibilities with respect to the protection and promotion of the co-official languages. It has devoted itself to the protection and promotion of the use and the role of Castilian, both domestically and internationally. Even if this adjudication of roles has a *prima facie* constitutional justification, it has caused several asymmetries.

First, it has resulted in a strict territorialized language scheme, in which the general institutions of the state presume that they are not abided by already quoted Article 3(3) of the Constitution, nor by official-language regulations of bilingual autonomous communities, when they are in non-bilingual territories (e.g., Madrid). In other words, the constitutional commitment to the protection of linguistic diversity has so far had no consequences for the three branches of the central government; citizens from bilingual autonomous communities do not enjoy linguistic rights in their relationships with institutions, organs and authorities affecting their rights that happen to be based in Castilian-only territory. It must be noted that, unlike federal states such as Germany, all general institutions of the state, all

8 The exception is Navarre, where both Castilian and Basque have been declared 'autochthonous' languages of the autonomous community.

9 See Article 6(1) of Organic Law 6/2006 on the Reform of the Statute of Autonomy of Catalonia, of 19 July 2006. This was already established by Law 1/1998 on Language Policy.

10 See I. Urrutia Libarona, '¿Nuevos paradigmas en la interpretación jurídica de la doble oficialidad lingüística?' (2021) *Revista Vasca de Administración Pública* 121, 171–220.

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Supreme Court chambers, the Constitutional Court, the Court of Auditors, etc., as well as most regulatory and administrative agencies and bodies of the state administration are located in the state capital city following unitary state traditions: this implies that they are not subject to the (territorial) official status of languages other than Castilian.

Only in September 2023 members of the lower Chamber of Parliament (*Congreso*) were allowed to use official languages other than Spanish in their parliamentary activity, including oral interventions and the submission of written texts.[11] This very recent innovation, after forty-five years of legal force of the Constitution of 1978, remains isolated and provides a neat contrast with the entire monolingual practice of the rest of the state powers and organisation.[12]

Second, the state has not met its constitutional responsibility to promote the use of co-official languages and even to comply with official-language legislation in the many functional areas still under its competence: in the services it provides through authorities located in bilingual areas and, above all, in the administration of justice. As we will see, this lack of commitment corresponds with the missing implementation of Charter obligations on those fields.

Several scholars are even of the opinion that the Spanish model of official bilingualism contributes more to a policy of integration and, therefore, it is superior to the Swiss, Canadian and Belgian models, since those states lack a common official language.[13] Moreover, the general approach to comparative and international legal standards on language protection is

11 Article 6(3) of the Rules of Procedure of the Chamber of Deputies. On other recent initiatives to improve the status of official languages before the state authorities see J. Ridao, 'Avances y retos del plurilingüismo en los poderes públicos del estado español', (2024) *International journal of constitutional law* 22, 1338-1361. https://doi.org/10.1093/icon/moae058

12 In contrast, members of the Senate, which is the chamber of the Spanish Parliament that according to the Constitution should represent the autonomous communities and integrate them in the all-state legislative and decision-making process, were long before allowed to use official languages other than Castilian but only in the framework of the general commission on autonomous communities, which was created in 1994 and meets once per year.

13 In a standard legal commentary on the Spanish Constitution see L. Sánchez Agesta and J. Prieto de Pedro, 'Artículo 3.º: Las lenguas de España' in O. Alzaga Villaamil (ed), *Comentarios a la Constitución española de 1978* (Madrid: Edersa 1996), p 260. The Spanish first national expert appointed to the Charter's Committee of Experts was also of that opinion: A. Pérez Calvo, 'Pluralismos lingüísticos y sus regulaciones' (2011) *Revista Jurídica de Navarra* 51, p 89.

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rather self-indulgent. The (rare) unanimity of all Spanish political parties regarding the ratification of the Charter can be explained by that general feeling. Prior to the ratification, politicians from both the conservative and the socialist party insisted that the ratification of the Charter would bring no added value to the protection that regional or minority languages already enjoyed in Spain.[14] Since languages spoken traditionally in Spain have been given official status in their respective geographical areas, so goes the reasoning, Spain would be at the forefront of the states seriously committed to the protection of linguistic diversity. The internal situation is presented as legally and politically outstanding, and therefore not susceptible of being improved. In fact, the central state has done simply nothing to comply with the obligation of disseminating information among authorities, organisations and persons on the rights and duties established by the Charter (Article 6 of the Charter).[15]

Accordingly, it is not surprising that, when the Charter was ratified, some language experts considered that, however its significance as an international commitment on the part of the state, the Charter was not about to bring substantive changes to the Spanish internal legal situation.[16] Since language legislation of various autonomous communities often recognises language rights, the ratification of an international document like the Charter, which itself consciously avoids recognising any language rights, was generally considered to have added little value.

What is beyond doubt is that the Charter creates obligations for Spain. The Charter, as a validly concluded and officially published international treaty, constitutes part of the internal legal order. After being incorporated

14 See, for example, the declarations of the conservative member of the Parliament Mr. González Pons in 1998. See *Cortes Generales. Diario de Sesiones del Senado*, No. 79, of 24 March 1998, p 3577. A similar view was expressed in 1995 by the then socialist minister of Education and Culture, Mr. Solana de Madariaga. See *Cortes Generales. Diario de Sesiones del Senado-Comisión*, No. 430, of 6 May 1999, p 27.

15 The Spanish authorities argued in their first periodical report that 'the level of protection already existing [in domestic law] was considered sufficient. It was therefore not considered to conduct a specific policy of informing the authorities that have to apply the Charter, in view of the fact that its application coincides with the application of laws already in force in Spain'.

16 J. Triadú i Vila-Abadal, 'Perspectiva constitucional i Carta Europea de les Llengües Regionals o Minoritàries' (2002) *Revista de Llengua i Dret* 37, p 143; X. Deop Madinabeitia, 'España ratifica la Carta Europea de las lenguas regionales o minoritarias' (2002) *Revista Vasca de Administración Pública* 62, p 357 ('a more symbolic than effective step').

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into the Spanish legal order, the Charter possesses a rank superior to that of domestic law and only inferior to the Constitution.[17] Therefore, the Charter obligations can be enforced by domestic courts, provided that they regard them to be self-executing.

In addition, the Charter will produce the interpretative value that Article 10(2) of the Spanish Constitution recognises human rights international treaties concluded by Spain.[18] This peculiar regulation goes beyond a mere interpretative guideline that looks for an interpretation of constitutional provisions most friendly to international law: by ensuring the permanent adjustment and coordination of the meaning of constitutional fundamental rights with international instruments, it allows that the content of constitutional fundamental rights be gradually enriched, with the consequence that the enriched content enjoys the same guarantees and protection as the purely constitutional content. The Spanish Constitutional Court has acknowledged that, by virtue of Article 10(2) of the Constitution, the Charter can provide for interpretive criteria on constitutional provisions on the official status of languages other than Castilian.[19]

To understand the significance of that ruling, it must be recalled that the Constitution limits itself to proclaim some basic principles but says little on the scope and content of the official status or the scope and content of the protection of languages other than Castilian spoken in Spain. Both aspects are devolved to the relevant autonomous communities, which enjoy a wide margin of discretion to adopt their linguistic legislation and to implement the constitutional principles. Therefore, according to the Constitutional Court's case-law, the significance of the Charter is enormous in the Spanish legal order: it will provide co-official status with a minimum content; the central government and the autonomous communities have to guarantee, at least, the level of protection of Part III of the Charter. Similarly, although

17 Article 96(1) of the Spanish Constitution reads: 'Validly concluded international treaties once officially published in Spain shall constitute part of the internal legal order. Their provisions may only be abolished, modified, or suspended in the manner provided for in the treaties themselves or in accordance with general norms of international law.'

18 Article 10(2) of the Spanish Constitution reads: 'The rules relating to the fundamental rights and liberties recognized by the Constitution shall be interpreted in conformity with the Universal Declaration of Human Rights and the international treaties and agreements thereon ratified by Spain'.

19 Spanish Constitutional Court: Order 166/2005, legal ground no. 5; Judgment 165/2013, legal ground no. 14 a); Judgment 56/2016, legal ground no. 5; Judgment 86/2017, legal ground no. 6; and Judgment 75/2021, legal ground no. 2.

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the Constitutional Court does not consider it explicitly, it can be concluded that the constitutional duty of respecting and protecting languages that do not enjoy co-official status (Article 3(3) of the Constitution) will also have a guaranteed minimum content, that of Part II of the Charter.

3. The terms of ratification

It can be argued that implementation arrangements already started with the instrument of ratification. Spain's approach in this regard was rather conservative: one of confirming the status quo, rather than one of advancing the legal status of languages other than Castilian. This is reflected in three aspects: the specification of languages, the territorial application of the Charter, and the scope of the Part III measures being ratified.

3.1. Specification of languages that enjoy the protection of the Charter

Like other states, Spain opted to differentiate between languages to which a selection of provisions of Part III of the Charter are applicable, on the one hand, and languages to which only a vaguer "principle- and objective-based" scheme should be "reasonably" applicable, on the other. 60 measures chosen from paragraphs and subparagraphs of articles of Part III are applied to some languages, while a second group of languages have to resign themselves to the provisions of Part II that can reasonably apply, according to the objectives and principles laid down in Article 7. This differentiation corresponds with the domestic distinction between languages that are recognised as official languages and languages that are (merely) protected.

Unlike other states, however, Spain did not specifically name the languages covered by the Charter in the instrument of ratification. This lack of direct specification seems to run against the wording of Article 3(1) of the Charter. It must be noted that there is, to some extent, a certain Spanish constitutional tradition for this curious way of referring to languages other than Castilian.[20] This practice of 'specification by reference' is mainly the

20 See eg, Article 3(2) of the Spanish Constitution and Article 55(2) of the Treaty on the European Union, which was originally Article IV-448(2) of the Treaty establishing a Constitution for Europe and was introduced at the bequest of Spain.

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result of socio-political fragmentation within a particular linguistic community.[21] The aim of this practice is to avoid raising domestic controversies by identifying by name the languages spoken in the autonomous communities.[22] In sum, this manner of specification is not due to some technical drafting need, but to the political convenience of the Spanish authorities.

The instrument of ratification mentions the names of the six autonomous communities that have recognised an additional official language in their statutes of autonomy. In principle, it seems easy to identify which are the corresponding languages. Basque is recognised as official language in the autonomous communities of the Basque Country and of Navarre; Catalan or Valencian in Catalonia, Balearic Islands and Valencian Community; and Galician in Galicia.

Nevertheless, lawyers know that the use of references to other pieces of legislation is a legal drafting technique that may raise problems of interpretation and of conformity.[23] What happens if the referred provision or legal act -in this case, the Statute of Autonomy- is later modified? Should the provision containing the reference be interpreted in accordance with the amended referred provision or should it be given the meaning initially taken into account by the law-maker? This is not a theoretical problem. The Occitan language already possessed official status in the Pyrenean valley of Aran but by virtue of an Act of the Parliament of Catalonia. Nevertheless, the recognition of the official status of Occitan was entrenched and reinforced after the ratification of the Charter, through the Reform of the Statute of Autonomy of Catalonia of 19 July 2006.[24]

21 While the scientific community has no doubt about the unity of the language spoken in Catalonia, Valencian Community and the Balearic Islands, in Valencian Community certain political forces not only promote and insist on using a different denomination for the Catalan language spoken in their territory (*Valencià*) but also attempt various kinds of rhetorical and practical linguistic secessionism, with a view to express a politically differentiated identity. The history of this socio-politically motivated linguistic conflict is rather convoluted to be summarised here. Initially, the Committee of Experts' report referred to Valencian and Catalan as though they were different, although similar, languages, but later it assumed the unity of the language with the dual term 'Catalan/Valencian'.

22 Vernet, Pons, Pou, Solé and Pla, n 7 above, p 82.

23 See H.-U. Karpen, *Die Verweisung als Mittel der Gesetzgebungstechnik* (Berlin: Walter de Gruyter 1970).

24 Article 6(5) of the 2006 Statute reads: 'The Occitan language, known as Aranese in Aran, is Aran's own language and is official in Catalonia, as established by this *Estatut* and by the laws of linguistic normalisation'. On the legal status of Aranese see N. Magaldi, 'Lengua y derechos lingüísticos en Arán: régimen jurídico de la oficialidad

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The question that immediately arises seems evident: Should Occitan be considered – in the territory of Aran valley – as a language already entitled to the whole panoply of measures of protection ratified by Spain? We are inclined to answer positively this question: first, because the rationale of the Spanish ratification is one of strict correspondence between languages that are *co-official in accordance with the statutes of autonomy* and languages specified to enjoy the protection of Part III of the Charter; second, because the wording of the Spanish instrument of ratification actually allows for the inclusion of Occitan (Aranese).[25]

It is true that Article 3(2) of the Charter stipulates that the parties may, at any subsequent time, accept new obligations or the inclusion of "other regional or minority languages, or (…) other official languages which are less widely used on the whole or part of its territory". This would be strictly necessary in the eventual case of recognition of official status to further languages spoken *in other* autonomous communities (for instance, Asturian in Asturias). In any case, for the sake of legal certainty it would have been desirable that, after the promulgation of the Statute of Autonomy for Catalonia of 2006, Spain would have notified the Secretary General that it would apply a set of measures chosen from Part III also to Occitan (Aranese).

Languages that lack official status but are merely 'protected by the [respective] Statutes of Autonomy' are Asturian in the autonomous community of Asturias, Galician 'and other linguistic modalities' (this phrase might refer to Asturian or Leonese, as it is known there) in the autonomous community of Castile and León, and Aragonese and Catalan in the autonomous community of Aragón.[26]

The legal situation is less clear in other cases. On the one hand, the Statute of Autonomy of Asturias does not officially recognise 'Galician-Asturian', which is spoken in areas adjacent to the autonomous community

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del aranés' (2022) *Revista de Estudios de la Administración Local y Autonómica* 18, 56–76. https://doi.org/10.24965/reala.11111

25 In this sense also, E. Pons Parera, 'Estatuto jurídico de las lenguas en Cataluña' in J. M. Pérez Fernández (ed), *Estudios sobre el estatuto jurídico de las lenguas en España* (Barcelona: Atelier 2006), p 319.

26 Article 4 of the Statute of Autonomy of *Principado de Asturias*; Article 4(2) of the Statute of Autonomy of Castile and León; Article 7 of the Statute of Autonomy of Aragón. On the legal situation of languages in Aragón and in Asturias, see J. I. López Susín, 'Estatuto jurídico de las lenguas en la Comunidad Autónoma de Aragón' and J. M. Pérez Fernández, 'Estatuto jurídico de la lengua asturiana' both in J. M. Pérez Fernández (ed), n 25 above.

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of Galicia, between the rivers Navia and Eo. However, the Law 1/1998 on the Use and Promotion of Asturian contains a final provision, according to which 'Galician-Asturian' (*gallego-asturiano* or *fala* of Western Asturias, as it is also known) shall have a similar status to that of Asturian concerning protection, respect, teaching and use. Therefore, it seems that the mentioned law shall apply *mutatis mutandis* to 'Galician of Asturias' in the territory in which this language is spoken.

On the other hand, the Statute of Autonomy of Extremadura stipulates that this autonomous community has competence for 'the protection of the linguistic and cultural characteristics' of the region, in any case with due regard to the local varieties (Article 11(2)). This provision seems to be open enough to comprehend diverse regional dialects, which are not covered by the Charter, as well as some languages that should be protected according to the Charter: on the one hand, the Portuguese language traditionally spoken in the municipality of Olivenza within the province of Badajoz; on the other, the *Fala*, a linguistic modality spoken in three municipalities in the north-west of the province of Caceres (San Martín de Trevejo, Elijas and Valverde del Fresno) that would be a kind of transition between Galician (or Portuguese) and Asturian. The aforementioned provision of the Statute of Autonomy has not so far been legally developed or implemented. Only the *Fala* achieved a sort of explicit recognition and protection after the autonomous authorities declared it in 2001 a "cultural asset of Extremadura" (*Bien de Interés Cultural*).[27]

In addition to languages that are not clearly enough recognised (nor, therefore, protected), there are some languages that clearly are not legally protected where they are traditionally spoken: this is the case of Catalan/Valencian in three municipalities of the autonomous community of the Region of Murcia[28] and Arabic and Berber in the Spanish North African cities of Ceuta and Melilla. According to the instrument of ratification, lan-

27 See M. A. Encabo Vera, 'Estatuto jurídico del patrimonio lingüístico de Extremadura' in J. M. Pérez Fernández (ed), n 25 above.

28 See A. C. Navarro Sánchez, 'Estatuto jurídico del patrimonio lingüístico de la Cuenca del Segura' in J. M. Pérez Fernández (ed), n 18 above, pp 495–496; 'Sobre la protecció i el reconeixement jurídics de l'expressió lingüística del català més desconeguda i abandonada de totes: la del Carxe, a la Regió de Múrcia (I)' (2018) *Revista de Llengua i Dret, Journal of Language and Law* 69, 176–209, https://www.doi.org/10.2436/rld.i69.2018.3093, and 'Sobre la protecció i el reconeixement jurídics de l'expressió lingüística del català més desconeguda i abandonada de totes: la del Carxe, a la Regió de Múrcia (i II)', (2018) *Revista de Llengua i Dret, Journal of Language and Law* 70, 86–102, https://www.doi.org/10.2436/rld.i70.2018.3094

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guages that are not protected by the respective statute of autonomy *appear* to remain outside the field of application of the Charter. However, Spanish authorities must be reminded that *all* regional or minority languages that correspond to the definition are protected under Part II of the Charter, regardless of the member state's instrument of ratification.

3.2. The territorial approach of the Spanish instrument of ratification

States are encouraged to specify the languages that will enjoy the protection of Part III and to choose an appropriate set of protection measures, but they are not required to specify the territorial area in which that protection will be enjoyed.[29] It is true that the Charter defines 'regional or minority languages' according to a territorial aspect and many measures of protection it opens to signature are territorial in character. Article 1(b) states that the notion 'territory in which the regional or minority language is used' means 'the geographical area in which the said language is the mode of expression of a number of people justifying the adoption of the various protective and promotional measures provided for in this Charter'.

The question is whether a state can freely specify the geographical area in which a language will enjoy the protection of Part III. It is evident that a state can reduce the impact of its obligations under the Charter in two ways:

> In demarcating the territory, a state has to avoid both too broad an interpretation (too largely a territory) which might render the undertaking impossible or hard to meet effectively, and too narrow an interpretation (too small a territory) leaving many speakers of the regional or minority language outside the scope of the undertaking concerned.[30]

The Spanish instrument of ratification may illustrate the issue. The ratification has confirmed and left untouched existing administrative divisions and subdivisions affecting Spanish languages. Spain has specified for the purposes of Article 3(1) of the Charter the languages recognised as co-official languages in the statutes of autonomy of several autonomous communities.

29 H. Tichy, *Die Europäische Charta der Regional- oder Minderheitensprachen und das österreichische Recht* (Klagenfurt/Celovec: Hermagoras/Mohorjeva 2000), p 117; J.-M. Woehrling, *The European Charter for Regional or Minority Languages. A critical commentary* (Strasbourg: Council of Europe Publishing 2005), p 81.

30 Woehrling, n 29 above, p 142.

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Catalan/Valencian language has been specified as a Part III language for the territory of Catalonia, Valencian Community and the Balearic Islands. However, it is also spoken in Aragón, in a narrow but long border area adjoining Catalonia, and in several villages in Murcia. Therefore, Catalan will be a Part III language in the mentioned autonomous communities and a Part II language beyond that territory. The same situation refers to the Galician language.

In Navarre, the existing administrative divisions affecting the geographical area of Basque are internal to the autonomous community. The instrument of ratification specifies Basque in Navarre as a Part III language. Nevertheless, the Statute of Autonomy of Navarre provides that Basque shall have the status of official language 'in the Basque-speaking areas of Navarre' and that a special law shall determine the said areas and shall regulate the official use of Basque. The Basque Language Act, passed by the Parliament of Navarre in 1986, defines three linguistic areas for the only purpose of differentiating the scope of linguistic rights: the Northern part of the autonomous community is identified as 'Basque-speaking', the central part as 'mixed' and the Southern part as 'non-Basque-speaking'.

This definition of three linguistic areas is highly controversial for social groups actively committed to the preservation of the Basque language in Navarre. It has amounted to confining the full official status that that language must be constitutionally given to a rather narrow northern territory close to the Pyrenees and, therefore, leaving the most populated areas of the community outside the official status.

3.3. The obligations

Although language legislation differs in the six autonomous communities that recognise a co-official language, Spain has opted to ratify the same level of protection for all the six autonomous communities. Probably, a more differentiated approach should have been adopted, as many other states have done. Since autonomous communities have a major responsibility in legislating on their official languages, they should have been consulted on the scope of the commitments they will be obliged to implement or were willing to fulfil.[31]

31 According to Article 50 of Law 25/2014 on treaties and other international agreements, the government must inform autonomous communities on the negotiation of

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As it is known, Article 2(2) of the Charter obliges states to commit themselves to implement a minimum number of 35 "paragraphs and subparagraphs" choosing undertakings that really are separate from one another. Spain has chosen 60 from the 65 paragraphs and subparagraphs listed in Part III.[32] Nevertheless, the 'quality' of the paragraphs and subparagraphs chosen by Spain is more important than the number itself.

4. The implementation of Part III of the Charter

According to Spanish law, the government, the autonomous communities and the cities of Ceuta and Melilla must adopt all necessary measures that fall within the fields of their respective competencies to implement those international treaties where Spain is a contracting party.[33]

4.1. The improvement of the legal framework in Navarre

The best way to implement the Charter obligations at national level is through an appropriate legal framework, which may result in granting rights to the speakers of the relevant languages. The existence of a solid legal foundation is crucial: coherent language policies and good practices can only be established, maintained and developed on that basis. All Part III languages count on a specific language law approved by the relevant autonomous community. It means that there are seven language acts for the four Spanish co-official languages passed by the respective autonomous communities: two language acts on Basque (in the Basque Country and Navarre), three on Catalan/Valencian (in Catalonia, Valencian Community and Balearic Islands), one on Galician (in Galicia) and one on Occitan (for the Aran valley in Catalonia).[34]

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international treaties that affect areas of their competence, so that they can submit their considerations to the government. Legal scholarship considers that the obligation of previous information derives from the constitutional framework (principle of loyalty) and therefore existed already before. In fact, Article 20(5) of the Statute of Autonomy for the Basque Country (1979) expressly imposes that obligation.

32 See Woehrling, n 29 above, pp 73–75.

33 Article 30(3) of Law 25/2014 on treaties and other international agreements.

34 See, for instance, the assessment of 40-years of language policy in Catalonia by J. Ridao Martín. In his article he does not consider the role or impact of the Charter

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The Basque Language Act of Navarre (1986) is an example of a half-hearted language law. As already mentioned, part of the problem of this Language Act lies with its controversial definition of linguistic areas, and another part with the vague formulations it deliberately uses to lay down the consequences deriving from that definition. This ambiguity does not allow the creation and maintenance of a coherent language policy for the preservation and promotion of the Basque language in Navarre. The absence of clearly defined legal standards does not seem consistent with the obligations of Part III of the Charter ratified by Spain. Nevertheless, despite its limitations, even that language act can be developed and applied with a broadness of vision, if the government of the day is in the mood to do so: this was the case for more than a decade.

However, from 2000 successive conservative regional governments applied a restrictive language policy through sub-statutory measures, which led to social contestation and a high judicialization of regional language policy.[35] Social actors resorted to legal mobilisation, and they even succeeded in annulling the main legal instruments of that language policy on substantive grounds. The social and legal mobilisation on behalf of the Basque language and the series of adverse judicial decisions considerably eroded public support for the governing political party, and in the middle term it contributed to the improvement of the legal framework of the Basque language in Navarre. What is interesting is the role played by the Charter during the whole process. All actors affirmed to be willing to comply with the Charter.

To understand the invoking of the Charter by the different actors, the position of the Committee of Experts concerning the territorial approach to Spain's ratification of the Charter regarding Navarre needs first to be considered in this regard. Later, the substantive impact of the Charter on the political and social developments will be commented.

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on Catalan language policy. The only occasion he mentions the Charter refers to the incompatibility of the *Spanish* procedural legislation with Article 9 of the Charter. See J. Ridao Martín, 'La llengua catalana al Principat després de quaranta anys d'autonomia política. Un balanç des de la perspectiva jurídica' (2018) *Revista de Llengua i Dret, Journal of Language and Law* 70, 31–51. https://www.doi.org/10.2436/rld.i70.2018.3143

35 See X. Arzoz, 'Legal mobilisation at the subnational level: the case of language rights in the Spanish autonomous community of Navarre', in D. Anagnostou and M. Claes (eds.), *Rights in Pursuit of Social Change: Legal Mobilisation in the Multi-Level European System* (Oxford: Hart 2014), 53–77.

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The state authorities defended before the Committee of Experts the standpoint of the regional authorities of Navarre that Basque is only official in the 'Basque-speaking' area and that, therefore, the obligations Spain entered into only applied to that portion of territory. It is interesting to quote here from the Spanish authorities' response to the Committee of Experts' report: 'extending the level of protection of Basque existent in the Basque-speaking zone to the territory of the mixed zone, as suggested in the Committee of Experts' report, would mean amending the menu of protection of Basque recognised in the legislation of the *Comunidad Foral de Navarra*, and accordingly, the terms of ratification by Spain'.[36] This reasoning misses the point. If, by virtue of the ratification of the Charter, Spain had effectively extended the level of protection of Basque existing in the 'mixed' area under domestic law, the obligations could not be avoided with the argument that that extension of protection would be inconsistent with existing domestic law.[37]

This restrictive approach calls for the following comments. First, under the Charter, the issue is not what status a language has in domestic law, but whether it is in need of an appropriate level of Part III protection. Second, a specification of the territorial scope is possible for the provisions of Part III for which the Charter envisages territorial implementation. In any case, it must be noted that Spain has not made an explicit and direct specification. Indeed, the internal linguistic zoning in Navarre and its legal consequences are not mentioned or referred to in the instrument of ratification, nor is there any declaration that Spain wished to limit the level of protection of Part III to the so-called 'Basque-speaking area' of Navarre. If it is argued that a specification by reference has been made, it can be wondered whether such an obscure and indirect specification should be regarded as a valid ratification of the Charter. Third, it has been stated that, where the provisions of Part III apply generally, that is, without territorial limitation, 'a state's limiting them to certain territories must be regarded as a reservation not provided for in the charter and therefore contrary to it'.[38] Fourth, the option most consistent with the wording and spirit of the Charter would have been the specification of the whole territory of the relevant autonomous community, as far as speakers of the Basque language

36 Comments by the Spanish authorities, pertaining to the Committee of Experts' report on the ECRML submitted to the Committee of Ministers of the Council of Europe, on 27th May 2005, paragraph K.

37 See Articles 27 and 46 of the Vienna Convention on the Law of Treaties.

38 Woehrling, n 29 above, p 143.

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as well as a significative demand of Basque-medium education exist in all parts of it. It must be noted that the territory of application could vary for each type of measure envisaged under Part III of the Charter.

Initially, the Committee of Experts accepted Spain's restrictive approach merely as a starting point for its report. At that time, it had not taken a definitive position yet. For the Committee, the interpretation given by a contracting state is not decisive:

> In principle it is possible for a contracting state to consider it preferable, for reasons which lie within its discretion, not to extend the benefit of the provisions of Part III of the Charter to a given language, or to a given territory. However, the reasons for not extending Part III protection to a given language, or to a given territory as in the present case, must still be compatible with the spirit, objectives and general principles of the Charter (...).[39]

Later, the Committee of Experts reviewed the issue and considered three kinds of arguments in order to assess the presence of Basque in the 'mixed' area of Navarre: first, the knowledge of Basque; second, the number of pupils receiving Basque-medium education (30 per cent); and, third, the relevance of Pamplona/Iruña, capital city of Navarre, both from the socio-olinguistic perspective, as the highest concentration of Basque-speakers in a single town, and from the socio-economic perspective, as the main urban and administrative centre of Navarre attracting Basque-speakers from the Basque-speaking area. It seems to derive from the Committee of Experts' report that all these very specific aspects have to be adequately taken into account by the competent state authorities with a view to deciding the appropriate level of protection for the Basque language in the 'mixed' area.[40] In any case, the Committee of Ministers assumed the observations of the Committee of Experts and it explicitly recommended, 'as a matter of priority', that the authorities of Spain 'consider the possibility of applying an appropriate form of Part III protection to the Basque language within the "mixed zone" as defined by the legislation of Navarre'.[41] In its last

39 *Report of the Committee of Experts on the application of the Charter in Spain* (2005), para. 71 and point K of the findings.

40 Woehrling, n 29 above, p 68, notes that the Committee of Experts has not yet had a proper discussion on the specification by contracting states of the territorial scope of Part III obligations.

41 *Recommendation RecChL(2005) 3 of the Committee of Ministers on the application of the European Charter for Regional or Minority Languages by Spain*, point 3.

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report, adopted on 18 June 2024, the Committee of Experts recommended 'to eliminate the obstacles to the use of Basque arising from the administrative division into three linguistic zones, with the aim of improving the level of protection afforded to Basque in the Foral Community of Navarre'. Therefore, the Committee of Experts rejects the restrictive interpretation given by the state authorities to the terms of ratification.

In the following I will focus on the social and political developments in Navarre. With the social mobilisation against the regional restrictive language policy reaching a high point, the 2003–07 government agreement between the conservative regionalist party (UPN) and the centrist party (CDN) stipulated that all obligations derived from the Basque Language Act and from the European Charter for Regional or Minority Languages had to be complied with. The agreement also stated that it would promote education and language teaching in Basque in line with the principles of the Basque Language Act and the voluntary nature of Basque education. In 2007, a moderate pro-Basque language political majority emerged in the regional parliament, while the governing party lost its absolute majority in regional parliament, but it continued governing. Nevertheless, it was politically compelled to take appeasing measures, making relatively small but significant amendments to the language policy. Thus, in 2010, under a conservative regionalist party (UPN) lacking a parliamentarian majority, the Language Act was amended for the first time in twenty-four years to allow four municipalities to move from the non-Basque-speaking to the mixed area, at the request of the respective municipality and based on a decision by absolute majority. That amended was grounded on the need to satisfy the social demand of education in Basque and to adapt to the 'administrative and linguistic reality' of those four municipalities, which were part of the social and economic conurbation of Pamplona/Iruña (linguistically mixed area), despite being in the non-Basque-speaking area.[42]

In 2015, still with a UPN-led government the Language Act was amended to allow the gradual implantation of Basque-medium education as well as the teaching of Basque in the non-Basque-speaking area, if enough demand existed to that effect.[43] With this amendment the linguistic educational

42 See preamble and content of Law 2/2010, of 23 February, amending Article 5.1, letters a) and b), of Law 18/1986, of 15 December, on the Basque Language.

43 Law 4/2015, of 24 February, partially amending Law 18/1986, of 15 December, on the Basque Language.

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rights of the students of the non-Basque-speaking area were assimilated to those of the mixed area.

Finally, in 2017, under a coalition government supported by left-wing and nationalist parties, the Language Act was amended in three key aspects: first, a municipality was automatically included in the Basque-speaking area and forty-four municipalities to the mixed area;[44] second, the title of the Language Act was amended, from Act on *vascuence* to Act on *euskera* (which is the preferred denomination of that language by Basque-speakers); and third, the capacity of all local entities of Navarre to regulate and promote the use of Basque within their territory was legally entrenched, regardless of the linguistic area they are located, ending that way a lasting controversy on the capacity to carry out their one language policies.[45]

Through the whole process of enhancing the status of the Basque language in Navarre, the Charter proved to be a useful instrument, at least politically, to counter political reluctance and inertia and ideological constraints. Acts 4/2015 and 9/2017, improving the legal framework of Basque in Navarre, refer both in their preambles to the Charter obligations.

4.2. The linguistic educational models in Valencian Community, Galicia, Balearic Islands and Catalonia

The linguistic educational model is an issue controverted in several autonomous communities. Article 8(1) of the Charter, which has been ratified by Spain, unconditionally imposes the contracting state 'to make available pre-school/primary/secondary/technical and vocational education in the relevant regional or minority language'.

However, the autonomous communities of Balearic Islands, Galicia and Valencia have opted for so-called bilingual or plurilingual models in which the teaching in the regional or minority language takes only part of the teaching time, along with Castilian and sometimes English. The same bilingual or plurilingual educational model is applied to all students enrolled in the public schools and educational institutions of the territory. Therefore, there is no option for either requesting full education in the respective

44 Additionally, one of the four municipalities that did not join the mixed area after the 2010 amendment retains the possibility of voluntary joining that area.

45 See preamble and content of Law 9/2017, amending the title and the legal provisions of Ley 18/1986 on the Basque Language (*Vascuence*).

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regional or minority language, or for receiving full education in Castilian, the official language in all the state. Alternating political majorities in those territories have sometimes adjusted to some extent the linguistic model towards the preferences of their voters: either more instruction through the regional language or through more Castilian and/or English. In any case, education in those autonomous communities is not entirely available in the respective regional or minority language, and pupils must conform to the uniform, compulsory linguistic educational model designed for all students by the regional authorities. This situation does not correspond with the obligations subscribed by Spain under Article 8(1) of the Charter.[46]

A substantively similar problem has been raised in Catalonia, although through a very different path. From the beginning of the democratic period, Catalonia developed a model of schooling in which Catalan is the sole medium of instruction and both Catalan and Spanish are compulsory subjects.[47] That model fully complies with Article 8(1) of the Charter. Nevertheless, the Catalan linguistic educational model has been for the last decades increasingly under political and mediatic contestation, mainly prompted from the outside of the autonomous community.

In the discussion on the total early language immersion practised in Catalonia, the Charter is often mentioned and even instrumentalised. A former Spanish member of the COMEX argued that the Catalan linguistic educational model was 'out of kilter with that advocated by the Charter, which has never attempted to impose use of a regional or minority language on anyone who has not expressed the wish to use it'.[48] Nevertheless, the Catalan language cannot be considered in Catalonia merely as a regional or minority language, and total language immersion via Catalan is not a by-product of the ratification of the Charter by Spain, but the result of a broad political consensus in that autonomous community going back to

46 A. López Basaguren, n 5 above, pp 128, 136; A. Nogueira López, 'A incidencia da Carta europea das linguas rexionais ou minoritarias na programación do sistema educativo', in L. Villares Naveira (ed), *Estudios xurídicos sobre o Decreto para o plurilingüismo* (Ames: Laiovento 2010), p 72; A. López Castillo and A. López Basaguren, 'Minority Languages in Spain: Recognition, Promotion and Some Conflicts' (2022) *Cuadernos Manuel Giménez Abad* 24, pp 47, 50.

47 Until the Catalonia Education Act of 2009, the model included the possibility of some instruction in Castilian for the first years of primary education if the parents so wished.

48 López Basaguren, n 5 above, p 136. He argues that 'it is rather a case of incompatibility with the very spirit of the Charter'.

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the 80s of the past century. In contrast, the current Spanish member of the COMEX argues 'the Charter demands that the State's official language be taught in schools where an RML [regional or minority language] is the medium of instruction, but it does not demand that the State's official language be used as a medium of instruction in such schools'.[49]

In any case, contestation brought the judicialization of the Catalan linguistic educational model. In 2020 the High Court of Catalonia ruled, at the request of the state government, that at least 25 % of teaching must be delivered in Spanish in all schools in Catalonia,[50] raising the issue of whether this obligation conforms to the undertakings chosen by Spain under the Charter.[51] The principle that Spanish could not be excluded as a language of instruction had been affirmed already before, but only in 2015 did the same court of Catalonia establish the 'at least 25 %' rule as far as the Catalonian authorities had once and again disregarded judicial orders to establish the share of Spanish-medium instruction to be given to pupils demanding it. Nevertheless, the 2020 innovation was that the High Court of Catalonia specified the exact proportion of Castilian-medium instruction that was mandatory in all public schools, with the aim of shaping an enforceable legal right. The Supreme Court rejected a request for leave to appeal against the 2020 judgment and, as a result, the ruling of the High Court of Catalonia became final.

According to that case-law, the education in Catalonia cannot consist of total immersion via Catalan anymore, since it is considered unconstitutional. However, the mandatory bilingual educational model resulting from

49 A. Branchadell, 'Education in a regional or minority language: the case of Catalan in Spain' (2023) *Revista de Llengua i Dret, Journal of Language and Law* 79, p 241. https://www.doi.org/10.58992/rld.i79.2023.3937

50 Judgment of 16 December 2020, ECLI:ES:TSJCAT:2020:8675. For a full account of the judicialization of the language of instruction in Catalonia see J. Ridao i Martín, 'Crònica legislativa de Catalunya. Segon semestre de 2021. Un període caracteritzat per la incipient activitat normativa associada a l'inici de la nova legislatura i per les invectives judicials contra el model lingüístic educatiu' (2022) *Revista de Llengua i Dret, Journal of Language and Law* 77, 156–164, https://doi.org/10.2436/rld.i77.2022.3797, and 'Crònica legislativa de Catalunya. Primer semestre de 2024. Un període caracteritzat pel desplegament reglamentari del marc lingüístic educatiu vigent i la decisió del TSJC de suspendre'l a l'espera de la sentència del TC' (2024) *Revista de Llengua i Dret, Journal of Language and Law* 82, 383–390. https://doi.org/10.58992/rld.i82.2024.4320

51 On this see Branchadell, n 49 above. His conclusion about the Charter compatibility of the 'at least 25 %' case-law is negative.

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that case-law violates the right conferred by the Charter on those who may choose to receive an education entirely in Catalan.[52]

The 'at least 25 %' case-law applies regardless of the wishes of the parents (or the students). All pupils, whether they are interested or not in having (more) teaching in Castilian, should receive at least 25 % of their teaching in Castilian. The case-law curtails the regional authorities' competence to organise their linguistic educational model as they deem it convenient.

It is interesting to note that the same *constitutional* obligation does not seem to apply to the linguistic educational models of the Basque Country and Navarre, where students can choose the linguistic educational model of their preference (at least if they are available in their proximity) among three options: teaching through either Castilian or Basque with the other official language being taught as a subject or teaching through both. In other words, students enrolled in public schools in the Basque Country and in Navarre are allowed to skip education through the medium of Castilian, regardless of its official status.

In 2022 the Catalan institutions adopted two legislative acts to hamper the execution of the mentioned ruling of the High Court of Catalonia.[53] Those legislative acts have been challenged before the Constitutional Court: adjudication is still pending in July 2026. The Constitutional Court will likely adjudicate only on the basis of the Constitution, although its text does not regulate the language of instruction. However, the only way to reconcile the Charter obligations with the case-law requirement of 25 % of the teaching time through Castilian is to understand that this is only mandatory inasmuch as the students (their parents) request it and that it only concerns those students and not all the students.

Nevertheless, the recommendations of the Committee of Experts after the 6th monitoring cycle (2024) are, again, unequivocal: Spain has to 'ensure that education in Aranese, Catalan (called Valencian in the Valencian Community) and Galician are available at all appropriate levels, respectively in the Autonomous Communities of Catalonia, the Balearic Islands, the Valencian Community and Galicia, in accordance with the ratification instrument'. According to the Charter, no bilingual educational scheme of any kind, in which instruction in the regional or minority right is reduced to a 33 %, a 50% or even a 75 % of the education, may be imposed on

52 López Castillo and López Basaguren, n 46 above, p 49.

53 Decree-Law 6/2022 and Law 8/2022 on the use and the learning of official languages in non-university education.

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parents and students willing to receive instruction through their regional or minority language only, with the compulsory teaching of the state official language.

4.3. The legal framework concerning the use of Part III languages in courts

According to the constitutional distribution of competences, central state authorities have a significant role in the implementation of the Charter obligations. Until now, however, they have done nothing to implement those obligations. This is surprising, since the state's highest consultative organs had already warned, prior to ratification, that several aspects of the Charter would affect the Spanish legal order.

The General Council of the Judiciary, the high consultative organ in justice matters, stated that Article 9 of the Charter 'constitutes undoubtedly a broader and more complete undertaking than the mere possibility of using the co-official language being given to judges, magistrates, registrars and other servants of the courts by Article 231(2) of the Organic Law on Judiciary'.[54] This is recognition from a qualified central state organ that obligations concerning the use of regional or minority languages in courts emanating from the Charter go beyond the mere possibility of using official languages granted to judges and other court staff by domestic legislation, as we shall see below.

Furthermore, the State Council, the high consultive organ of the government in administrative matters, drew from this circumstance the consequence that the ratification of the Charter was governed by Article 94(1)(e) of the Constitution, which stipulates that the ratification of international treaties whose compliance with requires amending legal provisions with statutory rank is subject to a previous authorisation by the Spanish Parliament.[55] Indeed, the Charter was ratified according to Article 94(1) of the Constitution, which can only mean that the government followed the advice of the State Council. In other words, the Government considered it as an international treaty that implies the amendment or derogation of domestic legal provision or requires legal provisions for its enforcement.

54 Opinion of the General Council of the Judiciary, published in (1997) *Boletín de Información* 127, pp 21–27. For an excerpt see Triadú i Vila-Abadal, n 16 above, pp 144–147.

55 Opinion 1492/1992 of the Council of State. See Triadú i Vila-Abadal, n 16 above, pp 143–144.

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As a matter of fact, there is an overt inconsistency between domestic law and obligations under Article 9(1) of the Charter.[56] According to Article 9(1) of the Charter, 'the courts, at the request of one of the parties, shall conduct the proceedings in the regional or minority language', be they proceedings in criminal, civil or administrative matters. In contrast, Article 231(1) of the Organic Law on the Judiciary only allows Judges and Courts to conduct the proceedings in a co-official language 'if none of the parties objects that he or she does not know that language and is therefore likely to be left without defence'.[57] Briefly, under the Charter any party may request and obtain conduct of the court proceedings in the regional or minority language; in contrast, under Spanish domestic law, any party can block that request, since all parties must agree on the use of a co-official language.[58]

The rationale behind that very restrictive regulation is that the use of an official language other than Castilian might cause other parties that do not understand the language in question 'being left without defence', that is, a violation of their right to a fair trial. It must be noted that this is the only case in Spanish constitutional law in which parties are allowed to successfully invoke that they are 'left without defence', without being required to give evidence thereof.[59] Furthermore, the fundamental rights argument only goes in one direction: excluding the use of the co-official

56 Triadú i Vila-Abadal, n 16 above, p 147; I. Agirreazkuenaga Zigorraga, 'La Carta Europea de Lenguas Regionales o Minoritarias del Consejo de Europea como derecho interno' in J. M. Pérez Fernández (ed), n 25 above, p 123; Pons Parera, n 25 above, p 303; López Castillo and López Basaguren, n 5 above, p 51; I. Urrutia Libarona, 'Administración de Justicia, doble oficialidad lingüística y derecho fundamental a la tutela judicial efectiva' (2022) *Revista d'estudis autonòmics i federals* 35, pp 305-315, https://www.doi.org/10.2436/20.8080.01.88; A. Pou Pujolràs, 'Llengua i justícia a Catalunya' (2025) *Just: Journal of Language Rights & Minorities, Revista de Drets Lingüístics i Minories* 4, p 77, https://www.doi.org/10.7203/Just.4.31322

57 It is not clear what the court should do in that event, whether to use Castilian or to appoint an interpreter to respect other parties and witnesses' right to use the co-official language. The Constitutional Court seems to believe that the second alternative is the only one consistent with all values in conflict, because it has stated that the right of parties, their representatives and lawyers and of witnesses and experts to use the co-official language is not subject to any limitation in Article 231 of the Organic Law of the Judiciary: see Order 166/2005, para. 5. To the same effect, see J. F. Etxeberria Guridi, 'El euskera en la Administración de Justicia' (1999) *Revista Vasca de Administración Pública* 53, pp 74–75.

58 The same rule applies to the administrative procedures: see Article 15(1) of Law 39/2015 on the common administrative procedure of public administrations.

59 On the application of the concept of 'being left without defence' because of linguistic reasons see Judgment 122/2021, legal ground no. 6.

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language to conduct proceedings. By contrast, no accused person is being left without defence if the judge or the prosecutor does not speak the accused person's language, but they resort to an interpreter.

The wording of Article 231 confuses two issues that should have never come together: on the one side, procedural fairness in trials, and on the other side, knowledge/ignorance of the regional or minority language.[60] In this point, the Constitutional Court has not given clear direction: in its early case law, the right to a fair trial was regarded as constitutionally linked with Castilian by virtue of Spaniards' constitutional duty to know that language.[61]

Some Spanish judicial authorities have defended the position that the introducing paragraph of Article 9(1) of the Charter leaves a great deal of discretion to contracting states ('on condition that the use of the facilities afforded by the present paragraph is not considered by the judge to hamper the proper administration of justice') and that, therefore, the Spanish regulation would be covered by it. They argue that the aim of the Spanish legal order is precisely a proper administration of justice.[62]

Oddly enough, in a state constitutionally committed to respect and protect linguistic diversity, which grants official status to several languages, the use of official languages other than Castilian is considered as not only hampering the proper administration of justice, but a *per se* violating the fundamental rights of defence of the parties. The Spanish legal order already imposes on the relevant judge an automatic exclusion of the use of an official language other than Castilian when a party opposes that use. However, the authors of the Charter took the opposite view. The Charter leaves discretion to consider whether the undertakings listed in Article 9(1) may hamper the proper administration of justice only in exceptional circumstances, and only to the relevant judge.[63] It is also questionable to

60 In this sense, López Basaguren considers 'very unfortunate' that association: see A. López Basaguren, 'Algunos problemas en torno a la cooficialidad lingüística y el Poder Judicial' (1999) *Jueces para la Democracia* 34, p 29, and López Basaguren, n 5 above, p 123.

61 See Judgment 56/1990.

62 See the General Council of the Judiciary's Opinion on the Charter, adopted prior to its ratification by Spain, published in (1997) *Boletín de Información* 127, pp 21–27. Later, echoing that report, the High Court of Galicia declared in a judgment of 3 October 2003 (ECLI:ES:TSJGAL:2003:5017), that the use of a regional or minority language cannot become an obstacle for the proper administration of justice.

63 See Woehrling, n 29 above, p 167.

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interpret the Charter in the sense that it allows judicial authorities a broader discretion than domestic law to decide on the use of official languages other than Spanish.[64] In any event, the obstacle to proper administration of justice should not result from the state's failure to introduce legal and organisational measures to meet its Article 9(1) undertakings.[65]

In more than twenty years of monitoring, the opinion of the Committee of Experts has been unambiguous: the Spanish authorities must amend the legal framework with a view to making it clear that criminal, civil and administrative judicial authorities in bilingual autonomous communities will conduct proceedings in Part III languages at the request of one party. This applies even in the case where the other party does not understand the language in question, because in that event interpreters and translators should be used.[66]

In 2005 the Spanish Constitutional Court ruled on the constitutionality of Article 231 of the Organic Law of the Judiciary. Unfortunately, the ruling elaborated the meaning of Article 9(1) of the Charter in a way inconsistent with the Committee of Experts' report. The Court denied the existence of any contradiction between Article 231 of the Organic Law of the Judiciary and Article 9(1)(a)(i) of the Charter, since the obligations entered by Spain under Article 9(1) are to be implemented with due respect to safeguarding the proper administration of justice, to which, among other elements, the prohibition of 'being left without defence' belongs.[67] The Court erected an indeterminate phrase -safeguarding the proper administration of justice- as an absolute barrier to the enforcement of the unequivocal content of Article 9(1). Its interpretation of the provision neutralises the whole scope of protection of Article 9(1). Thus, the Spanish Constitutional Court, along with other domestic courts, has given Article 9(1) of the Charter an interpretation inconsistent with the objective of that provision.

64 Triadú i Vila-Abadal, n 16 above, p 141, considered that the introducing paragraph was not appliable in Spain, since domestic law did not allow judicial authorities such a discretion.

65 Woehrling, n 29 above, p 168.

66 Since the first Report, para. 370.

67 Order 166/2005, para. 5.

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4.4. The legal and organisational framework of training and career of judges, court registrars, and prosecutors concerning their command of Part III languages

Autonomous communities may legislate on the status and use of the respective co-official language, but the administration of justice is a particularly complex issue. The competence to organise the material and personal resources at the service of the administration of Justice (so-called 'administration of the administration of Justice') has been devolved to all bilingual autonomous communities save Balearic Islands, while the core content of the administration of Justice remains as an exclusive state competence. Therefore, it is up to the state to adopt the legal and administrative measures necessary to enforce Charter obligations regarding judges of all categories, prosecutors and registrars, and to the autonomous communities to adopt the legal and administrative measures necessary to implement Charter obligations regarding the rest of the judicial staff (forensic doctors, court clerks, proceedings managers, and so on).

Judges, prosecutors and registrars are integrated into state-wide bodies of civil servants under the competence and responsibility of the central state. Moreover, relevant aspects of the training and career development of judges are not in the hands of the state's executive power itself, but they must be decided by the General Council of the Judiciary, an organ which functions independently from the other branches of government. In summary, autonomous communities have no competence to define and to implement the legal consequences of the official status of their regional or minority languages on the recruiting, training, assigning and promoting of judges of all ranks, prosecutors and court registrars.

The right to request that judicial proceedings or administrative procedures be conducted in a regional or minority language entails consequences for public authorities: they must take the necessary measures to guarantee an organisation of proceedings that is able to work in that language. This basic idea, which is common to all states committed to protect their internal linguistic pluralism, however, seems to be completely alien to state authorities in Spain. There is no systematic, adequate approach to this issue.[68] While in other plurilingual states the knowledge of official languages is mandatory to obtain a position as judicial staff and/or to obtain an

68 See A. M. Pla Boix, *El règim jurídic de les llengües a l'Administració de justícia* (Barcelona: Institut d'Estudis Autonòmics 2005).

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appointment to a bilingual area, in Spain they are systematically neglected or insufficiently taken into account with regard to appointments of judicial staff posted in bilingual autonomous communities.

The central state has never adopted or even discussed institutional arrangements to provide courts with enough members that are able to speak co-official languages, nor legal provisions defining judicial posts in which language requirements are mandatory, nor capacity-building efforts in this regard.[69] According to data gathered in 2022 by the justice department of the government of Catalonia, only 14 % of the judges and 9 % of the prosecutors assigned to that territory had the level of knowledge of the Catalan language (C1) that is required to all students at the end of obligatory education in that autonomous community.[70] The situation is even worst in the Basque Country, Navarre, Valencian Community and Balearic Islands.

Although more than twenty million citizens live in autonomous communities that recognise an official language in addition to Castilian, the command of official languages others than Castilian is not considered anyway in the recruitment and training of judges, prosecutors and court registrars. After candidates have been selected, they are assigned to existing vacant posts on a basis of marks achieved in access and training examinations. Only after recruitment, selected but not yet assigned to a post, as well as appointed judges willing to move to another destination are allowed to show their knowledge of co-official languages.

Although the legislation stipulates that knowledge of official languages other than Castilian will be a preferential qualification for obtaining post in bilingual autonomous communities,[71] the interpretation of the courts has minimised the meaning of the notion. Thus, knowledge of official languages other than Castilian has been reduced to the relevance of a non-determining qualification, a non-decisive merit among others: as the knowledge

69 Still in May 2024 a state-wide call for awarding financial aid to law graduates interested in preparing during several years the competitive selection procedures established for acceding to the posts of a judge, a prosecutor, a court registrar or a state lawyer included no mention to the knowledge of official languages other than Castilian. In other words, the knowledge of Spanish official languages other than Castilian is still irrelevant for the state ministry of Justice even in purely promotion activities. See Order PJC/491/2024, of 23 May (*Boletín Oficial del Estado* No. 126, of 24 May 2024).

70 *El País*, 22.12.2023.

71 Article 341(2) of Organic Law 6/1985, of 1 July, on the Judiciary and Article 35(1) of the Statute of Autonomy for the Basque Country (1979). Pursuant to Article 102(2) and (3) of the Statute of Autonomy for Catalonia (2006), the knowledge of the Catalan language is a mandatory requirement for being transferred to Catalonia.

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of international languages or having advanced legal studies. No post of a judge, a prosecutor or a registrar in a bilingual autonomous community has a mandatory linguistic profile.

In other words, the knowledge of official languages other than Castilian is not truly part of the 'merit and capacity principle' that is constitutionally entrenched and should govern access to public service in Spain.[72] Under the current framework, if an appointed judge or prosecutor knows the respective official language other than Castilian of the autonomous community of destination, it is not for the benefit of the public service itself, but to his or her professional advantage inasmuch he or she will get additional points that may allow him or her to likewise obtain a better assignment (usually, in a bigger city and/or a more relevant court).[73] Nothing prevents or hampers judges that do not speak the relevant co-official language from being appointed to bilingual autonomous communities, and this is what usually happens.

Pursuant to agreements with the ministry of Justice and the General Council of the Judiciary, the governments of several bilingual autonomous communities organise voluntary language classes for judges, prosecutors and registrars that have been assigned to their territory. These promoting activities are not an optimal way to guarantee the languages protected under the Charter are effectively used in courts. Without institutional arrangements to guarantee that there are enough judges and other judicial staff who speak co-official languages, the significance of whichever official-language rights that law may grant is reduced in practice.

Summing up, the legal and institutional framework in Spain does not allow the state to be able to comply with its obligations under Article 9(1). The Charter does not specify which institutional arrangements states should make to fully implement their obligations. However, the Committee of Experts was conscious that it is not enough to replicate the wording of the Charter obligations in domestic law, but that the contracting states must take all necessary organisational measures to comply with those obligations. Consequentially, in the light of the Committee of Experts' report, the Committee of Ministers of the Council of Europe has recommended

72 Article 103(3) of the Spanish Constitution.

73 Knowledge of an official language corresponds with one year of service or seniority for judges, two years of service or seniority for higher rank judges (*magistrados*) assigned to one-judge courts, or three years of service or seniority for higher rank judges (*magistrados*) assigned to multiple-judge courts. See Article 110 of Regulation 1/1995 of the General Council of the Judiciary, of 7 June 1995, on the Judicial Career.

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that the authorities of Spain 'ensur[e] that an adequate proportion of the judicial staff posted in the autonomous communities concerned by the application of Article 9 of the Charter has a working knowledge of the relevant languages'. The last implementation report of the Spanish government (2023) and its comments on the Committee of Experts' 6th report (2024) insist on the compatibility of domestic legislation with Article 9(1) of the Charter.

4.5. Future perspectives

The decentralisation of authority is the main explanation for the high level of compliance with the Charter that the six officially bilingual autonomous communities show, as it was reported above. Indeed, the devolution of powers has resulted in the legal institutionalisation of linguistic groups. The institutionalisation of minority languages and cultures can play a significant part in creating a framework in which regional or minority languages and cultures can flourish.

But the argument is a highly conditional one. It turns on the central requirement that the linguistic group be effectively institutionalised, that is, that rulers and speakers share a notion of the intrinsic value of their regional or minority language. If that breaks down, then the significance of institutional arrangements is reduced to an empty framework of protection: autonomous authorities tend to water down and minimise constitutional and legal obligations. The Committee of Experts is conscious of this possible outcome.[74]

This is what happened in Navarre and in Valencian Community in the first decade of the twenty-first century,[75] and what is happening after the regional elections of 2023 again in Valencian Community and Balearic

74 *Report of the Committee of Experts on the Charter*, ECMRL (2008) 5, 11 December 2008, para. 65: "The attribution of competences to the Autonomous communities has many advantages in the field of regional or minority language protection and promotion. Their closeness to the languages means that measures can be tailor-made to reflect the actual situation of each language. However, in some cases, Autonomous Communities can hamper the implementation of the obligations under the Charter. In this regard, the Committee of Experts recalls that irrespective of the domestic arrangements of the competences involved, Spain remains responsible under international law for the implementation of treaties it has ratified".

75 See J. Ochoa Monzó, 'La situación jurídica de la lengua propia en la Comunidad Valenciana tras veinte años de pretendida -pero preterida- normalización lingüística'

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Islands, where legal acts are adopted and plans are envisaged to reinforce the use of Castilian in education and to weaken the requirements of knowledge of Catalan/Valencian in access to public administration.[76] In some autonomous communities there are cyclical processes of doing and undoing schemes of linguistic protection by successive elected governments. Some autonomous communities are not free from regressive developments. In that event, the Charter operates as a safety net and provides support for contesting regressive policies.

5. Some aspects of the implementation of Part II of the Charter

Many scholars have rightly underlined the importance of Article 7 as the hard core, the compendium or the summary of the Charter.[77] This view has a solid ground: the commitments of Part III develop, implement and specify in different fields the (general) objectives and principles laid down in Part II. Nevertheless, in Spain Article 7 tends to be seen the other way round: it is identified with uncompromising or weaker obligations regarding the most vulnerable languages, those lacking official status, protection or even recognition. In this way, a kind of vicious circle has emerged.

Two strategies of the Committee of Experts' monitoring have attempted to break that vicious circle. Although those strategies are not explicitly stipulated in the Charter, they derive from its spirit and system. It must be also remembered that the Part II of the Charter *compulsorily* covers all

(2004) *Revista Vasca de Administración Pública* 69(I); X. Arzoz, 'La convivencia lingüística en Navarra' (2004) *Revista Vasca de Administración Pública* 69(II).

76 For first signals of alarm, see R. Marzal Raga, 'Crònica de la Comunitat Valenciana. Segon semestre de 2023. El desmantellament de les polítiques lingüístiques: inacció administrativa i entrebancs per al valencià' (2024) *Revista de Llengua i Dret, Journal of Language and Law* 81, 284–290, https://doi.org/10.58992/rld.i81.2024.4200; M. Ballester Cardell, 'Crònica legislativa de les Illes Balears. Segon semestre de 2023. El trencament dels consensos en matèria lingüística en un context sociolingüístic molt delicat' (2024) *Revista de Llengua i Dret, Journal of Language and Law* 81, 291–302, https://doi.org/10.58992/rld.i81.2024.4233

77 See P. Hilpold, 'Artikel 7', in *Europäische Charta der Regional- oder Minderheitensprachen, Handkommentar* (Zurich/St. Gallen: Dike Verlag 2011), 112–182; R. Dunbar, 'Article 7. Objectives and principles', in A. Nogueira López, E. J. Ruiz Vieytez and I. Urrutia Libarona (eds), *Shaping langauge rights* (Council of Europe Publishing 2012); F. Ramallo, 'Relevance and impact of Article 7 of the European Charter for Regional or Minority Languages' (2018) *Revista de Llengua i Dret, Journal of Language and Law* 69, p 39.

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regional or minority languages that are spoken within the contracting state, be on one or more territories or without a fixed or determined territory.

When there were doubts about the existence of a language, the Committee of Experts has not hesitated to undertake a broad inquiry perspective. It has requested information to the Spanish authorities about languages whose existence was overlooked or denied by same voices. In that way, the Committee has contributed to the visibility of ignored linguistic realities: this is the case of Amazigh in the autonomous town of Melilla (North of Africa), Leonese in the autonomous community of Castile and León, and Fala and Portuguese in the autonomous community of Extremadura.[78]

After gathering information, the Committee of Experts has often recommended urgent action. Thus, the recommendations for immediate action of the Committee of Experts between the 5th and 6th monitoring cycles (23.3.2021) were compelling: Spain was recommended to take immediate action to protect Galician in Castile and León, Fala/Galician in Extremadura, Amazigh in Melilla, Leonese in Castile and León, particularly in education, and Portuguese in Extremadura, particularly in education.[79] The recommendations of the 6th report of the Committee of Experts (2024) focused again on those Part II languages, plus Darija in the autonomous city of Ceuta (North of Africa).

A second right strategy has been the insistence in the improvement of the legal framework regarding Part II languages. Paragraph 7.1.a refers to 'the recognition of linguistic diversity as an expression of cultural wealth'. In states governed by the rule of law, only the law can recognise linguistic diversity, since only law is able to fulfil the empowering and symbolic functions that are required in a modern society. Nevertheless, lack of recognition is generally the main weakness of Spanish Part II languages. There

78 Thus, the Committee of Ministers recommended Spain in 2008 to clarify the status and consider the protection of Galician in Castile and León, Portuguese in the town of Olivenza, Berber/Amazigh in Melilla and Arabic in Ceuta (Recommendation CM/RecChL(2008)5 of the Committee of Ministers on the application of the European Charter for Regional or Minority Languages by Spain). And in 2019, to clarify the situation of Arabic/Darija in Ceuta, Caló as a non-territorial language of Spain, Estremeñu in Extremadura and Portuguese in Castile and León' (Recommendation CM/RecChL(2019)7 of the Committee of Ministers to member States on the application of the European Charter for Regional or Minority Languages by Spain).

79 For an overview of the situation of Part II languages in English see Annex 2 to F. Ramallo, 'Relevance and impact of Article 7 of the European Charter for Regional or Minority Languages' (2018) *Revista de Llengua i Dret, Journal of Language and Law* 69, pp 44–51.

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are only two specific laws on the use and protection of those languages: one of them was passed after the ratification of the Charter.

In Asturias, a law protects the Asturian language as well as the so-called 'Galician-Asturian'. Although it does not declare Asturian as a co-official language, it grants citizens the right to use Asturian in their relations with regional authorities (but not with local or state authorities).[80] This is the most intensive protection framework for a Spanish non-official language. The difference between official status and lack of it is not a clear-cut one, but a continuous line: the regional law on the Asturian language gives legal effect to several uses that are very close from an official status. This is an important point, since autonomous communities have more options to protect and promote their regional or minority languages than just declaring its official status, which is a more forceful decision that may find social contestation in some territories.

Nevertheless, although it enjoys a similar legal framework by reference,[81] the protection of Galician-Asturian is less unequivocal. Therefore, among its recommendations for immediate action the Committee of Ministers recommended in 2021 the competent authorities to develop a structured policy for the protection of Galician/Galician-Asturian on the territory where it is spoken (Eo-Navia region).

The other language law on Part II languages comes from the autonomous community of Aragon. Actually, the first law protecting Aragonese and Catalan was approved in 2009.[82] Nevertheless, it was soon replaced by a new, controversial Act on the Languages of Aragon.[83] This law did not refer to those languages with their usual, academic and social denominations (Aragonese and Catalan), but with long circumlocutions referring to their location, which were rapidly reduced to acronyms.[84] Nevertheless, those

80 Law 1/1998 on the use and promotion of Asturian.

81 A final provision of mentioned Law 1/1998 on the use and promotion of Asturian stipulates that provisions regarding Asturian language should also be applicable to Galician-Asturian.

82 Law 10/2009 on the use, protection and promotion of the autochthonous languages of Aragon.

83 Law 3/2013 on the use, protection and promotion of the autochthonous languages and linguistic modalities of Aragon.

84 The Act referred to the Aragonese as the 'language of Aragon that is usual in the Pyrenees and the territory before the Pyrenees' (Spanish acronym LAPAPYP) and to Catalan as the 'language of Aragon that is usual in the Eastern territory' (Spanish acronym LAPAO). The intention was to avoid the glotonym 'Catalan' on the territory of Aragon.

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languages recovered their official names after an amendment of 2016.[85] The new law assumed that there are two areas in which those languages are used, but it did not demarcate then. Sub-statutory regulations should specify the municipalities belonging to both areas, but they are still missing, showing a half-hearted approach to language protection.

In contrast, Part II languages spoken outside Asturias and Aragon lack a legal framework. This situation is striking in the case of Galician in the autonomous community of Castile and León, if we consider that the regional authorities have shown a good disposition to recognise that linguistic reality and offer voluntary classes of Galician in the public schools in the two areas in which that language has been traditionally spoken: that policy is not covered or supported by an appropriate legal text. The 2021 Committee of Experts' recommendations for immediate action referred to the situation of Valencian/Catalan in Murcia. Spain has been recommended to recognise Valencian/Catalan as an expression of cultural wealth in the Region of Murcia and take urgent measures to protect and promote Valencian/Catalan in that region.

A basic step to improve the legal recognition of a language is to include its name in the statute of autonomy of the respective autonomous community. Now, the names of most Part II languages are not included: instead, circumlocutions as 'languages and linguistic modalities' of the relevant territory are used. Thus, the name and the existence of Galician-Asturian is not mentioned in the statute of autonomy of Asturias, the names of the Catalan and Aragonese languages are not included in the statute of autonomy of Aragon, and the same happens with Leonese in the statute of autonomy of Castile and León, Fala, Extremeñu and Portuguese in the statute of autonomy of Extremadura and Catalan in the statute of autonomy of Murcia.[86] Another problem is that, sometimes, names other than the modern, scientific glotonym are used: thus, in the statute of autonomy

85 See Article 4 (on languages and linguistic modalities of Aragon) of Law 3/1999 on the Cultural Heritage of Aragon, as amended by Law 2/2016 on tax and administrative measures.

86 On the failed new statute of autonomy for the Region of Murcia (2019–2021) and the regulation of Valencian/Catalan of the Carche area see A. C. Navarro Sánchez, 'Sobre la frustrada aprobación de un nuevo Estatuto de Autonomía de la Región de Murcia (2019–2021) y el tratamiento del patrimonio lingüístico autóctono (hablas murcianas y valenciano/catalán del Carche)' (2024) *Revista de Llengua i Dret, Journal of Language and Law* 81, 154–169, https://doi.org/10.58992/rld.i81.2024.4126

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of Asturias Asturian language is still referred to as *bable*, which is the traditional, less dignified form.

Apart from endorsing symbolic recognition in the mentioned way, the Committee of Ministers also recommended in 2016 to consider extending 'the recognition of those regional or minority languages with a co-official status in six Autonomous Communities to other Autonomous Communities provided that there is a sufficient number of users of the regional or minority language involved'.[87] The recommendation implicitly refers to Catalan in Aragon, Valencian in Murcia and Galician in at least Castile and León and Asturias (and perhaps in Extremadura). By the moment, it seems a very unlikely possibility.

6. Conclusions

The level of protection chosen by Spain within Part III of the Charter includes the strongest commitments in each area foreseen in the Charter regarding four languages and six territories. Nevertheless, the ratification of the Charter was not used to significantly enhance existing domestic standards for the protection of linguistic diversity. It confirmed two of the features of the Spanish linguistic model: first, the three-level-hierarchisation of languages other than Castilian existing under Spanish constitutional law: co-official status / protection / no recognition at all;[88] second, the territorialized model of language protection. The strictly territorial approach of Spanish language law may also be in contradiction with the Charter's measure-by-measure-approach. In some areas, Charter obligations have remained under domestic regulations (e.g., Article 10(1)(a)).

In Spain, some authorities and scholars frequently affirm that the existing practice goes beyond the Charter's level of protection. This may be true regarding some aspects and languages. Spanish language legislation may, at first glance, be at the forefront of legal commitments expressed by European states to protect their linguistic diversity. This self-indulgent

87 Recommendation CM/RecChL(2016)1 on the application of the European Charter for Regional or Minority Languages by Spain.

88 Hierarchisation between national languages on the one hand and regional or minority languages on the other is inherent to the Charter itself. See already M.-A. Clotet i Miró, 'La Carta Europea de las Lenguas Regionales o Minoritarias' (1994) *Revista de Instituciones Europeas* 21, p 560.

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attitude may explain (but not justify) the absence of a resolute and coherent policy, first, to disseminate the obligations incurred by Spain and, second, to implement them. The question is not assessing the intrinsic virtues of domestic law, whatever they are, but complying with every paragraph and sub-paragraph ratified by Spain. Here, self-indulgence is out of place. The number, content and relevance of the recommendations for immediate action that the Committee of Experts approved in 2021 give evidence of the serious gaps between some of the undertakings chosen and the level of protection offered by the domestic legal framework and/or practice.[89]

The main function of the Charter is to offer a quality external control against which domestic rules and practises can be checked. In Spain, the Charter may be legally and politically relevant in two areas: first, in areas in which the Charter expands the obligations already imposed on authorities under domestic law; and second, in areas in which the Charter reiterates obligations that already exist in domestic law but were so far incompletely or deficiently implemented.

The level of compliance with Charter obligations by state authorities is very limited. The Committee of Experts has reiterated the same structural deficiencies under the responsibility of the state authorities once and again for twenty-five years. This is the most displeasing experience with the implementation of the Charter in Spain: despite the strict and recurring monitoring no progress is visible. Here, the problem lies very deep: in the absence of a will to address the necessary adjustment of the state's monolingual administrative structures to Spain's linguistic diversity. The most outstanding case of non-compliance refers to Article 9(1), concerning the use of languages in courts, a field of legislative and executive competence completely in the hands of the state authorities. The interpretation given by domestic courts and even the Constitutional Court to Article 9(1) is inconsistent with the objective of that provision. The content of the state legislation and its interpretation by the courts make a key provision of the Charter totally ineffective.

Regional and local authorities from officially bilingual autonomous communities that recognize official status to languages other than Castilian

89 On those recommendations see F. Ramallo, 'Balance del Informe del Comité de Expertos de la CELRM respecto a la implementación de las recomendaciones de acción inmediata por parte del Estado español', *RDL blog*, 13 May 2021; Basque version, 'Espainiako Estatuak berehalako ekintzarako gomendioak ezartzeari buruz EEUHEGEren Adituen Batzordeak egindako txostenaren balantzea' (2021) *Bat Soziolinguistika aldizkaria* 121, 67–78.

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show in general terms a high level of compliance with the Charter. Those autonomous communities have adopted language acts and designed language policies, based on domestic obligations and not for the sake of complying with the Charter. In some of them the practice, nevertheless, still shows shortcomings, or they are not free from regressive developments. Not all autonomous communities have the same obligations under domestic law: consequentially, they look differently at their Charter obligations. For some autonomous communities, the Charter merely delivers a minimum level of protection that is mandatory; for others, it is a maximum that they tend to regard as orientating.

The main shortcomings of officially bilingual autonomous communities are in education. The consolidation of linguistic-educational models combining Castilian with the respective co-official language (and sometimes with English) that several autonomous communities implemented two decades ago (Valencian Community, Galicia) risks to perpetuate an overt inconsistency between domestic law and undertakings under Article 8(1) of the Charter, which unconditionally imposes the contracting state 'to make available pre-school/primary/secondary/technical and vocational education in the relevant regional or minority language'.

In Catalonia, where total early immersion via Catalan has been traditionally practised, it is not the regional authorities who threaten compliance with the Charter, but the High Court of Catalonia and the Constitutional Court: since 2020, the case-law of the former obliges the authorities of Catalonia to offer at least 25 % of the teaching through Castilian. Nevertheless, a 75 %-25 % linguistic educational model does not comply with the mentioned provision of the Charter. The Catalan institutions have passed legal provisions to maintain their traditional linguistic educational model and avoid the execution of that case-law. We will see whether the Constitutional Court, who will have to adjudicate on this issue, will also consider the legal relevance of Charter obligations.

From the perspective of the Charter, the shortcomings regarding the education in Catalonia do not concern so far the teaching in Catalan, but in Occitan, which is the third official language recognized in the Aran valley and is spoken by less than 3,000 people there. The Committee of Experts has pointed at the shortcomings of education in Occitan in the secondary, technical and vocational education.

In contrast, in autonomous communities where languages other than Castilian lack official status but are merely protected (Galician in Castile and León, Aragonese and Catalan in Aragón, Portuguese in Extremadura,

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Catalan in Murcia), there is no appropriate legal framework to comply with Part II of the Charter. In these circumstances, the Charter may prove to be a useful instrument, at least politically, and deliver a relevant contribution to removing domestic reluctance and political inertia.

It is discouraging that, although the Committee of Experts and the Committee of Ministers have delivered categorical reports and recommendations after each monitoring cycle in this regard, very little has improved since 2001 concerning the use of languages other than Castilian in courts and in peripheral state administration, which includes a big number of state offices based and acting in officially bilingual autonomous communities.

Against this unequal background, the positive developments in Navarre in the second decade of the twenty-first century must be underlined. At the end of the day, the Charter is the only international tool available in the long-term struggle to protect linguistic diversity and to contest the shortcomings of an otherwise seemingly unassailable domestic linguistic model.

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The Implementation of the Language Charter in Germany

Robert Böttner

1. The German Constitutional Framework as a Starting Point

When it entered into force, the European Charter for Regional or Minority Languages (the Language Charter) has met a very dense network of constitutional guarantees regarding fundamental rights also of minorities. It must therefore be positioned in the German constitutional fundamental rights framework. The German constitutional order assigns a high value to the free development of the personality and the ban on any form of discrimination both at federal level (section 1) as well as at the level of the states (section 2). The use of language must therefore not lead to any unjustified disadvantage. The European Charter for Minority Languages as an international treaty underscores and enhances the individual rights with regard to minorities and their languages as group rights (section 3).

1.1. The right to free development of one's personality and the principle of non-discrimination

In the 1990s, there was an intensive discussion on including a specific constitutional provision on the protection of minorities in the *Grundgesetz* (the German Basic Law – the German constitution).[1] While this amendment has not been enacted, minorities still enjoy extensive protection under the federal constitution. Article 2(1) of the *Grundgesetz* prominently features that "every person shall have the right to free development of his personality". As the German Federal Constitutional Court holds in its consistent case law, this is to be understood as everyone's freedom to do and not do what does not infringe the rights of others.[2] In this sense, Article 2(1) of the *Grundgesetz* is a comprehensive expression of the personal sphere of

1 See on this *Siegert*, Minderheitenschutz in der Bundesrepublik Deutschland, 1999, p. 128 ff.

2 German Federal Constitutional Court, case 1 BvR 253/56, judgment of 16 January 1957.

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freedom and at the same time the starting point for all subjective rights of defence of the citizen against the state and state interference.[3] However, this right is guaranteed only insofar as its enjoyment "does not violate the rights of others or offend against the constitutional order or the moral law". Thus, the *prima facie* wide scope of protection is balanced by a relatively low barrier to put boundaries to the free (unrestricted) development of one's personality. However, Article 2(1) of the *Grundgesetz* is only the general and in most cases subsidiary right to free expression and development. The German constitution contains a number of other, more specific rights and guarantees, such as the freedom of expression, the freedom of the press and of broadcasting (Article 5(1) of the *Grundgesetz*), religious freedom (Article 4 of the *Grundgesetz*), the right to establish private schools (Article 7(4), (5) of the *Grundgesetz*) or the freedom of assembly (Article 8 of the *Grundgesetz*) and of association (Article 9 of the *Grundgesetz*).[4]

A second pillar of the constitutional order is the principle of non-discrimination enshrined in Article 3 of the *Grundgesetz*. It provides that all persons shall be equal before the law (paragraph 1) and that no person shall be favoured or disfavoured because of, inter alia, parentage, language, homeland or origin (paragraph 3). A 2025/26 motion on the inclusion of a specific (declaratory) paragraph on respect of the identity of the autochthonous minorities and ethnic groups recognised in Germany in Germany's Basic Law has been rejected.[5] While the reference to parentage and origin is relevant for the protection of minorities in general, the explicit mention of "language" awards the use of minority languages a specific protection. However, non-discrimination only requires like situations to be treated equally, i.e. a different treatment can be justified if the underlying situations – even based on the criteria mentioned before – are not equal. For example, the role of German as a national language (which is an underlying assumption of the constitution) can often be considered as a justification for the different treatment of minority languages (e.g. German as the court and official language). At the same time, even certain

3 German Federal Constitutional Court, case 2 BvR 123/7, order of 1 August 1978; *Lang*, in Epping/Hillgruber (eds.), Beck-online Kommentar Grundgesetz, 58th edn. (2024), Artikel 2 GG para. 17 f. See also *Pfeil*, Zur Rechtslage der nationalen Minderheiten in Deutschland, Europäisches Journal für Minderheitenfragen, 2023(1–2), p. 93 ff. (98).

4 See in detail *Siegert*, Minderheitenschutz in der Bundesrepublik Deutschland, 1999, p. 100 ff.; *Pallek*, Der Minderheitenschutz im deutschen Verfassungsrecht, 2001, p. 271 ff.

5 Eighth periodical report (Germany), MIN-LANG (2026) PR 3, p. 26 f.

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differences in the quality of language protection of the various regional and minority languages are permissible if a differentiation is objectively justified, for example by characteristics such as the number of speakers, the tradition of the language or the degree of threat to which it is exposed.[6]

1.2. Constitutional guarantees at subnational level

Most of the issues regulated by the Language Charter are matters within the competence of the subnational level, the German regions or states (or *Länder* in German). The protection of fundamental rights afforded by the federal level is mirrored by a similar level of protection in the *Länder* by their constitutions, either through fundamental rights with a similar wording or by reference to the federal constitution. In any case, fundamental rights protection by the *Länder* must not contradict or fall behind the fundamental rights protection guaranteed by the federal constitution (see Articles 31 and 142 of the *Grundgesetz*). Apart from that the *Länder* have a margin of discretion to include other rights in their constitutions or to broaden, complement and enhance the scope of protection for existing federal rights.[7]

Some *Länder* constitutions, especially of *Länder* where minorities or speakers of a regional or minority language (primarily) live, contain specific provisions that address minority (and language) rights.[8] The constitution of Schleswig-Holstein provides in its Article 6 that people are free to commit to a national minority and that the cultural independence and political participation of national minorities and ethnic groups are protected by the state and the municipalities. Furthermore, it expressly states that the Danish national minority, the minority of German Sinti and Roma and the Frisian ethnic group are entitled to protection and support. Furthermore,

6 *Hofmann*, Die ECRM aus rechtswissenschaftlicher Sicht. Begriffe und Maßnahmen auf dem Prüfstand, in Lebsanft/Wingender, Die Sprachpolitik des Europarats, 2012, p. 9 ff. (16); see also CCPR General Comment No. 23: Article 27 (Rights of Minorities), CCPR/C/21/Rev.1/Add.5, sect. 62.

7 See on this German Federal Constitutional Court, case 2 BvN 1/95, order of 15 October 1997 = BVerfGE 96, 345 at p. 365. Cf. also *Unruh*, Artikel 142 GG, in Huber/Voßkuhle (eds.), Grundgesetz, 8th edn. 2024, para. 13; *Sodan*, Artikel 142 GG, in Sodan (ed.), Grundgesetz, 5th edn. 2024, para. 4.

8 See on this in detail *Siegert*, Minderheitenschutz in der Bundesrepublik Deutschland, 1999, p. 108 ff.; *Pallek*, Der Minderheitenschutz im deutschen Verfassungsrecht, 2001, p. 469 ff.

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according to Article 12(4), legal guardians may decide whether their children should attend a school of a national minority. Finally, in line with Article 13(2), the state shall protect and promote the cultivation of the Low German (*Niederdeutsch* or *Plattdeutsch*) language.

The constitutions of Saxony and Brandenburg contain specific rules on the Sorbian minority. Article 2(4) of the Saxon constitution allows that in the relevant parts of the *Land* the colours and coat of arms of the Sorbs be used on an equal footing with the *Land*'s colours and coat of arms. Furthermore, Article 5(2) underlines that the state guarantees and protects the right of national and ethnic minorities of German nationality to preserve their identity and to maintain their language, religion, culture and traditions. With regard to the Sorbs specifically, Article 6 proclaims that the state guarantees and protects the right of the citizens of Sorbian ethnicity to preserve their identity and to maintain and develop their language, culture and traditions, in particular through schools, pre-school and cultural institutions. The constitution of Brandenburg contains a very comprehensive provision on the Sorbs in its Article 25. It provides inter alia that the national identity and cultural independence of the Sorbian/Wendish people shall be protected and that the right to the preservation and promotion of the Sorbian/Wendish language and culture in public life and its teaching in schools and day-care centres shall be guaranteed. This includes, among others, that in the traditional settlement area of the Sorbian/Wendish people, Sorbian/Wendish language shall be included in public signage.

Other *Länder* that are not home to a national minority, nonetheless contain in their constitutions provisions on minority protection. Both Saxony-Anhalt and Mecklenburg-Western Pomerania provide for the special protection of the cultural autonomy of ethnic and national minorities and ethnic groups of citizens of German nationality (Article 37 and Article 18 of the constitution, respectively). Mecklenburg-Western Pomerania furthermore prescribes that the state shall protect and promote the cultivation of the Low German language (as a regional language spoken in that area). Most recently, Brandenburg introduced a new constitutional provision (Art. 34(4)) prescribing that the state shall protect and promote the use of the Low German language. Moreover, the same *Land* has introduced a new constitutional clause on peaceful coexistence of people (Art. 7a), opposing inter alia antiziganism and the spread of racist and xenophobic ideas.

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1.3. The European Language Charter and international obligations

As shown in this short overview, minorities and their languages enjoy a high level of protection by the constitution both at federal and at *Länder* level. However, constitutional law only contains (in the negative sense) rights of defence against interference by the state, but not (in the positive sense) requirements to promote the use of minority languages. This gap is filled by the Language Charter, which has been in force in Germany since January 1, 1999.

The Language Charter is, however, not the only international instrument applicable in Germany for the protection of minorities and their languages. First and foremost, the Language Charter, naturally, must be seen in the context of the Council of Europe's Framework Convention for the Protection of National Minorities of 1995, that entered into force in February 1998.[9] Rules relevant to minorities can also be found in Article 14 of the European Convention on Human Rights (ECHR), that bans discrimination based inter alia on language or association with a national minority, and the International Covenant on Civil and Political Rights (ICCPR), whose Article 26 bans discrimination based inter alia on language and whose Article 27 protects minority rights.[10]

International treaties require the consent of the German parliament (Article 59(2) of the *Grundgesetz*). Therefore, they share the same legal status as other acts enacted by parliament: they must comply with the constitution and they have formally no hierarchical precedence over other statutory acts. However, as the Federal Constitutional Court has ruled on numerous occasions, a combined reading of different provisions of the *Grundgesetz* shows that the German constitution is open or 'friendly' towards international law. Accordingly, where there are several possible interpretations of a norm, the meaning that is consistent with the requirements of international law is to be ascribed to it as far as possible.[11] Furthermore, all state powers have a duty to respect international law and implement international obligations

9 Cf. *Pfeil*, Zur Rechtslage der nationalen Minderheiten in Deutschland, Europäisches Journal für Minderheitenfragen, 2023(1–2), p. 93 ff. (96 f.).

10 See on the latter in detail *Taylor*, A commentary on the International Covenant on Civil and Political Rights, 2020, p. 729 ff. and p. 787 ff.

11 German Federal Constitutional Court, case 2 BvR 1107, 1124/77 and 195/79, order of 23 June 1981 = BVerfGE 58, 1 at p. 34.

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as far as possible.[12] Obligations from international treaties and agreements thus gain a sort of *de facto* precedence as regards the application of national law. This applies also vertically with regard to the relationship between federal law and *Land* law. The obligations from the Language Charter as an international instrument thus exert an influence on national law at various levels. Nonetheless, compliance with international obligations must not infringe the constitution, as the latter still remains hierarchically superior.

2. Minority and Regional Languages in Germany

In line with Article 1(a) of the Language Charter, the Federal Republic of Germany has notified Danish, Upper Sorbian and Lower Sorbian (Wendish), North Frisian and Saterland (East)/Sater Frisian and the Romani language of the German Sinti and Roma as minority languages and the Low German language as regional language. Since dialects and languages of immigrants are not covered,[13] the languages mentioned above cover all the regional or minority languages in Germany that fall within the scope of the Language Charter.[14]

The Danish minority lives in Northern Germany in Schleswig, which is a region that is located on both Danish and German territory. This border region has repeatedly changed its political affiliation over the centuries. Today's border between the two countries was laid down in 1920 on the basis of the results of two plebiscites agreed upon in the Treaty of Versailles. South Schleswig belongs to Germany as part of the federal

12 German Federal Constitutional Court, case 2 BvR 955/00, 1038/01, order of 26 October 2004 = BVerfGE 112, 1 at p. 26.

13 Language minorities not covered by the Language Charter include Russian (cf. *Dück*, Russisch, in Beyer/Plewnia (eds.), Handbuch der Sprachminderheiten in Deutschland, 2020, p. 303 ff.), Turkish (cf. *Cindark/Devran*, Türkisch in Deutschland, in Beyer/Plewnia (eds.), Handbuch der Sprachminderheiten in Deutschland, 2020, p. 351 ff), Polish (cf. *Brehmer/Mehlhorn*, Die polnische Minderheit, in Beyer/Plewnia (eds.), Handbuch der Sprachminderheiten in Deutschland, 2020, p. 391 ff.) and German Sign Language (cf. *Jaeger*, Deutsche Gebärdensprache (DGS), in Beyer/Plewnia (eds.), Handbuch der Sprachminderheiten in Deutschland, 2020, p. 429 ff.).

14 Germany, Initial Periodic Report, 20 November 2000, Annex 3: Declaration by the Federal Republic of Germany in Preparation of the Ratification of the European Charter for Regional or Minority Languages of 23 January 1998. Therefore, a recent initiative to have Bavarian included in the list of charter languages is unlikely to succeed. See on this *Böttner*, Bairisch ist keine eigene Sprache – oder doch?, JuWiss Blog 17/2025 of 18 February 2025, https://www.juwiss.de/17-2025/.

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state of Schleswig-Holstein, while North Slesvig (*Sønderjylland*) belongs to Denmark. There is a language minority in both regions. The number of members of the Danish minority in Germany is estimated at around 50,000 people, and in some municipalities they make up as much as 20 % of the total population. All members of the Danish minority understand Danish, most of them speak it and all of them have a good command of German.[15]

The Sorbs are a Slavic people with more than a thousand-year history within the German or Germanic territory. The current language area of Sorbian is Upper Lusatia (with Upper Sorbian) in the north-east of the state of Saxony and Lower Lusatia (with Lower Sorbian) in the south-east of the state of Brandenburg; the Sorbs of the latter area are also known as Wends. The number of persons who consider themselves Sorbs is not known. The estimated number is about 60,000 Sorbs, of whom two thirds live in Saxony, and one third in Brandenburg. They make up around 10 % of the population in the relevant area, in some communities they form the majority, sometimes reaching even up to around 90 %. Approximately 20,000 Sorbs still have a command of Sorbian in both its spoken and written form; all Sorbs speak German as well.[16]

Frisian, as an independent and ancestral language of the North Sea Germanic branch of West Germanic, differs clearly from Dutch, Flemish and Low German and is closely related to Old English in terms of language history. The historic mainland of the Frisians comprises parts of today's Netherlands and North-western Germany. East Frisian has become extinct in the meantime; and only in the Saterland in the Oldenburg region, near the border with the Netherlands, do about 2,000 persons still use Saterland Frisian which forms part of the Old East Frisian subgroup of languages. It persisted over time due to the remoteness of villages where this form of Frisian was and is still spoken. From around the year 1000, Frisians settled to the north of the mainland and developed their own branch of the language, which is related to Old Danish. A number of dialects of North Frisian developed on the North Sea islands particularly. The people considering themselves North Frisians are estimated to number as many

15 Germany, Initial Periodic Report, Sect. 3.1. See also *Pedersen/Stolberg*, Dänisch als Minderheitensprache in Deutschland, in Beyer/Plewnia (eds.), Handbuch der Sprachminderheiten in Deutschland, 2020, p. 17 ff.

16 Germany, Initial Periodic Report, Sect. 3.2. See also *Menzel/Pohontsch*, Sorbisch, in Beyer/Plewnia (eds.), Handbuch der Sprachminderheiten in Deutschland, 2020, p. 227 ff.

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as 50,000 to 60,000 persons, which is one third of the population of this region. Of these, some 10,000 persons still speak North Frisian.[17]

The Romani language of the German Sinti and Roma historically was spoken in a larger number of small regions in Germany. The Nazi government between 1933 and 1945 and its state-sponsored persecution destroyed the historical structures of this ethnic group in Germany and the speech communities. Today, the majority of German Sinti and Roma live in the capital cities and some metropolitan areas of the western German federal states, as well as Berlin and the surrounding area. The Romani language traditionally spoken in Germany, therefore, does not have a uniform language area limited to one state. The Romani of the German Sinti is an independent language derived from Sanskrit and is estimated to be spoken by up to 60,000 people. The Romani of the German Roma is spoken by an estimated 10,000 people.[18]

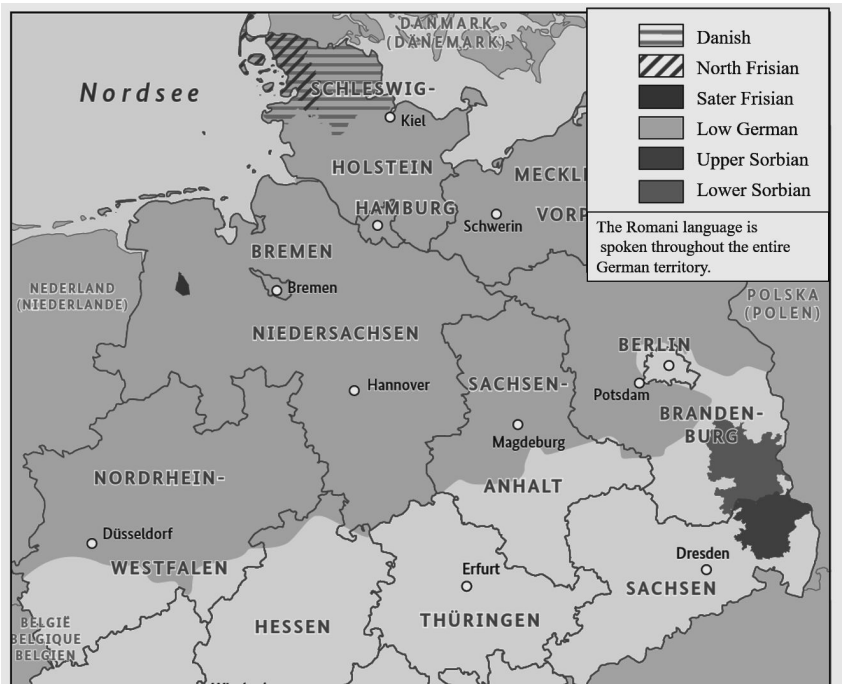
Low German is an original language of the North of Germany. In the 14th/15th century, Low German was the authoritative linguistic medium for the entire Hanseatic economic and cultural area. Later, Low German only played the role of a generally inferior second language to High German, until it was finally relegated to the everyday dialect of the 'common people', especially in the countryside. Today, Low German is traditionally spoken in eight states of the Federal Republic of Germany: Bremen, Hamburg, Mecklenburg-Western Pomerania, Lower Saxony and Schleswig-Holstein in their entire area, Brandenburg, North Rhine-Westphalia and Saxony-Anhalt in only (the northern) parts of their territory. According to a survey conducted in 2016, almost 16 % of people (around 2.5 million people in total) in this language area actively speak Low German.[19]

17 Germany, Initial Periodic Report, Sect. 3.3. See also *Walker*, Die Friesen und das Friesische in Nordfriesland, in Beyer/Plewnia (eds.), Handbuch der Sprachminderheiten in Deutschland, 2020, p. 65 ff. and *Peters*, Saterfriesisch, in Beyer/Plewnia (eds.), Handbuch der Sprachminderheiten in Deutschland, 2020, p. 139 ff.

18 Germany, Initial Periodic Report, Sect. 3.4. See also *Halwachs*, Romanes, die Sprache der Sinti und Roma, in Beyer/Plewnia (eds.), Handbuch der Sprachminderheiten in Deutschland, 2020, p. 271 ff.

19 Germany, Initial Periodic Report, Sect. 3.5. See also *Goltz/Kleene*, Niederdeutsch, in Beyer/Plewnia (eds.), Handbuch der Sprachminderheiten in Deutschland, 2020, p. 171 ff.

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Cf. Federal Ministry of the Interior, Nationale Minderheiten in Deutschland, 2024, p. 9.

3. Federal and Regional Measures implementing the Charter

Due to the federal structure of Germany, the implementation of the obligations assumed under the Language Charter is primarily the responsibility of the *Länder*.[20] Therefore, the obligations under the Charter vary among regions and with regard to the different languages. Since the presence of linguistic minorities is usually geographically limited or the *Länder* generally only have to address one or two of the linguistic minorities, the measures and regulations of the *Länder* are typically specifically designed for the protection and promotion of a particular minority (language). However, there are also measures within the competence of the federal level that

20 *Wich-Reif*, Deutschland (Bundesrepublik Deutschland), in Lebsanft/Wingender (eds.), Europäische Charta der Regional- oder Minderheitensprachen, 2012, p. 39 ff. (43). See also the Seventh Evaluation Report of the Committee of Experts on Germany, MIN-LANG (2022) 7, para. 9.

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regulate general issues or matters regardless of a specific minority language. In this context, it should be borne in mind that – with the exception of Low German – the language groups generally also represent a national minority or ethnic group within the meaning of the Council of Europe's Framework Convention for the Protection of National Minorities. Moreover, language issues are usually *a part of* more comprehensive measures addressing national minorities.

Since the constitutional framework (see above in section 1) opens a space of free development also for minorities, the latter have developed numerous private political and cultural associations that advocate for the use of the respective minority language and provide and establish measures, events and materials for the free development of the use of minority languages. Since the Language Charter is addressed to the States Parties, the following sections will focus on legislative and executive measures.[21] Due to the distribution of competences between the federal and the *Länder* level in Germany and the regional distribution of the minority and regional languages, public measures are manifold and quite divers. This chapter can only be an overview without claiming to be exhaustive.

3.1. Measures at Federal Level

The umbrella organizations of the four national minorities in Germany[22] joined forces in 2005 to form the Minority Council.[23] In addition to the respective chairpersons, two further representatives of the member organizations belong to the Council. The Minority Secretariat, funded by the Federal Ministry of the Interior, was set up in Berlin to provide organisational and financial support to the Council. It promotes the exchange of information between the minorities and the German Bundestag and the Federal Government.

21 The following information is essentially based on the national reports for the various reporting periods. They are not cited individually. The state reports can be accessed on the following page: https://www.coe.int/en/web/european-charter-regional-or-minority-languages/reports-and-recommendations

22 The Sydslesvigsk Forening (SSF), the Central Council of German Sinti and Roma, the Domowina – Federation of Lusatian Sorbs/Zwjazk Łužiskich Serbow/Zwězk Łužyskich Serbow and the Frasche Rädj/Frisian Council Section North, Seelter Buund.

23 https://www.minderheitensekretariat.de/en/minority-council/

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The Commissioner for Matters Related to Ethnic German Resettlers, whose responsibilities were expanded in 2002 to include the national minorities (and thus also minority languages), has been a part of the Federal Ministry of the Interior since 1988. The Commissioner is the primary contact for the national minorities at the federal level and represents the Federal Government in the relevant contact groups.[24] This includes the conferences of the federation and the *Länder* with representatives of the associations of minorities and minority languages and the Low German language group (such as the conference on the implementation of the Language Charter). In addition, there are individual advisory committees for issues relating to the individual minorities and the Low German language group, which ensure contact with the Federal Government and the German Bundestag. All five committees are chaired by the Federal Commissioner.

As regards legislation at federal level, the law regulating one's name is of particular relevance to minority languages. In 1997, the so-called Minority Name Change Act was enacted to implement Article 11 (1) of the Council of Europe's Minorities Framework Convention and it also implements the obligation under Article 10 (5) of the Language Charter. According to this law, a member of a national minority can have their first name or surname changed: 1) He/she may adopt a form of his/her name translated into the language of the national minority or ethnic group if his/her name is amenable to such translation (conceptual transfer); 2) He/she may adopt a name adapted by changing the spelling of his/her name to a sound corresponding to the language of the minority or ethnic group (phonetic transfer); 3) He/she may adopt a name previously used in the language of the national minority or ethnic group if this name has been transferred to a German form or changed to another name. A recent amendment of this act now allows Frisians to adopt a surname that is based on the father's (patronym) or mother's first name (matronym).[25] Moreover, in 2024, the Civil Code was amended (new section 1355b). Henceforth, it is possible for a spouse to bear a family name in a form adapted to their gender. This applies explicitly to members of the Sorbian minority, but also to any other adaptation if this is provided for in a foreign legal system (e.g. Slavic languages or Greek) and this legal system corresponds to the origin of the person concerned or the name traditionally originates from the language

24 https://www.aussiedlerbeauftragte.de/Webs/AUSB/EN/home/home-node.html
25 E.g. "Svensen" as a surname, if the father's first name was "Sven".

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area there. This change in the law serves to promote the integrative and identifying effect of the name.[26]

3.2. Danish

The state of Schleswig-Holstein and some municipalities provide financial support for the work of the *Sydslesvigsk Forening* (SSF), the main organization of the Danish minority for cultural work and the cultivation of the Danish language.

In education,[27] financial support is being provided for language acquisition in Danish, Frisian or Low German in pre-schools. In the primary school sector, there are some model schools where Danish is offered at various grade levels. In secondary schools, Danish is a regular foreign language subject. Appropriate teaching materials are also available in Danish, which are co-financed by the *Land*. For the training of teachers, the universities of Kiel and Flensburg offer Danish as an independent subject, which exists alongside the study programme in Scandinavian Studies (where a focus can be put on Danish). Within the framework of lifelong learning, Danish language courses are also available in the field of adult education, in addition to private courses.

There are special rules for Danish with regard to administrative procedures and communication with authorities. German is the official language. However, according to section 82a (2) sentence 2 of the *Land*'s Administrative Procedure Act, in some counties and municipalities applications, certificates or other documents may be submitted in Danish.[28] In addition, town signs and road signs may be bilingual, but the decision on this is up to the municipalities.[29] Regional and minority languages are also to be included in the implementation of the Online Access Act, i.e. in providing e-government services.

26 See Document No. 20/9041 of the German Bundestag, p. 44 ff. See also *Schmitz*, Schrotschussprinzip im Namensrecht, Zeitschrift für das gesamte Familienrecht 2024, p. 1329 ff. (p. 1333 f.).

27 These measures serve to implement the undertaking under Art. 8 (1) a) iv), b) iv), c) iii)/iv), d) iii), e) ii), f) ii)/iii), g), h), i), and (2) of the Language Charter for the Land of Schleswig-Holstein.

28 Undertaking under Art. 10 (1) a) v) for the Land of Schleswig-Holstein

29 Undertaking under Art. 10 (2) g) for the Land of Schleswig-Holstein.

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In the area of broadcasting, constitutional law mandates that even public broadcasters be independent of the state. Therefore, the states may not exert any influence on the broadcasting programme. This is a point of constant criticism in the evaluation of Germany's implementation of the Charter.[30] The state treaty between Mecklenburg-Western Pomerania, Lower Saxony, the Free and Hanseatic City of Hamburg and Schleswig-Holstein on the establishment of the North-German Broadcasting (*Norddeutscher Rundfunk* – NDR)[31] provides that Northern Germany and the diversity of its regions, their culture and their regional and minority languages are to be regularly and appropriately taken into account in the programmes offered by NDR (section 5(2)). In compliance with this clause, some programmes are offered in Danish language,[32] but this is still regarded as insufficient by the Committee of Experts.[33]

3.3. Sorbian

The Sorbian minority lives in a geographically quite clearly defined area in the *Länder* Saxony and Brandenburg. Both *Länder* have enacted so-called Sorbian laws to implement the respective constitutional provisions.[34] They emphasize the right to ethnic, cultural and linguistic identity of the Sorbs (section 1(2) of the SächsSorbG and of the SWG, respectively).[35] Along these lines, the acts recognize that the Sorbian language is part of the Sorbian identity and an expression of the states' intellectual and cultural wealth (section 8 of the SächsSorbG and of the SWG, respectively). To honour this commitment, public buildings and facilities, roads, paths, squares, bridges and signs in the Sorbian settlement area, must be marked in German and

30 See, most recently, the Seventh Evaluation Report of the Committee of Experts on Germany, MIN-LANG (2022) 7, para. 37.

31 State treaty establishing the North-German Broadcasting of 4–9 March 2021 (German).

32 Undertaking under Art. 11 (1) b) ii). c) ii), d), f) ii) of the Language Charter for the Land of Schleswig-Holstein.

33 Evaluation by the Committee of Experts of the Implementation of the Recommendations for Immediate Action, MIN-LANG (2024) 13, para. 24.

34 Sächsisches Sorbengesetz (SächsSorbG)/Sakski serbski zakoń (SSZ) of 31 March 1999, Official Gazette of the state of Saxony, p. 161; Sorben/Wenden-Gesetz (SWG) of 7 July 1994, Official Gazette of the state of Brandenburg, p. 294.

35 Cf. the general commitment under Art. 7 (1) a) of the Language Charter.

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Lower or Upper Sorbian (section 10(1) of the SächsSorbG and section 11(1) of the SWG).[36]

Education is an important aspect in the *Länder*'s approach to the use and promotion of the Sorbian language.[37] In the traditional territory of the Sorbs, Sorbian is therefore offered as a language class at all levels of pre-school and school education. Fully Sorbian and bilingual day care centres are funded by the *Länder*. Hiring a sufficient number of teachers for Sorbian is, however, still proving to be a problem, particularly in the secondary school sector.[38] Sorbian Studies is available as a course of study at the University of Leipzig; Brandenburg University of Technology Cottbus is preparing to integrate Sorbian/Wendish into its primary school teaching degree programme. In August 2019, a Sorbian language school also began operating as part of the regional teacher training programme. In the evaluation of the German efforts, the Committee of Experts holds more needs to be done to attract enough trainees in order to provide for a sufficient number of teaching staff.[39]

German is also the sole official language before courts and administration in Saxony and Brandenburg. However, section 184 sentence 2 of the Federal Courts Constitution Act (GVG) guarantees the right of Sorbs to use the Sorbian language in courts in their home districts without incurring any costs or other disadvantages.[40] In addition, section 9(1) of the SächsSorbG and section 8(2) of the SWG stipulate that residents of the Sorbian settlement areas may use the Sorbian language before the authorities and institutions of the respective *Land* and before the administrations of the municipalities without incurring financial or other disadvantages. The authorities have the choice of responding to requests in Sorbian or in German. A corresponding obligation to recognize the Sorbian language in

36 Commitment under Art. 10 (2) g) of the Language Charter for the Länder of Saxony and Brandenburg, respectively.

37 Undertaking under Art. 8 (1) a) iii), b) iii) or iv), respectively, c) iii) or iv) respectively, e) ii) or iii) respectively, g), h), (2) for the Länder of Saxony and Brandenburg, respectively.

38 This applies also to other minority languages; cf. the Seventh Evaluation Report of the Committee of Experts on Germany, MIN-LANG (2022) 7, para. 17.

39 Evaluation by the Committee of Experts of the Implementation of the Recommendations for Immediate Action, MIN-LANG (2024) 13, para. 33, 41.

40 Undertaking under Art. 9 (1) a) ii), iii), b) ii), iii), c) ii), iii) for the Länder of Saxony and Brandenburg, respectively.

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electronic communication and in administrative procedures also applies by virtue of the e-government acts of both *Länder*.[41]

The settlement area of the Sorbs falls within the area of two public broadcasters: Berlin-Brandenburg Broadcasting (*Rundfunk Berlin-Brandenburg* – RBB)[42] for the area of Lower Lusatia and Central German Broadcasting (*Mitteldeutscher Rundfunk* – MDR)[43] for the area of Upper Lusatia. The Sorbian laws of both *Länder* stipulate that the Sorbian culture and language must be given appropriate consideration in the programmes of the public media (section 14 of the SächsSorbG and section 12 of the SWG). A representative of the Sorbian minority is a member of the RBB and MDR broadcasting councils, which draw up guidelines for the programmes offered by the respective broadcasters. For the RBB, the state treaty also stipulates that the language and culture of the Sorbian/Wendish people must be taken into account.[44] There are some programmes in Sorbian, but there is a shortage in suitable journalists to extend the programmes. However, due to the constitutionally required independence of the media from state influence, Brandenburg and Saxony hold that they cannot set any binding requirements or quota for the radio or television programmes.

As the (uniform) settlement area of the Sorbs is administratively separated by the border between Saxony and Brandenburg, inter-state cooperation between the two *Länder* is essential (see section 15 of the SächsSorbG and section 13 of the SWG).[45] The vehicle for this cooperation is the 'Foundation for the Sorbian People',[46] half of which is financed by the Federal Government, one third by Saxony and one sixth by Brandenburg. The foundation receives additional funding from the means available for the transition of the brown coal region in Lusatia, which is located in parts of the settlement area of the Sorbs, in order to promote measures

41 Undertaking under Art. 10 (1) a) iv)/v), (2) b), (3) c) for the Länder of Saxony and Brandenburg, respectively.

42 State treaty establishing the Berlin-Brandenburg Broadcasting of 17 November 2023 (German).

43 State treaty establishing the Central German Broadcasting of 12 January 2021 (German).

44 Undertaking under Art. 11 (1) a) iii), b) ii), c) ii), d), f) ii), (3) for the Länder of Saxony and Brandenburg, respectively.

45 This is, in essence, what Art. 14 b) of the Language Charter prescribes, but neither of the two states have ratified this undertaking.

46 State treaty between Brandenburg and Saxony establishing the "Foundation for the Sorbian People" of 28 August 1998 (German). See https://zalozba.de

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for the preservation and further development of the language, culture and traditions of the Sorbian people as a national minority.[47] The tasks of the foundation include the promotion of cultural, artistic and heritage institutions of the Sorbs as well as promoting the preservation and further development of the Sorbian language and cultural identity.

3.4. Frisian

In recent years, Frisian has received more attention in pre-school and school education. This applies mainly to North Frisian (in Schleswig-Holstein), but less so to Sater Frisian (in Lower Saxony) due to its narrow geographical range. Schleswig-Holstein provides financial support for language education. The aim of pre-school language education in particular is to familiarize children with the *Land*'s regional and minority languages at an early age. Frisian is taught as a voluntary subject at various public schools in North Friesland at primary level, and Frisian can be chosen as a regular subject at a few secondary schools. However, the number of students is usually low. In addition, there is also a problem with having enough qualified teachers for Frisian, even though considerable efforts have been undertaken to design study programmes. North Frisian can be studied in Schleswig-Holstein at the University of Kiel and the University of Flensburg as part of teacher training programmes. At the University of Oldenburg in Lower Saxony, the specialisation 'Low German and Sater Frisian' is also offered as part of the German studies.[48]

In addition to German as an official and court language, Frisian can also be used in some parts of Schleswig-Holstein. To this end, the *Land* has amended the Administrative Procedure Act and issued its own 'Frisian Act'.[49] According to section 1(2) of the Frisian Act and section 82a (2) sentence 2 of Schleswig-Holstein's Administrative Procedure Act, citizens in the district of North Friesland and on the island of Helgoland can contact authorities and submit documents in Frisian. The authorities can choose

47 See section 17 No. 31 of the act on investments in the coal mining regions of 8 August 2020.

48 Undertakings under Art. 8 (1) a) iii)/iv), b) iv), c) iv), e) ii), g), h) for North Frisian for the Land of Schleswig-Holstein.

49 Act on the promotion of Frisian in public spaces (FriesischG) of 13 December 2004 (German).

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to answer in either German or Frisian. In the district of North Friesland citizens can submit documents and evidence in Frisian in civil proceedings[50] (section 1(4) of the Frisian Act). The same applies to electronic communication within the framework of the so-called Online Access Act.[51] With regard to public visibility, sections 3 and 6 of the Frisian Act stipulate that place name signs, road signs, information signs and signs on public buildings should always be bilingual in German and Frisian.[52]

As mentioned in the context of the Danish language (see above 3.2), the state cannot intervene in the planning of the programme of public broadcasting, especially that of the North-German Broadcasting (*Norddeutscher Rundfunk* – NDR), but the region's cultural and linguistic diversity must be taken into account in the programmes offered by NDR. There are, therefore, a number of radio and television programmes that are broadcasted in Frisian,[53] but again, this is considered insufficient by the Committee of Experts.[54]

The *Nordfriisk Instituut* (North Frisian Institute)[55] as a central scientific institution in North Frisia is of great importance for the preservation, promotion and research of the Frisian language, culture and history. The institute is an affiliated institution of the University of Flensburg. It is primarily active in the fields of language, history and regional studies of North Frisia, both academically and in the field of publishing. It is funded in particular by the state and local authorities. In 2020, the *Friisk Stifting* (Frisian Foundation) was established by Schleswig-Holstein (and co-funded by the federal level) as a new, important player in the promotion and preservation of the Frisian language.[56] The *Friisk Stifting* was modelled on the existing foundation for the Sorbian people. In 2023, the *Friisk Stifting* received new resources for the establishment and development of an "edu-

50 The restriction to civil proceedings is due to the fact that the competent administrative court is located outside of the Frisian language area.

51 Undertakings under Art. 9 (1) b) iii), c) iii), (2) a) and Art. 10 (1) a) v), c) for North Frisian for the Land of Schleswig-Holstein.

52 Undertaking under Art. 10 (2) g) for North Frisian for the Land of Schleswig-Holstein.

53 Undertakings under Art. 11 (1) b) ii), c) ii), d) for North Frisian for the Land of Schleswig-Holstein.

54 Evaluation by the Committee of Experts of the Implementation of the Recommendations for Immediate Action, MIN-LANG (2024) 13, para. 56, 64.

55 https://www.nordfriiskinstituut.eu/

56 Act on the establishment of the "Foundation for the Frisian Ethnic Group in the State of Schleswig-Holstein" of 13 January 2020 (German).

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cational institution for Frisian language teacher training, the development of teaching materials and the expansion of Frisian languages classes".[57]

3.5. Romani

The Central Council of German Sinti and Roma[58] is the umbrella organization of nine state associations of German Sinti and Roma and several regional or local associations and institutions. Since 1991, the Central Council of German Sinti and Roma and the Documentation and Cultural Centre of German Sinti and Roma have been supported by institutional funding from *Länder* and the federation. There are, on the other hand, no special state bodies and institutions that deal with the protection and promotion of Romani. This is mainly due to the fact that the members of this language group themselves do not want this. This sentiment is rooted in the oppression and genocide they had suffered during the National Socialist regime.

In this context, the organized Sinti and Roma reject the idea of introducing Romani into the curriculum at public schools or making it the subject of academic research.[59] In addition, the Romani of the German Sinti and Roma is not a standardized (written) language and is often seen by the Sinti and Roma as a kind of 'peer group language' that should not be taught by state institutions. Language lessons are therefore not offered in schools, nor are there Romani language courses and formal education at university level. Due to existing reservations within the Sinti community regarding the teaching of Romani to non-Sinti, funding is provided almost exclusively to projects in which both students and staff belong to the Sinti and Roma community. Only in the area of pre-school education there are very few institutions in which Romani also plays a role. Almost all educational measures and programmes in Romani are *for* Sinti and Roma. Incrementally, however, in recent times steps are taken for teaching Romani language and culture.[60]

57 Mid-Term Report following the Seventh Report of the Federal Republic of Germany, MIN-LANG (2023) IRIA 5, p. 14 f.

58 https://zentralrat.sintiundroma.de/en/

59 See also *Pfeil*, Zur Rechtslage der nationalen Minderheiten in Deutschland, Europäisches Journal für Minderheitenfragen, 2023(1–2), p. 93 ff. (103) as well as the Seventh Evaluation Report of the Committee of Experts on Germany, MIN-LANG (2022) 7, para. 83.

60 See the Mid-Term Report of the Federal Republic of Germany (2023), p. 57 ff.

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For the same reasons, there is no interest on the part of the speakers in using Romani in administrative or court proceedings. Accordingly, no rules have been issued in this regard. Nonetheless, a number of undertakings have been ratified with regard to Romani by the Federal Republic of Germany and the German *Länder*. Therefore, the Charter's Committee of Experts is called upon to evaluate the implementation also of these undertakings. The commitments Germany entered into on the one hand and the wishes of the speakers on the other hand need to be reconciled, which requires more effort, but also sensitivity on the part of the German authorities.[61]

Recently, for example, state cooperation with regional associations has intensified. In 2025, the regional interest representation for Rhineland-Palatinate (*Verband Deutscher Sinti & Roma, Landesverband Rheinland Pfalz e.V.*) has entered into a state treaty, which further develops the framework agreement of 2005.[62] In the treaty, the *Land* commits to intensifying political and educational measures to strengthen historical awareness and the culture of remembrance with regard to the persecution of Sinti and Roma under National Socialism. A key element is the establishment of an independent antiziganism commissioner. In addition, Rhineland-Palatinate specifically promotes the preservation and cultivation of the culture and language of the German Sinti and Roma through a state cultural commissioner and through substantial financial support for the regional interest representation. In a similar fashion, the states of Baden-Württemberg (2014, renewed 2019), Saarland (2022), Hesse (2022), and North Rhine-Westphalia (2024) have entered into framework agreements with the competent regional associations

3.6. Low German

Low German is the only *regional* language in Germany. Low German speakers living throughout Germany have joined together to form the *Bun-*

61 Cf. also the Seventh Evaluation Report of the Committee of Experts on Germany, MIN-LANG (2022) 7, para. 84 f.

62 Vertrag über die Zusammenarbeit des Landes Rheinland-Pfalz mit dem Verband Deutscher Sinti und Roma, Landesverband Rheinland-Pfalz e.V., official law gazette 2025, p. 239.

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desraat för Nedderdüütsch (Federal Council for Low German – BfN).[63] In November 2017, the *Low German Secretariat* was set up with funding from the Federal Ministry of the Interior and it has been managing the BfN since 2018. It also carries out projects to promote and strengthen the regional language Low German. In 2018, the states of Schleswig-Holstein, Lower Saxony, Bremen and Hamburg founded the Centre for Low German (*Länderzentrum für Niederdeutsch* – LzN), which is tasked with supporting the implementation of the Language Charter. The preservation of the Low German language, literature and culture is supported in particular by the Institute for Low German in Bremen (*Institut für niederdeutsche Sprache* – INS), whose work is financially supported by some *Länder* and the Federal Government.

In summer of 2024, the parliament of Brandenburg passed the Act on the protection and promotion of the Low German language,[64] the first *Land* law of its kind. The act specifies obligations from the Language Charter and the *Land* constitution. Although the act itself does not contain any specific measures, such measures are to be enacted if there is a corresponding regional need. Measures include, among other things, training and further education opportunities for nursery, primary and secondary school teachers, bilingual signage in relevant localities, and cross-border cooperation. The interest groups representing Low German speakers play an important role in determining the needs and measures under the act. The interest groups are also granted the right to bring class action lawsuits in case a state action infringes rights of Low German speakers.

In the main areas where Low German is spoken, i.e. Bremen, Hamburg, Mecklenburg-Western Pomerania, Lower Saxony and Schleswig-Holstein, Low German is part of various educational programmes in pre-school and primary school. The relevant school acts usually refer to Low German and general knowledge of the language as one of the tasks of the respective *Land*'s schools. In the secondary school sector, similar problems arise as with the minority languages, namely that the number of interested students is sometimes too small to provide a structured range of courses. Nonetheless, in recent years, educational efforts (teaching, teacher training, teaching

63 https://www.niederdeutschsekretariat.de/

64 Act on the protection and promotion of the Low German language in the State of Brandenburg – Gesetz zum Schutz und zur Förderung der niederdeutschen Sprache im Land Brandenburg (Brandenburgisches Niederdeutsch-Gesetz – BbgNdG), Official Law Gazette I/24, No. 1.

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materials) have increased and Low German, alternatively or cumulatively to specific languages classes, is part of the general German lessons in the relevant territories.[65] Moreover, some school regulations have lowered the minimum number of students necessary for offering language classes.[66] As regards higher education, Low German can be studied as a major or a minor or as part of other study programmes (e.g. as part of German studies) inter alia at the Universities of Bremen, Hamburg, Greifswald, Rostock, Kiel, Flensburg or Oldenburg. The institutions provide financial resources and staff to varying extents. Moreover, several institutes provide and facilitate scientific research into Low German, e.g. by establishing dictionaries.

As regards administrative procedures, section 82a (2) sentence 1 of the Administrative Procedure Act of Schleswig-Holstein provides that citizens can submit applications, requests and documents in Low German. Different from Danish or Frisian, this applies to all administrative offices of the *Land* and is not limited to specific counties or municipalities. The authorities can choose to answer in either German or Low German. The use of Low German in administrative and court proceedings is allowed also by section 6 of the Brandenburg Act on the Low German language.

In media and broadcasting, Low German is taken into account insofar as this is permitted by the constitutional requirement of state neutrality. Section 3(7) of Bremen's Act on public broadcasting[67] provides that broadcasts in Low German must be represented in the programme to an appropriate extent and on a regular basis. Section 5(2) of the state treaty on North German Broadcasting (*Norddeutscher Rundfunk* – NDR) stipulates that NDR must take appropriate account of the diversity of languages in the NDR broadcasting area – and thus also Low German as a regional language – in its programming. On the internet, NDR offers a special Low German online service in which all content on Low German and the Low German language from NDR television and NDR radio programmes – in particular, from among the regional radio programmes – is bundled and permanently presented.

65 See in this respect the Mid-Term Report of the Federal Republic of Germany (2023), p. 36 ff.

66 See on this, for example, Evaluation by the Committee of Experts of the Implementation of the Recommendations for Immediate Action, MIN-LANG (2024) 13, para. 47.

67 Act establishing Radio Bremen of 12 January 2021 (German).

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4. The Language Charter at 25 – success and necessary efforts

Under the German constitution, minorities and minority languages have enjoyed comprehensive rights and liberties and were protected by the principle of non-discrimination even before the entry into force of the Language Charter. There is no doubt, however, that the Language Charter and its implementation have contributed to the active promotion and dissemination of minority languages. A look at the latest evaluation report[68] shows that the Federal Republic of Germany is compliant with the Charter in many areas and that considerable progress has been made over the years.

This is particularly evident in the expansion of (private) educational programmes, which are secured by constitutional law, as well as in the promotion of minority languages in public education. However, the acquisition of a sufficient number of adequately qualified teachers remains a challenge and a constant point of criticism by the Charter's Committee of Experts. While this problem is part of a general shortage of skilled staff in the field of education, the German *Länder* may still step up their efforts, for example by integrating language classes in the general curriculum, decreasing the minimum number of students required to teach a class, or certain privileges for teachers offering minority language classes. Apart from incentives, however, the state's influence on future teachers enrolling in training in minority languages is limited. In addition, the limited financial resources of the public sector must be reconciled with the expectations for the implementation of the Language Charter, particularly as formulated by the Committee of Ministers.

The fact that the use of minority languages in public life (especially bilingual signage) and in the (public) media has increased is also to be welcomed. This strengthens the identification power of the languages for the minorities and also raises awareness in the general public. The (financial) support for private projects of linguistic minorities is appreciated, as are the increasing efforts in public broadcasting. However, this latter point remains a matter of conflict. It reveals diverging views on what is allowed under the constitutional principle of non-interference by the state in broadcasting. Whereas the Committee of Ministers demands that the production and distribution of radio and television broadcasts and

68 See, for example, the most recent Seventh Evaluation Report of the Committee of Experts on Germany of 15 June 2022 and the Recommendation CM/RecChL(2022)5 of the Committee of Ministers to Germany of 23 November 2022.

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press products be actively promoted by the state, the Federal Republic of Germany and the German *Länder* consider their ability to shape and influence the programmes offered to be limited by the freedom of opinion, broadcasting and the press and the necessary state neutrality. Undoubtedly, the non-intervention principle does not prohibit the state from providing sufficient funding for staff at the broadcasting stations that have a knowledge of the respective minority/regional language and can create respective programmes. Then again, however, public funding is scarce and must be reconciled with other interests and obligations. The use of AI and other technological developments may tackle this issue to some extent, e.g. by editing and amending existing German language programmes in the media library in minority languages.

Another point of criticism, which is also reflected in the scores of the evaluation report, is that regional or minority languages are rarely used in public affairs and communication, i.e. before courts and in administration. In the past, the opportunities to use a regional or minority language before the authorities have increased and are regularly promoted by the state and local governments. On the other hand, legal rules sometimes still limit the use of a regional or minority language to situations where there is insufficient command of the official (German) language. However, as almost all speakers of regional or minority languages are bilingual and also speak German, this often does not apply. Moreover, for the same reason there is not a huge demand in practice. Nonetheless, there is still room to increase the efforts to pro-actively and regularly inform about the possibility to use regional or minority languages before courts and ensuring that the necessary translators or interpreters are available.

All in all, more than 25 years of application and implementation of the Language Charter have been a success in promoting minority languages but there are still some aspects where efforts should be increased in the future.

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The Implementation of the Language Charter in Hungary

Lessons Learned and Future Challenges

Elisabeth Sándor-Szalay, Petra Lea Láncos

1. Introduction

The implementation of the Language Charter in Hungary has been an evolving process marked by successes, challenges, and ongoing developments. Over the past decades, Hungary has sought to guarantee language rights through a structured legal framework, yet the practical enforcement of these rights continues to face obstacles. This chapter examines the historical and legal context of minority language rights in Hungary, analyses key issues arising from the implementation of the Charter, and discusses recent census data and its implications for language use. Additionally, it highlights key recommendations of the COMEX and reflects on the broader socio-political dynamics affecting linguistic minorities in Hungary.

2. The Legal Framework for Minority Language Rights in Hungary

When it comes to the status of national minorities in Hungary, it is worth recalling our state founder, Saint Stephen's admonitions to his son: „For as strangers come from diverse regions of the provinces, they bring with them diverse languages and usages, and diverse learning and arms, all of which not only adorn the royal palace and render magnificent the court, but also abash the arrogance of aliens. For a kingdom of one tongue, or of one custom, is weak and fragile. Wherefore I bid you, my son, support those persons with a good will, and treat them fairly, that they may prefer to continue with you rather than to live elsewhere."

It is in this spirit that Article XXIX paragraph (1) of the Fundamental Law of Hungary (constitution) states that "National minorities living in Hungary shall be constituent parts of the State. Every Hungarian citizen belonging to a national minority shall have the right to freely express and preserve his or her identity. National minorities living in Hungary shall have the right to use their mother tongue, to use names in their own

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languages individually and collectively, to nurture their own cultures, and to receive education in their mother tongues." Paragraph (2) includes that "National minorities living in Hungary shall have the right to establish their self-government at both local and national level." As such, the protection and promotion of national minorities' identity, including their distinctive languages, are constitutionally guaranteed.

Hungary's minority rights framework is built on a comprehensive system of regulation, implementation, and control. The legal foundations include the Fundamental Law of Hungary, international treaties, the Act on the Rights of Nationalities and sectoral legislation. The governance structure comprises national, regional, and local minority self-governments, along with oversight mechanisms involving the National Assembly's Standing Committee on National Minorities in Hungary,[1] the Deputy Commissioner for the Rights of National Minorities (Minority Ombudsman), the State Audit Office, and government bodies.

As far as specific legislation regarding minorities is concerned, historically, two major acts protecting national minorities were passed in Hungary. Following the change of political regime after the collapse of socialist rule in Hungary, new laws were enacted to enforce democratic principles in the country. Among others, an important new law was adopted on the rights of national and ethnic minorities (Act No. LXXVII of 1993). As Dobos explains, many see the 1993 Act as Hungary's attempt to provide a model for minority rights protection and as a demonstration of good will towards neighbouring countries, i.e. kinstates of minority language speakers living in Hungary. In this reading the Act was construed primarily for the benefit of Hungarians living in the neighbouring countries, which, through the elaboration of a modern and comprehensive system of protection and promotion sought reciprocity from its counterparts. At the same time, as Dobos points out, several politicians involved in the change of political regime belonged to national minorities, who, among others, also took part in drafting the new Act.[2]

1 The Standing Committee on National Minorities in Hungary comprising the German nationality MP and the representatives of 12 further recognized nationalities may submit bills and form opinion on bills. Its competence extends to matters covered by the Charter. The COMEX considered the Standing Committee on National Minorities in Hungary to be good practice in Europe. Seventh report of the Committee of Experts in respect of Hungary, Strasbourg, CM(2019)86, 21/05/2019, para 8–9.

2 Balázs Dobos: A szakpolitikai célok meghatározásának problémája a magyarországi kisebbségpolitikában, MTA JTI Working Papers 2015/10, 4–6.

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The 1993 Act afforded protection to national and ethnic minorities, recognizing them as an integral part of Hungary's cultural heritage and declaring that "the right to national or ethnic identity is a fundamental human right enjoyed by individuals and communities alike" (section 3 paragraph (2)). The Act protected traditional minorities, defined as those groups that have been "been resident on the territory of the Republic of Hungary for at least a century, [and constitute] a numerical minority among the population of the State, whose members are Hungarian citizens and who are distinguishable from the rest of the population by their language, culture and traditions, and who also demonstrate a sense of belonging which is aimed at preserving these and at expressing and protecting the interests of their historically established communities" (section 1 paragraph (2)). The minority languages protected under the 1993 Act were Bulgarian, Romani and Beás (Boyash), Greek, Croatian, Polish, German, Armenian, Romanian, Ruthenian, Serbian, Slovak, Slovene and Ukrainian, which could be freely used in private and public life, including bilingual administration in municipalities where a significant percentage of the population belonged to one or more of the protected communities. Areas of protection and promotion covered cultural traditions, historical heritage, media and education in the minority language at all levels. An important right of national and ethnic minorities was the right to establish minority self-governments in municipalities where a 'sufficient number' of minority citizens resided. These self-governments played a part in both local and national political participation, minority cultural life and the maintenance of educational institutions (all which are important areas of minority language use). Finally, the Act foresaw that the operation of minority institutions be funded through the national budget.

While the 1993 Act was amended several times, twenty years on, the legislator deemed it necessary to pass a new act on the protection of the rights of nationalities (Act No. CLXXIX of 2011), with new terminology referring to both national and ethnic minorities as 'nationalities'.[3] The designation nationality was meant to overcome the dichotomy of majority population and minority communities, and the belittling quality of the word 'minority'. The new 2011 Act did not bring about changes regarding the definition and status of nationalities, but specified that bilingual administration in

3 Balázs Szabolcs Gerencsér, Gondolatok az új nemzetiségi törvényről, Pázmány Law Working Papers 2012/34, 5.

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municipalities is guaranteed where the members of a given recognized nationality constitute at least 20 percent of the population. Where at least 10 percent of the municipal population is made up of members of a nationality, forms, decrees are to be translated into their language, including signages. Upon request, municipal media services must be made available in the nationality's language (section 6 paras (1) to (3)). Finally, the Act also made certain changes to the election of minority self-governments, with the goal of resolving the problems of double voting and the so-called 'ethno-business' [where] people belonging to the majority can participate in national minority elections, thereby manipulating electoral results".[4]

Over the past twenty years, data from the national censuses show that the number of persons identifying as a member of a nationality in Hungary has first generally grown, declining sharply in the latest 2022 census. This 'volatility' may be explained by several factors. Already in 2001 the COMEX in its Evaluation Report noted that "The numbers of minority-language speakers in general are rather disputed. Owing to the historical situation of minority languages during the last few decades, it is evident that users of such languages are reluctant to declare officially that they are mother-tongue speakers of a minority language. The official census thus systematically underestimated the number of users of regional or minority languages. On the other hand, estimates given by the minority associations themselves are not necessarily reliable".[5] It is in this context that the national legislation detailed above operates.

	2001	***2011***	***2022***
Bulgarian	*2316*	*6272*	*6109*
Greek	*6619*	*4642*	*6178*
Croatian	*25730*	*26774*	*21824*
Polish	*5144*	*7001*	*7398*
German	*120344*	*185696*	*142551*
Armenian	*1165*	*3571*	*4199*
Roma	*205720*	*315583*	*209909*
Romanian	*14781*	*35641*	*27554*

4 Péter Kállai, How to Lose (the Almost) Guaranteed Representation – Recent Developments concerning Roma Parliamentary Representation in Hungary. ECMI Minorities Blog. https://doi.org/10.53779/DJPM0924.

5 Evaluation Report of the Committee of Experts on the Application of the Charter in Hungary, Strasbourg, 4 October 2001, ECRML (2001) 4, para 11.

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	2001	**2011**	**2022**
Rutenian	*2079*	*3882*	*7111*
Serbian	*7350*	*10038*	*11622*
Slovakian	*39266*	*35208*	*29881*
Slovenian	*4832*	*2820*	*3965*
Ukranian	*7393*	*7396*	*24615*
	442739	***644524***	***502916***

1. Table: Comparative national census data on self-reported minority affiliation in Hungary. Light gray: growth in self-reported affiliation membership, dark gray: decline in self-reported affiliation.

Yet despite the new Act on the protection of the rights of nationalities and its forward-looking provisions, the practical application of minority language rights often falls short due to bureaucratic inefficiencies, limited funding, and a lack of societal awareness about linguistic diversity. In the following section, we take a closer look at the ratification and implementation of the Charter in Hungary.

3. Ratification and Languages Covered by the Charter

Hungary signed the Charter on 5 November 1992, being among the first States Parties to ratify the Charter through Resolution No. 35/1995. (IV. 7.) of the National Assembly taken on 7 April 115. The Charter entered into force in respect of Hungary on 1 March 1998, covering the protection of Armenian, Boyash, Bulgarian, Croatian, German, Greek, Polish, Romani, Romanian, Ruthenian, Serbian, Slovakian, Slovenian and Ukrainian. Part II of the Charter covers only Armenian, Bulgarian, Greek, Polish, Ruthenian and Ukrainian, while the other protected languages are subject to further commitments made under Part III.

In respect of Romani and Boyash, there is a slight difference in ratification under Article 10 (administrative authorities and public services), while the ratification for Croatian, German, Romanian, Serbian, Slovak and Slovene is exactly the same. It is worth noting, that although there is no minimum ratification of provisions foreseen by the Charter under Article 14 (transfrontier exchanges), Hungary ratified both paragraph (a) and (b) for each of its protected languages. An important vehicle for imple-

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menting these commitments is the work of so-called joint committees set up between Hungary and its neighbour states, and Germany, respectively.

While Hungary did not over-ratify for its Charter languages, it selected 49 undertakings for Romani and 47 undertakings for Boyash, Croatian, German, Romanian, Serbian, Slovak and Slovene, that is, commitments well over the minimum number prescribed under Article 2 paragraph 2 ECRML.

4. Key Challenges in Implementing the Charter in Hungary and Recurrent Recommendations

Several overarching issues have emerged from the implementation of the Charter in Hungary. One of these is that Hungarian authorities formally comply with minority language provisions, however, legal compliance does not always translate into effective implementation. Authorities tend to focus on procedural formalities rather than substantive improvements in minority language use. In addition, while minority communities are formally involved in policymaking, their influence on substantive decisions remains limited. The consultation processes often do not result in meaningful changes in language policy or resource allocation.

A related problem may be the delimitation of competences related to nationalities within the Hungarian governance system. Over the past 30 years since the entry into force of the Charter for Hungary, the responsible authorities were changed under the successive governments (with the notable exception of the Minority Ombudsman – although the independent minority ombudsman position was transformed into a deputy ombudsman position from 2012). While the Act on National Minorities and related legislation do not distinguish between smaller and larger communities, smaller and larger minority languages, competences in the government structure are fragmented. Indeed, the affairs of the Roma community have been placed entirely under the competence of the Ministry of Interior as part of the catching-up strategy devised for the benefit of this community. Meanwhile the affairs of the other twelve nationalities are generally assigned to the State Secretariat of the Prime Minister's Office (which also responsible for religious affairs). Next, the entire minority education sector is placed under a state secretariat in the Ministry of the Interior, with pre-schools and schools being typically maintained by the self-governments. Finally,

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national minority cultural affairs have been placed under the responsibility of a separate ministry.

One of the most critical challenges is the persistent decline in minority language education. Despite repeated COMEX recommendations, Hungary has struggled to ensure sufficient teacher training programs (German, Slovak, Romanian, Slovenian and Romani, Boyash), with Hungary admitting that "the situation of nationality teacher training and the efficiency of teaching nationality languages needs to be improved".[6] A further problem is the lack of adequate teaching materials for minority language instruction. A broader crisis regarding the social and economic status of the teaching profession has exacerbated this issue, making it increasingly difficult to recruit and retain qualified minority-language educators. In this context, the Roma community, the largest ethnic minority in Hungary, faces systemic barriers in accessing education in their native languages. While Romology studies exist at the University of Pécs and the University of Debrecen, enrolment numbers remain strikingly low, with merely 17 persons enrolling to study Romology in 2023 at all universities offering the major in Hungary combined.

As far as primary and secondary education is concerned, despite the requisite legal provisions, national minority education remains precarious. The Hungarian government introduced a policy allowing national minority classes with fewer than eight students, but in practice, many institutions hesitate to maintain small minority language classes due to funding constraints and a shortage of teachers. Certain schools playing an important role in implementing the ECRML and sustaining minority language use in Hungary are now facing new threats. Bilingual schools, such as the *Tamási Áron Primary School, Secondary School and German Nationality Secondary School* have become an attractive target for private universities who are making offers to take over and transform these schools into tuition based private schools.[7]

While not a Part II language, the education in Ukranian is a notable example for progress in recent years. Thanks to the successful mobilization of the proactive Ukranian community in Hungary, *the Magyar-Ukrán Két Tanítási Nyelvű Általános Iskola és Gimnázium* was established on Csepel

6 Seventh report of the Committee of Experts in respect of Hungary, Strasbourg, CM(2019)86, 21/05/2019, para 17.

7 https://telex.hu/belfold/2024/03/02/tamasi-aron-iskola-gabor-denes-egyetem-atvetel-tankerulet-valasz.

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island, Budapest in 2023. Similar initiatives by the Greek and Polish communities have led to the creation of primary schools and kindergartens. These cases highlight the importance of community activism in preserving linguistic heritage.

University-level minority language programs are offered throughout Hungary, but they do struggle with low enrolment numbers. The lack of well-developed undergraduate and pedagogical training courses in certain minority languages significantly limits the professional formation of minority language educators. Indeed, certain formerly renowned and popular university departments are closing; a recent example would be the German Department and the major in German offered at Pázmány Péter Catholic University.

	2001	***2011***	***2022***
Bulgarian	*1118*	*2756*	*2027*
Greek	*1974*	*2346*	*2167*
Croatian	***14788***	***16053***	***9171***
Polish	*2659*	*3815*	*3520*
German	***53040***	***95661***	***66491***
Armenian	*300*	*496*	*901*
Romani, Beás	***53323***	***61143***	***31173***
Romanian	***8215***	***17983***	***13633***
Ruthenian	*1068*	*1131*	*2382*
Serbian	***4186***	***5713***	***6017***
Slovakian	***18057***	***16266***	***12521***
Slovene	***3119***	***1745***	***1732***
Ukranian	*4519*	*3245*	*15356*
	166366	***228353***	***167091***

2. Table: Comparative national census data on self-reported minority language use in families, with friends. Light gray: growth in self-reported language use, dark gray: decline in self-reported language use.

Recent census data reveal declining numbers of individuals identifying with certain minority communities. This trend raises concerns about language transmission within families and the overall vitality of minority languages. Notably, the decline in speakers of Romanian, Slovak, and other smaller

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minority languages suggests that existing policies have not been sufficient to reverse linguistic assimilation. Indeed, except for Serbian, all Charter languages show a decline in self-reported language use within the family and with friends, based on the most recent national census data.

Slovak belongs to those Charter languages in Hungary that has shown a consistent decline in the number of self-reported users throughout the censuses conducted at national level. In fact, as the COMEX noted, "the linguistic assimilation of Slovaks in Hungary is very far-gone".[8] The COMEX's 2016 report noted the exceptional priority given to supporting Slovak in education through substantial funds and the increasing attachment of Slovak speakers to Slovak culture,[9] which may reverse the decline in speaker numbers.

Meanwhile, Armenian is an interesting case, since the number of speakers seems to be growing, notwithstanding the fact that the Part II language „traditionally spoken by the Armenians in Hungary is nowadays hardly used and currently not taught in school".[10] Nevertheless, the latest census data shows an increase in the number of speakers, the reasons for which should be further explored. Something similar may be observed in respect of Ruthenian, where the number of self-reported speakers is on the rise. This trend was already recognized by the COMEX in 2004, where it noted, that although Ruthenian is a traditional, territorial language in Hungary, "it appears that a part of the Ruthenian-speaking community is of more recent origin".[11] A very relevant aspect of the state protection of minority languages without a kinstate was touched upon by the COMEX, where it pointed out that "since there is no state where Ruthenian is an official language, […] the speakers or Ruthenian in Hungary can therefore not rely on support from another state."[12]

A notable difference between the number of persons identifying as members of the Roma community and those self-reporting as speaking Romani

8 Sixth report of the Committee of Experts in respect of Hungary, Strasbourg, CM(2016)144, 12/10/2016, para 617.

9 Sixth report of the Committee of Experts in respect of Hungary, Strasbourg, CM(2016)144, 12/10/2016, para 620–621.

10 Seventh report of the Committee of Experts in respect of Hungary, Strasbourg, CM(2019)86, 21/05/2019, para 42.

11 Evaluation Report of the Committee of Experts on the Application of the Charter in Hungary, Strasbourg, 1 July 2004, ECRML (2004) 5, para 23.

12 Evaluation Report of the Committee of Experts on the Application of the Charter in Hungary, Strasbourg, 1 July 2004, ECRML (2004) 5, para 23.

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or Boyash in the family or with friends is striking. As the COMEX noted, "The majority of Roma/Gypsies have lost their native language, speaking only Hungarian as mother tongue (although often with severe deficiencies in linguistic skills). Only some 20 % of people of Roma/Gypsy origin still speak Romani. An additional 10 % of Roma/Gypsies still use 'Beás', an archaic version of the Romanian language."[13] In 2004 the COMEX concluded that even if only a quarter of the Hungarian Roma community spoke Romani or Boyash, this would mean the national language policy should aim to provide language education for at least 120 000 to 200 000 persons, rendering the existing facilities for teaching these minority languages "clearly insufficient, if not purely symbolic".[14] A recurrent theme of COMEX evaluation reports is the recommendation to make available Romani education facilities and teacher training.[15] The COMEX repeatedly makes reference to the persistent discrimination faced by the Roma population in various fields, including education. In fact, due to the low esteem of those working in higher education, the poor funding of courses (especially smaller courses) in general, the very low number of enrolments from kindergarten in Romani[16] to university training in Romology in particular, the prospects for improving the situation of the Romani and Boyash in education – if nothing changes – is poor. Under these circumstances, it is perhaps no surprise, that the 2022 census data show that the number of self-reported Romani and Boyash users has sharply declined over the past 10 years, evidence that the Charter protection has not sufficed to maintain or increase the number of language users and more should be done to ensure the vitality of the language.

13 Evaluation Report of the Committee of Experts on the Application of the Charter in Hungary, Strasbourg, 4 October 2001, ECRML (2001) 4, para 13.

14 Evaluation Report of the Committee of Experts on the Application of the Charter in Hungary, Strasbourg, 1 July 2004, ECRML (2004) 5, para 47.

15 Eg. Evaluation Report of the Committee of Experts on the Application of the Charter in Hungary, Strasbourg, 20 June 2007, ECRML (2007) 5, para 30; Evaluation Report of the Committee of Experts on the Application of the Charter in Hungary, Strasbourg, 10 June 2010, ECRML (2010) 2, para 38; Evaluation Report of the Committee of Experts on the Application of the Charter in Hungary, Strasbourg, 14 December 2016, ECRML (2016) 6, para 116.

16 Evaluation by the Committee of Experts of the Implementation of the Recommendations for Immediate Action contained in the Committee of Experts' seventh evaluation report on HUNGARY, Strasbourg, 8 October 2020, MIN-LANG (2020) 14, para 34.

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While languages without a kinstate are in a particularly dire situation when it comes to teacher and (up to date and age appropriate) teaching material shortages, even languages with a kinstate are not necessarily well-served with importing teachers and teaching materials for lack of a better alternative (e.g. Slovak or Greek in Hungary).[17] Charter languages are minority languages, with users of a distinctive culture and needs, which are not seamlessly served by kinstate teaching materials catering to a majority, official language.

Even though Hungary ratified for the use of minority languages in the areas of administrative authorities and public services, in its last report the COMEX noted that „no progress was observed during the last monitoring cycles. No structural measures have been taken to prepare public service providers for the use of such languages".[18] While the COMEX had been urging Hungary to provide incentives for staff members of state and local administrations to learn minority languages, and give preferential treatment to candidates who speak a minority language in hiring administrative staff, the broad education policy stance taken recently by the Hungarian legislator is not conducive to language learning in general, or learning minority languages in particular for career purposes. Indeed, in 2022[19] the legislator repealed the provision of the Act on Higher Education[20] which foresaw that a university diploma may only be awarded to those holding at least a B2 level language exam in a foreign language (with stricter rules applying to awarding diplomas in certain disciplines).

Nor can Hungary demonstrate that there has been any minority language use in court proceedings and the state should take steps to encourage users to make use of the available facilities.[21] For example, in its 2004 report, the COMEX pointed out that the commitment made by Hungary regarding the use of minority languages in court (Article 9 para 1 b. ii. and b. iii. ECRML)

17 Evaluation Report of the Committee of Experts on the Application of the Charter in Hungary, Strasbourg, 20 June 2007, ECRML (2007) 5, paras 34–35. Evaluation Report of the Committee of Experts on the Application of the Charter in Hungary, Strasbourg, 14 December 2016 ECRML (2016) 6, paras 625–627.

18 Seventh report of the Committee of Experts in respect of Hungary, Strasbourg, CM(2019)86, 21/05/2019, para 28.

19 Act No. LIX. of 2022 on amending certain laws relating to higher education, vocational training and adult education.

20 Act No. CCIV of 2011 on National Higher Education.

21 Seventh report of the Committee of Experts in respect of Hungary, Strasbourg, CM(2019)86, 21/05/2019, para 23.

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were not fulfilled merely by putting into place legislation allowing such use, but must also involve "a certain degree of practical implementation", for which a few cases reported in the monitoring cycle do not suffice.[22]

As far as the use of Charter languages in the media is concerned, by 2019 short programmes in minority languages on public radio and television broadcasts are available (although their length should be extended and their time slot should be changed to a more popular time), furthermore, Hungary supports the publication of minority language newspapers. Speakers' representatives seem to be unlocking the potential of new media "as new media tools for the promotion and use of minority languages".[23] Finally, while the COMEX's 2019 report found that „Hungary has a well-developed network of cultural facilities using regional or minority languages"[24] referring primarily to the number of museums centering on nationalities' culture and ethnography, a recent investigation of the Minority Ombudsman into the legal, financial and professional system underlying nationalities' museum network found that there were grave problems of public financing and ensuring the next generation of professionals in the field.[25]

5. Conclusion

Despite Hungary's comprehensive institutional and legal framework for minority language protection, the effective implementation of the European Charter for Regional or Minority Languages remains a challenge. Key obstacles include teacher shortages in minority language education, lack of financing and assimilation. The most recent census data underscore the urgency of revitalizing minority languages through targeted policies and community engagement. Moving forward, Hungary must address structural deficiencies in education, enhance financial support for minority cultural and language programs, and foster greater awareness of the benefits of linguistic diversity to ensure the prestige and vitality of its minority languages.

22 Evaluation Report of the Committee of Experts on the Application of the Charter in Hungary, Strasbourg, 1 July 2004, ECRML (2004) 5, para 91.

23 Seventh report of the Committee of Experts in respect of Hungary, Strasbourg, CM(2019)86, 21/05/2019, para 35.

24 Seventh report of the Committee of Experts in respect of Hungary, Strasbourg, CM(2019)86, 21/05/2019, para 37.

25 https://www.ajbh.hu/en/web/njbh/-/2681089-65 (accessed: 16 April 2025).

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Papiamentu, a regional language on the threshold of recognition[1]

Bastiaan D. van der Velden

Papia ta un kos y hasi ta otro
(Talking is one thing, taking action is the other)

1. Introduction

Let me take you to a small island, 60 kilometres off the coast of Venezuela, in the Caribbean Sea. Bonaire, covering 294 km², is the easternmost of the three Dutch islands: Aruba, Curaçao, and Bonaire. All three are part of the Kingdom of the Netherlands. The inhabitants speak the local creole, Papiamentu.

When the European Charter for Regional or Minority Languages was being drafted, few people likely considered the implications of applying the Charter in a Caribbean context – where a dominant colonial language, Dutch, spoken by only a small portion of the population, has for centuries failed to displace the local creole.

The inclusion of Papiamentu in the Charter is not only remarkable; it is exceptional. New regional languages are rarely added to the ECRML, and even more rarely is this a language spoken outside continental Europe.[2] The recognition of a Caribbean creole highlights complex questions of linguistic justice and colonial legacy. This chapter examines why this case is significant – and why it warrants more in-depth scholarly consideration.

1 I would like to thank Ruben Severina, Wim Gijsen, Elsmarie Beukenboom, Geraldine Dammers and all the other volunteers connected to Academia Papiamentu and SPLIKA. For reading earlier versions of this paper, I would like to thank my colleagues Igor van Loo, Yuri Michielsen, Liesbeth Echteld, Ronnie Severing, Viola Heutger and Rene de Groot, who initiated me in the field of law and language.

2 On the outer frontier of Europe, in the past decade, Tamazight (Berber) in the Autonomous City of Melilla and Arabic in the Autonomous City of Ceuta were recognized under the ECRML after intervention of the Committee of Experts of the Council of Europe. María Acracia Núñez Martínez, 'The protection of minority languages at the European level', *Revista de Derecho Político*, N.º 87, mayo-agosto 2013, p. 101–128.

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Papiamentu, which is spoken on Bonaire, is a regional language according to the definition of Article 1 of the ECRML, because the island's population total 26,552 permanent residents (Jan. 2025, an increase of 10,011 since 2012) and there are approximately 250.000 Papiamentu speakers in Europe, form a numerical minority compared to the rest of the population of the Netherlands (almost 17 million people, with Dutch as the official language). Papiamentu is different from the official languages of the Netherlands, which are Dutch and, in some areas, Frisian. Papiamentu is not a dialect of Dutch. According to the 2001 census of the Netherlands Antilles, Papiamentu was the home language of 74.7 % of the inhabitants of Bonaire. Papiamentu has been traditionally used on the islands of Bonaire, Curaçao, and Aruba since the second half of the 17th century.[3] It is also spoken in some provinces of Venezuela, although on the South American mainland, the language is nearly extinct. Papiamentu has deep roots in the trade of enslaved people from Africa, as the neighbouring island Curaçao was a significant trade hub, and the language served as a lingua franca here.[4] Academic scholars debate the origins of Papiamentu. The majority shares the opinion that Papiamentu originates from a single Afro-Portuguese proto-Creole. This proto-Creole functioned as a lingua franca in Western Africa during the times of the transatlantic slave trade. When visiting Cabo Verde today,

3 The Netherlands Antilles 2001 census posed questions on languages spoken at home, giving percentages of the population living in a "Papiamentu speaking household"; this census is a much broader study and cannot be characterised as a socio-linguistic analysis of society. *Census atlas 2001 Bonaire, Netherlands Antilles,* Willemstad: Central Bureau of Statistics, https://www.cbs.cw/2001-census. In 2013, in the Omnibus Survey Caribbean Netherlands, the term "main language" is used: "Papiamento is the main language of 64 percent of the population; 15 percent speak mainly Dutch, another 15 percent Spanish, and 4 percent English." *The Caribbean Netherlands in figures,* 2013. In 2015 the term "first language" is used (apparently in the Aruban spelling Papiamento): "Papiamento is the most widely spoken language: two-thirds of the population indicate that it is their first language. Dutch is the first language of 15 percent of the population on Bonaire." *Trends in the Caribbean Netherlands*, 2015.

4 Kevin S. Carroll & Joyce. L. Pereira, 'Threat. Inversion. and. Language. Maintenance', in Puerto. Rico. and. Aruba. In: Nancy H. Hornberger ed., *Honoring Richard Ruiz and his Work on Language Planning and BilingualEducation,* Clevedon: Multilingual Matters 2016.On the origin of Papiamentu: Frank Martinus, *The Kiss of a Slave: Papiamentu's West-African Connections*, Curacao: De Curaçaosche Courant, 2004 (Phd thesis Amsterdam 1996); Florimon Camillus Maria van Putte, *Dede pikiña ku su bisiña: Papiamentu - Nederlands en de onverwerkt verleden tijd,* Zutphen: Walburg pers 1999; and Gary C. Fouse, *The Story of Papiamentu: A Study in Slavery and Language,* University Press of America 2002.

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one will hear a language close to Papiamentu in the streets.[5] On the other hand, a second group of academics supporting the so-called polygenetic theory maintains that Papiamentu emerged on Curaçao, drawing on the Spanish language. Throughout the ages, other languages have influenced Papiamentu. Most words related to cleaning are Dutch, while all car-related terminology seems to originate from Anglo-American words.

Until October 10, 2010, the federative state Kingdom of the Netherlands consisted of three autonomous countries: the Netherlands in Europe, Aruba, and the Netherlands Antilles (comprising the Caribbean islands of Bonaire, Curaçao, St. Maarten, St. Eustatius, and Saba). To fulfil a long-standing wish for independence, the Netherlands Antilles was dissolved in 2010, despite a lack of clarity regarding its implications for the tiny communities of Bonaire, Saba, and St. Eustatius (from now called BES-islands, referring to the first letter of the three islands, or officially characterized as "public bodies").[6] After October 10, 2010, this federative Kingdom consists of four independent countries: Aruba, Curaçao, St. Maarten, and finally the Netherlands in Europe (thus the name of the federative state Kingdom of the Netherlands is the same as one of the entities of this state, the Netherlands in Europe). The Netherlands in Europe includes from this date three Caribbean islands: Bonaire, St. Eustatius, and Saba.

In the past thirty years, the administrative unit where Papiamentu is spoken has become highly fragmented.[7] Until 1986, the year Aruba obtained a "*status aparte*," Papiamentu was used in one country, the Netherlands Antilles; until 1976–77 in a non-standardized form.[8] The new political structure means that more and more countries are responsible for the language, a fragmentation that weakens it. After October 10, 2010, three countries in the Kingdom are responsible for the language: Aruba, Curaçao, and the Netherlands, as the BES-municipality of Bonaire is part of the latter. Additionally, Papiamentu is the home language of a significant number of people who live in the European part of the Netherlands.

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5 Bart Jacobs, *Origins of a Creole: The History of Papiamentu and Its African Ties*, Berlin/Boston: Walter de Gruyter 2012.

6 Robert F. Aldrich & John Connell, *The Last Colonies*, Cambridge: Cambridge University Press 1998.

7 Maxy Bak-Piard, 'Will Papiamentu survive on Bonaire?' in: Nicholas Faraclas, Ronald Severing, Christa Weijer & Elisabeth Echteld (eds.), *Crossing shifting boundaries: language and changing political status in Aruba, Bonaire and Curaçao,* Curaçao: FPI/UNA 2010, p. 41–47.

8 E.M. Eckkrammer, 'The standardisation of Papiamentu: New trends, problems and perspectives', *Bulletin suisse de linguistique appliquée*, 1999, 69/1, 59–74.

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We also see fragmentation in the name by which the language is indicated, due to diverging orthographies. The term "Papiamentu" refers to the phonetic orthography that was implemented in 1976 on Curaçao and Bonaire.[9] “Papiamento” is the name of the etymological orthography used in Aruba.[10] "Papiaments" is a generic term, commonly used in Dutch language documents, but this neutral term has no translation into English. The introduction of two different orthographies poses a threat to the language. While local newspapers may use these orthographies interchangeably and adult readers can easily understand the two ways of writing words, and oral communication poses little difficulty in understanding, this inconsistency creates challenges for developing educational resources for schools.

In the new constitutional structure of the Netherlands, which entered into force on October 10, 2010, dissolving the Netherlands Antilles and incorporating Bonaire, Saba, and St. Eustatius to the territory of the Netherlands in Europe, the Netherlands in Europe became responsible for two new regional languages on its territories. Besides Friesian, Lower Saxon, and Limburgish, the two languages spoken on the BES-islands in the Caribbean are regional languages that require special attention: English and Papiamentu. When the ECRML was ratified by the Kingdom of the Netherlands, this international treaty was declared applicable only in the European part of the Netherlands. While the ECRML has protected 1998 Frisian in the European part of the Netherlands under Part III, similar protection was not established after October 10, 2010, for the languages spoken in the Caribbean part of the Netherlands.

In January 2024, the Netherlands declared Part III of the ECRML applicable to the Papiamentu language on the Island of Bonaire. How and when did efforts begin to extend the application of the European Charter for Regional or Minority Languages to Bonaire and secure recognition of Papiamentu, and what obstacles have NGOs and local politicians encountered during the subsequent 15-year process?

9 Island of Bonaire ordinance of February 14, 2013, no. 1 establishing the spelling of Papiamentu in the public body of Bonaire (Papiamentu spelling ordinance).

10 In 1977, Aruba introduced a etymology-based spelling. Papiamento has been an official language of Aruba since May 2003. Marta Dijkhoff & Joyce Pereira, ‘Language and education in Aruba, Bonaire and Curaçao’, in: Bettina Migge, e.o. ed., *Creoles in education: an appraisal of current programs and projects*, Amsterdam: John Benjamins Pub., 2010, p. 244.

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2. Bonaire insists on the application of the Charter.

Already in anticipation of the constitutional reform of October 10, 2010, the population of Bonaire urged the Dutch Government to make the ECRML applicable to Papiamentu. In September 2007, two island deputies from Bonaire visited my office at the University of the Netherlands Antilles, posing questions about the protection of the language of their island: Papiamentu. During that academic year, a course in Law and Language was introduced at this university.[11] In 2004, I defended a doctoral thesis on official languages in the Netherlands and the ECRML.[12] The Bonairians were in the right place to find a preliminary answer. The state reform aimed to integrate Bonaire into the Netherlands in Europe, but several human rights treaties signed by the Kingdom, but only applicable in the European part, were withheld from application on the BES-islands.[13] An approach by the Dutch government that contradicted international legal human rights obligations, though it remained undiscussed over the years 2007–2008.[14]

On February 21, 2008, on International Mother Language Day, Bonairean Deputy Silberie sent a letter to the State Secretary of Interior and Kingdom Relations, Bijleveld-Schouten, on behalf of the Executive Council of Bonaire. The letter expressed concern about the status of Papiamentu in the new state structure (the reform was initially scheduled for later that year but was eventually postponed to October 10, 2010). The Executive Council of Bonaire highlighted the potential role of the existing legal framework concerning regional languages in safeguarding Papiamentu. They wanted BES legislation that did justice to the role and status of Papiamentu in society. Specifically, the members of the Executive Council requested to protect Papiamentu under the ECRML.

11 Instruction was provided by Martha Dijkhoff, Ronald Severing, René de Groot, Bastiaan van der Velden and Viola Heutger.

12 Bastiaan D. van der Velden, *Waar gaan wij heen met het Fries? Het gebruik van de Friese taal in het juridische en in het bestuurlijke verkeer in de laatste twee eeuwen* (Nijmegen: Wolf Legal Publishers 2004).

13 In 2004 a referendum was held on the island of Bonaire. A majority of 59 % voted for a direct link with the Netherlands. 16 % voted for staying within the Netherlands Antilles. 24 % voted for the status of an autonomous country within the Kingdom. Only 0.5 % choose a complete independence of the Kingdom.

14 B.D. van der Velden, 'Herinvoering van de doodstraf', *Antilliaans Dagblad*, 31 March 2008.

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The conclusion in the Executive Council's letter was clear: the BES Public Entities Act (Wol-BES) contained in 2008 indications that English and Papiamentu may only be used if there is a legal basis for their use. Such a legal basis had only been established for the oath. There was no legal basis for the use of English and Papiamentu in administration, so only Dutch could be used on Bonaire, Sint Eustatius, and Saba. Therefore, the Executive Council found that legislation should be created, comparable to the language paragraphs in the Dutch General Administrative Law Act.[15] The letter from the Executive Council to the State Secretary had some positive results: a language regulation for administrative communication was included in the BES legislation.[16]

In a Motion of December 22, 2009, the Island Council of Bonaire called upon the Dutch government to declare the ECRML applicable to Papiamentu in Bonaire. In addition, the island government asked to strengthen ties with other countries where Papiamentu is spoken.

Why wasn't the ECRML applicable to Papiamentu since 1998, or immediately after October 10, 2010? The Kingdom of the Netherlands signs international treaties, and the instrument of acceptance indicates the parts of this federative state to which a treaty will be applicable. Concerning international treaty obligations on the BES islands, a law was enacted to ensure that treaties with a territorial application restricted to the Netherlands in Europe in the pre-October 10, 2010 situation – when there were three independent countries within the Kingdom of the Netherlands – would only be in force in the European part of the Netherlands after this date, and not extended to the BES islands.[17] In the pre-October 10, 2010

15 The Algemene wet bestuursrecht (AWB) contained until January 1, 2014 Art. 7.1: 'Anybody can use the Frisian language in communication with administrative bodies, insofar as they are located in the province of Fryslân.' This article was in the AWB of 4 May 1995 Stb. 302 (23 543) and is a good example of the "codifying approach" of the Dutch government when the ECRML was made applicable on Frisian (Tweede Kamer der Staten-Generaal, 1995–1996, nr. 15, p. 1017–1029). Anno 2025 these provisions are to be found in the Wet Friese taal.

16 In the Second Amendment Act on the public bodies of Bonaire, Sint Eustatius and Saba (32368); these articles have subsequently been integrated into the IBES, see below. B.D. van der Velden, 'Kansen voor het Papiaments', *Antilliaans Dagblad*, 17 May 2010.

17 Wet ter 'Goedkeuring van verdragen met het oog op het voornemen deze toe te passen op Bonaire, Sint Eustatius en Saba, en van het voornemen tot opzegging van verdragen voor Bonaire, Sint Eustatius en Saba' (2nd Chamber, 2008–2009, law number 32 047).

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situation of a federal state formed by three independent countries, such a territorial reservation may have been legitimate in respect of the ECRML.[18] However, in the post-October 10, 2010 situation, with Bonaire, Saba, and St. Eustatius being, from a constitutional perspective, an integral part of The Netherlands in Europe, such a territorial reservation flew in the face of the aims and goals of the ECRML and the basic principles of state succession.

Following the 2010 state reform, the territorial scope of all international treaties in force for the Netherlands in Europe, including the ECRML and Framework Convention for the Protection of National Minorities (FCNM), was limited to the geographical European part of the Netherlands, unless the treaty was included on a "positive list" accompanying this Act (no. 32 047). Members of Parliament inquired about the reasons for not including the ECRML, the FCNM, and the European Charter of Local Self-Government on this list to make them applicable to the BES islands. However, the Dutch government persisted the following years in its decision to introduce these new territorial reservations, even years after ratifying the treaties.[19] The Dutch government announced that following a five-year transition period, the BES legislation could be further aligned with Dutch law; however, this has never transpired.[20]

Such a territorial reservation (making it applicable in the Netherlands, but not on the Caribbean BES islands) of an international treaty that guarantees human rights cannot be made, because it is also contrary to national law; par. 43 of the Statuut of the Kingdom guarantees an equal standard of human rights in the whole of the Kingdom. The Dutch Advisory Council on International Affairs (Adviesraad Internationale Vraagstukken) stated recently, with regard to different regimes for Human Rights protection in The Netherlands and the BES: "These differences are hard to reconcile with the universality of human rights or with the fact that safeguarding fundamental human rights and freedoms is designated as a "Kingdom affair" (article 43, paragraph 2 of the Charter for the Kingdom of the Netherlands)." There is a possibility for specific and different rules in legislation for the BES, as codified in the Grondwet, but this article does not allow for a possibility to differentiate in legislation regarding the language-goals of the ECRML (Artikel 132a lid 4 Grondwet).

18 Jean-Marie Woehrling, *European Charter for Regional or Minority Languages : A Critical Commentary,* Strasbourg: Council of Europe, 2006, p. 267.

19 Tweede Kamer, 2009–2010, 32 047, nr. 7, p. 2.

20 H. Winter a.o., *Vijf jaar Caribisch Nederland: De werking van wetgeving.* Pro Facto 2015.

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The Kingdom of the Netherlands underwent in May 2017 a Universal Periodic Review (UPR) by the Human Rights Council of the United Nations. Four UN member states (Australia, Peru, Romania, and the Russian Federation) explicitly requested during the third UPR action to eliminate differences in human rights between the European and Caribbean parts of the Netherlands.

In the recent report by the Dutch Human Rights Council for the 2022 Universal Periodic Review (UPR), the lack of human rights equality was addressed. In response to this report, State Secretary of Kingdom Relations and Digitalisation Alexandra van Huffelen shared the view of the Netherlands Human Rights Council that the differences in the protection of human rights between the Netherlands and the Caribbean Netherlands must be eliminated as much as possible.[21]

3. Parliamentary discussions

The Dutch government's attitude towards the status of Papiamentu remains consistently indifferent: the language's name is used arbitrarily in administration and legislation, in three ways: Papiamento, Papiamentu, and *Papiaments*.[22] The classification of Papiamentu is also a challenge: "The members of the CDA indicate that the Minister, in the explanatory memorandum, refers to these languages, English and Papiamentu, as minority languages. These languages should probably be defined as regional languages." Reply from the Government: "Yes, the term minority language is ill-chosen, especially considering the possible negative connotations associated with the term "minority". Previously, the term "vernacular [*volkstalen*]" was used in the explanatory memorandum to the WolBES (see Kamerstuk 31 954, nr. 3, p. 23), but that term also creates confusion. Henceforth, the government proposed to use more neutral terms such as "local colloquialisms" or "local

21 Letter of the state secretary to the Human Rights Council of March 14, 2022.

22 See for example the declaration from the Minister of Foreign Affairs of the Netherlands, dated 16 January 2024, registered at the Secretariat General on 22 January 2024, "The Kingdom of the Netherlands declares, in accordance with Article 2, paragraph 2, and Article 3, paragraph 1, of the European Charter for Regional or Minority Languages, that it will apply to the Papiamento (Papiamentu) language on the Island of Bonaire the following provisions of Part III of the Charter". The official language on Bonaire is Papiamentu.

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official languages" in reference to Papiamentu and English on the BES islands."[23]

In January 2010, the BES-Bills still contained many restrictions on the use of Papiamentu. In WolBES, sent to the Parliament on May 26, 2009, only an oath in Papiamentu and English was included.[24] There was no legal basis for the right to use English or Papiamentu in administrative matters by January 2010; therefore, the use of Papiamentu would not be allowed in public bodies and by the administration. The Explanatory Report of the the BES-Bills indicates that without a legal basis, there can be no question of the use of these languages. A legal basis was established only for the oath. It took until April 2010, a few months before the state reform, for a language regime Bill in administrative matters to be sent to Parliament, allowing the use of Papiamentu and English.[25] Also in a later stage in the state reform process, the use of Papiamentu or English was made possible on ballot papers on Bonaire, Sint Eustatius and Saba: "in the case of the election of the members of the island Councils, indications on the candidate list may be made in English or in Papiamentu".[26] Following the constitutional reform of October 10, 2010, the BES Public Entities Act (WolBES) gave the administration on Bonaire, Sint Eustatius, and Saba the discretion to set language regulations. Bonaire's officials worked on it energetically. On the International Day of the Mother Language at the end of February 2013, two draft ordinances were ready to be discussed in the Island Council, one on the spelling of Papiamentu, the second on the language's use in administrative communication.

23 Hand. 2e Kamer, 32 368, A, nr. 7, Tweede Aanpassingswet openbare lichamen Bonaire, Sint Eustatius en Saba, Nota naar aanleiding van het Verslag, 14 September 2010.

24 Art. 15, 47, 77, 100 and 111 WolBES. B.D. van der Velden, 'Kansen voor het Papiaments', *Antilliaans Dagblad*, 17 May 2010.

25 Tweede Aanpassingswet openbare lichamen Bonaire, Sint Eustatius en Saba – A.

26 'Indien het betreft de verkiezing van de leden van de eilandsraden, mogen aanduidingen op de kandidatenlijst in het Engels of in het Papiaments worden vermeld.' The Elections Decree, containing provisions for the implementation of the Electoral Act (Kiesbesluit, houdende voorschriften ter uitvoering van de Kieswet (Stb. 1989, 471) contains rules on the use of Frisian. Candidates for election of the Provincial Council of Fryslân and municipal councils in this province may use indications in Frisian. There were no rules envisaged regarding English and Papiamentu or an amendment of the Electoral Act in connection with the new constitutional status of Bonaire, Sint Eustatius and Saba as a public body within the Netherlands (Vergaderjaar 2008–2009, Kamerstuk 31 956). In the end the Elections Decree (Section IVa, art. Ya 2) was changed.

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4. Language legislation in the Netherlands Antilles (until October 10, 2010)

According to Article 7.1.b ECRML, opportunities for speakers to use a minority language should not be restricted after the redefinition or creation of new administrative divisions. Therefore, in the case of Bonaire, it makes sense to focus on the language regulations in force and actual language usage in the Netherlands Antilles prior to October 10, 2010. Following the state reform, certain parts of the legislation of the Netherlands Antilles remained applicable to the BES-islands, while new laws were introduced in other areas. To identify the provisions to be selected from the ECRML Part III sliding scale menu, a logical starting point would be the body of language legislation in force in the Netherlands Antilles. This would align with the obligations set out in Article 7(1)(b) of the ECRML, which stipulates that new administrative divisions may not constitute an obstacle to the promotion of the regional or minority language or diminish the language rights previously enjoyed by the population. A law on the official languages was applicable in the Netherlands Antilles since 2007, which at that time consisted of Curaçao and Bonaire (mainly Papiamentu-speaking), St. Maarten, Saba, and St. Eustatius (the latter three English-speaking).[27] Three languages were designated as official languages: Dutch, English, and Papiamentu. However, the law on the official languages only foresaw that the government follow the language choice of its citizens ("*taalvolgend beleid*"). The use of Papiamentu or English was allowed in the Island Council and Staten, the parliament of the Netherlands Antilles. Some legal documents could be drafted in Papiamentu or English (Article 2:4 lid 1 BWNA / Civil Code of the Netherlands Antilles), and there were some language rights in criminal matters. There was no overview made of the specific areas within the government where Papiamentu was actively used in the Netherlands Antilles. For example, citizens communicated with ministries and tax authorities in Papiamentu, election information was consistently provided in the language, and during public emergencies, government announcements were made accessible in Papiamentu. Additionally, the language served as a medium of instruction in primary education and was a compulsory examination subject in secondary schools on Bonaire when it was part of

27 B.D. van der Velden, 'Landsverordening officiële talen', *Tar-Justicia*, 2007 no. 3, p. 172–175; B.D. van der Velden, 'Over de ontwikkeling van het gebruik van het Papiamentu als rechts- en bestuurstaal', in: *Una bundel 2007* (Curaçao: UNA 2008) p. 163–198.

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the Netherlands Antilles. This, however, is no longer the case after October 10, 2010.

In the constitutional reform, Bonaire, Saba, and St. Eustatius became public law entities within the European part of the Kingdom of the Netherlands on October 10, 2010. On these islands, Dutch legislation replaced large parts of the existing legislation, overturning the legal regime in place since 2007.[28]

5. Akademia Papiamentu & SPLIKA

As a scholar actively involved in the campaign for the recognition and protection of Papiamentu on Bonaire, I believe it is important to make my position transparent from the outset. This involvement has shaped both my research focus and my understanding of the sociolinguistic grassroots realities. While a scholar can offer insights into existing regulations, articulate a desired legal framework, and propose the legislation necessary for future development, scholarship alone is not sufficient to effect real change. It is also possible to contribute best practices and develop tools for designing language policy and legislation that reflect the social context of a small island community. However, to effectively advocate for the residents of Bonaire, it was essential to establish a civil society presence dedicated to the island's linguistic interests. The collaboration with the SPLIKA Foundation provided a support base in Europe, but advocacy efforts also required a local presence on Bonaire—necessitating the establishment of a dedicated NGO on the island itself.

In 1990, SPLIKA was founded by people from the Aruba, Bonaire and Curaçao residing in the Netherlands to preserve their culture and identity, advocating for the recognition of Papiamentu, and upholding language rights in Aruba, Bonaire, Curaçao, and the Netherlands. SPLIKA's mission is to promote awareness of Papiamentu within the Antillean community and the broader society in the Netherlands. The organization regularly hosts language courses and events, taking also the initiative to safeguard the Kaha di Orgel and Tambu music as intangible cultural heritage. In September 2009, SPLIKA devised a plan to implement the ECRML in Bonaire

28 Maxy Bak-Piard, 'Has Papiamentu survived on Bonaire?', in Nicholas Faraclas, Ronald Severing, Christa Weijer, Elisabeth Echteld, Wim Rutgers & Robert Dupey (eds.), *Embracing multiple identities*, Curaçao/Puerto Rico: UoC/UPR 2016, p. 99–111.

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and potentially in the Netherlands. Despite having the support from the Island Council and the Aldermen of Bonaire, the primary concern was the necessity of a local NGO, a foundation with objectives akin to SPLIKA. Additionally, establishing a network with other NGOs focusing on regional languages was deemed essential. The Fundashon Akademia Papiamentu from Bonaire, a local NGO dedicated to language matters, was established in 2010 with the objective, among others, of granting Papiamentu the same status as Frisian. Akademia Papiamentu collaborated with SPLIKA. A second NGO advocating for language also operates in Bonaire but is less active in the political arena.

To prevent the further dispersion and division of a small language with two spellings used in three countries under four divergent legal systems, an umbrella organization had to be established. In a motion of the Bonaire Island Council on December 22, 2009, the Executive Council (*Bestuurscollege*) was asked to contact the authorities in Curaçao and Aruba to establish a Papiamentu Language Union (*Papiamentu Taalunie*).[29] The "Plataforma Union di Papiamento/u" (United Platform for Papiamento/u Language) was created as a partnership of organizations that promote the language and culture of Papiamentu speakers in the Kingdom.[30]

In November 2012, a public lecture was organized on Bonaire by the Akademia Papiamentu. I was invited to share my knowledge of law, language, and the State reform in the Kingdom. In preparing my lecture, it became clear that after the State reform on October 10, 2010, the Netherlands Antilles law on the spelling and grammar of Papiamentu was abrogated by the Dutch government. Consequently, the official spelling and grammar of Papiamentu on Bonaire had to be formalized once again.

6. A spelling bylaw (2013)

During the parliamentary debate on the BES legislation, the question arose as to which spelling of Papiamentu should be used on Bonaire: the etymological spelling of Papiamento as used on Aruba or the phonetic spelling

29 Eilandsraad Bonaire, 22 Dec. 2009.

30 This platform has been active since February 2012 and includes representation from the following organizations: Fundacion Lanta Papiamento (Aruba), Fundashon Akademia Papiamentu (Bonaire), Instituto Alsa Papiamentu (Curaçao), SPLIKA, and Levende Talen Papiamentu (Netherlands).

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of Papiamentu used in the Netherlands Antilles.[31] Because the Dutch Antillean National Decree of 8 December 2008 on the spelling of Papiamentu and Dutch was not included by the Dutch government in the appendix to the Implementation Act on Public Bodies of Bonaire, Sint Eustatius, and Saba (hereinafter: IBES), it was no longer applicable to Bonaire after the transition of October 10, 2010. From that moment on, there was no legally prescribed spelling for Papiamentu.[32] However, the island council of Bonaire was free to determine "which spelling for Papiamentu will be considered the official spelling to be used."[33] In 2013, the new Papiamentu Island Ordinance stipulates that the phonetic spelling of the "Lista di palabra papiamentu" and the associated "Ortografía di papiamentu" published in 2007 by the Fundashon pa Planifikashon di Idioma (FPI) will be used as a guideline.[34]

7. An Island Regulation on Languages in Administrative Communication for Bonaire (2013)

After October 10, 2010, there was, for a few months, a temporary language law for the BES, identical to the Dutch Antillean law.[35] After January 1, 2011, there was no law for the use of official languages in administration. The Implementation Act on Public Bodies of Bonaire, Sint Eustatius, and Saba contains – analogous to the AWB in the Netherlands at that time – paragraphs on the use of languages in the official communication on the BES-islands. The IBES takes as its starting point that the government, in principle, uses Dutch in written documents (Article 4d IBES). Residents of

31 Up to October 10, 2010, Bonaire used the phonetic spelling in official documents and in schools, similar to Curacao. The *Extra* daily newspaper uses both versions side by side.

32 The appendix as mentioned in art. 2 of the Introduction of the regulations relating to the public bodies of Bonaire, Sint Eustatius and Saba (Implementation Act on Public Bodies of Bonaire, Sint Eustatius and Saba, 31 957).

33 32 368, Second Amendment Act for Public Bodies of Bonaire, Sint Eustatius and Saba – A, no. 7, Note in response to the Report, September 14, 2010.

34 Island ordinance of February 14, 2013, no. 1 establishing the spelling of Papiamentu in the public body of Bonaire (Papiamentu spelling ordinance).

35 In accordance with the original Dutch Antillean 'Landsverordening officiële talen', English, Dutch, and Papiamentu were mentioned as the official languages for Bonaire, Sint Eustatius, and Saba. However, with effect from January 1, 2011, the BES Temporary Official Languages Act lapsed. B.D. van der Velden, 'Landsverordening officiële talen', *Tar-Justicia*, 2007 no. 3, p. 172–175.

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Bonaire can communicate with the government both in writing and orally in Dutch and Papiamentu (Article 4e IBES). Papiamentu can be used in written documents in the public body of Bonaire, provided that an island ordinance provides rules on language use. It was, therefore, important that the Island Council acted on this legislative assignment from the IBES. The use of Dutch and Papiamentu in administrative communication was introduced with an Island Regulation on Languages in Administrative Communication. Bonaire opted for a "*volgend*" / "following" language policy: the language choice of island government bodies follows the language that the individual citizen has chosen. This means that if a citizen sends a letter or email in Papiamentu, the municipality will respond in Papiamentu.

The Island Regulation on Languages in Administrative Communication stipulates that the special municipality of Bonaire (officially referred to as a "public body") can use Dutch or Papiamentu in written documents and oral communication with residents. Individuals are free to use Dutch or Papiamentu in written correspondence with the government. If a resident expresses a preference for communicating in Papiamentu, the special municipality of Bonaire will make an effort to honour this language choice. Dutch will only be used if a written document from the special municipality of Bonaire includes a decision or has significant legal implications. Everyone may use Papiamentu during the meetings of the Island Council of Bonaire. Any debates in the Island Council in Dutch or Papiamentu will be recorded in the respective language.[36]

8. Nederlandse Taalunie

The BES Education Agenda 2011–2016 articulated the ambition to strengthen the quality of education in the Caribbean Netherlands to an acceptable level by both Dutch and Caribbean standards by 2016. One of the focal points is respecting the Caribbean language and culture. For instance, teaching materials in Papiamentu had to be developed for Bonaire, and efforts were proposed to tailor Dutch-language teaching materials to the Caribbean context.[37]

36 In addition, the Regulation contains paragraphs on translations, for which the OLB must bear the costs and on documents in two languages.

37 'Onderwijsagenda voor Caribisch Nederland: samen werken aan kwaliteit', Hand. II Kamer, 2012–2013, 31 839, Nr. 294, Brief van de Minister van Binnenlandse Zaken en

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The Dutch Ministry of Education, Culture and Science asked the Nederlandse Taalunie / Dutch Language Union in March 2014 to research the implementation of the Dutch reference framework for Language (& Arithmetic) and to develop a strategy for an adequate educational program in and of Dutch in the Caribbean Netherlands.[38] The Dutch Language Union recommends focusing on using high-quality and appropriate Dutch language in all educational activities starting from group 1 (4-year-old pupils) onwards, preferably even earlier. This approach had to ensure that the role of Dutch in education and the pupils' development is properly acknowledged. Recognizing Dutch proficiency as a key to knowledge acquisition and diploma attainment, the Dutch Language Union believes that pupils benefit from reaching the highest possible level of proficiency in Dutch. To achieve this goal, they posit that schools should prioritize extensive Dutch language exposure and the full integration of Papiamentu speakers. The report is used by the government as a policy paper.[39]

This approach of full immersion of children, who predominantly speak Papiamentu at home, in Dutch, the (former) colonial language, is at odds with Article 29c of the Convention on the Rights of the Child (1989), which states that the education of the child shall be directed to the pupil's own cultural identity, language, and values. Article 30 of the same instrument instructs states where ethnic, religious, or linguistic minorities live or persons of indigenous origin exist, that children belonging to such a minority shall not be denied the right, in community with other members of his or her

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Koninkrijksrelaties aan de Voorzitter van de Tweede Kamer der Staten-Generaal, 19 juni 2013.

38 *Nederlands op z'n BESt*, Advies over het 'Nederlands in Caribisch Nederland' naar aanleiding van de adviesvraag d.d. 11 maart 2014 van OCW aan de Taalunie ten aanzien van het onderwijs Nederlands in Caribisch Nederland.

39 The Language Union's report contained the idea to have the report discussed by two expert groups. The Language Union's report has been the subject of lengthy and sometimes emotional discussions in the meetings of these expert groups. Agreement could not always be reached. Each expert group documented findings and recommendations independently, leading to the creation of two reports: *Papiamentu in het onderwijs op Bonaire; een 'quick scan'* (Expert Group Papiamentu, July 2015) *and Inventarisatie inzake optimaliseren taalonderwijs Bonaire* (Expert Group Dutch, July 2015). On the policy making on the language use in school: Elaine Marchena & Maritsa Silberie, 'Status quo taal in het Caribisch Nederlandse onderwijs', *CARAN-conferentiebundel 3. Taalbeleid in het Caribisch Gebied; heden en in de nabije toekomst,* University of Curaçao, Willemstad 2017. See also the more recent discussion: Elsmarie Beukenboom, 'Het Papiaments treft geen blaam', *Antilliaans Dagblad*, 9 Nov. 2021.

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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. A key concept in the Convention on the Rights of the Child is that in all actions concerning children, the best interests of the child shall be the primary consideration. Based on an expert report, UNESCO has encouraged mother-tongue education in the early years of primary education since the 1950s.[40] A forced full immersion in the former colonial language is a violation of international human rights standards.

9. Constitution and Charter

The two Bonairian language ordinances and the regulation in the IBES laid down the foundation for the legal protection of the language. At what levels could and should Papiamentu be safeguarded? Several parties have urged the inclusion of Papiamentu in the Dutch Constitution, others opted for protection through the ECRML.[41]

Declaring the ECRML applicable to Papiamentu on Bonaire is important for several reasons. Firstly, the application on Bonaire is important for the status of the language. The Dutch government becomes responsible for the Part III and II measures taken for the language and has the obligation to report to the Committee of Experts. Non-governmental organizations, local authorities, and stakeholders (and it can be assumed that this group will expand in the future beyond just representatives of the Akademia Papiamentu and SPLIKA) can report to the Committee of Experts every five years where the language needs on Bonaire differ from the efforts made by the Public Entity and the national government. The constitutional reform of October 10, 2010 was a state succession, through which the Netherlands in Europe also assumes responsibility for Bonaire, St. Eustatius, and Saba. The rules governing international treaties in state succession form a complex system, particularly when the state in question asserts its sovereignty to establish the rules as it sees fit. The issue of state succession was already

40 'The Use Of Vernacular Languages In Education: The Report Of The Unesco Meeting Of Specialists, 1951', reprinted in: Joshua A. Fishman ed., Readings in the Sociology of Language, Berlin, Boston: De Gruyter Mouton, 1968, p. 688–716.

41 The initial aim was to include Dutch, and possibly Frisian, in the Constitution. Future research must determine whether the request to also include English and Papiamentu was intended to distract, or torpedo the revision of the Constitution in this subject.

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discussed during a period when the Batavian Republic was overrun by France in the years 1794–95. In the conversation Tula, the leader of the liberation movement of enslaved people on Curaçao, had with Father Schinck on August 19, 1795, Tula explains the consequences he attaches to the fact that the Netherlands became a vassal state of France: "We only seek our freedom. The French negroes have obtained their freedom. Holland has been taken by the French. Thus, we must be free here too."[42]

10. The Committee of Experts of the ECRML

A unique aspect of the ECRML is the five-yearly reporting by the Member States on the implementation of the ECRML and the subsequent visit of a Committee of Experts. During the first meeting of Akademia Papiamentu and SPLIKA with the COMEX on March 3, 2015, explaining their view on the constitutional reform to experts from across Europe was challenging, but the NGOs passed the first threshold: they were able to present their views. The COMEX urged the Netherlands to clarify the division of human rights between the Netherlands and the BES Islands in the upcoming reporting round. The report by the COMEX addressed the state reform structure as follows:

> The Committee of Experts was informed that, when preparing the changes in the status of Bonaire, Sint Eustatius and Saba, the Dutch authorities limited the scope of the treaties in force to the geographical European part of the Netherlands, unless the treaty was placed on a "positive list"; neither the Charter, nor the Framework Convention for the Protection of National Minorities appear on the "positive list". Pursuant to Article 2.1 of the Charter, Part II of the Charter applies to all languages spoken within the territory of a state which comply with the definition of a regional or minority language in Article 1 of the Charter. It follows from this that Part II would apply to Papiamentu if Bonaire can be considered an integral part of the Netherlands, like any other municipality in the European part of the Netherlands.[43]

42 Verslag van Pater Schinck, 1795. Den Haag, Nationaal Archief, 1.05.12.01, inv.nr. 105.

43 Report of the Committee of Experts on the Charter, 5th monitoring cycle (adopted on 16 June 2016), ECRML(2016)4.

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During the second meeting with the COMEX in 2019, SPLIKA and Akademia Papiamentu discussed the new constitutional structure, the impossibility of reservations to international treaties in the event of state succession, and the role of human rights within the Kingdom. Then, a simple question was posed by the Austrian chairman. In his view, such complicated legal structures are difficult to explain to the other members (only a limited delegation from the entire COMEX participates in such an on-the-spot visit), mostly linguists – the smokescreen about the "Sui generis" unique nature of the Kingdom, the explanation commonly used by the Dutch government, worked. But then a simple question was posed: isn't Papiamentu a historically spoken language in the Dutch part of the Kingdom? The response from the delegation from Akademia Papiamentu and SPLIKA was unanimous: yes, of course. Now, one may wonder why this argument was not put forward much earlier, but there is a simple answer to that. Spoken language is a volatile medium, so the historical use of a language can only be traced back to a moment in the past on the basis of written sources. The oldest data on the use of Papiamentu in Europe is a letter sent in 1783 from Curaçao to the Netherlands. This letter, which was part of a convolute of letters sent by a ship hijacked by an English privateer and, from that date, stored in British archives, only became known in 2012.[44] The SPLIKA delegation offered to draft a short report on the historical use of Papiamentu in the Netherlands, and two days later, an overview of 250 years of use of Papiamentu in Europe was sent to the experts, and that same week, the Dutch civil servants were informed about its contents.[45] The experts' report from 2019 states:

> During the on-site visit, however, the expert committee was informed that Papiamentu has traditionally been present in the Netherlands, as it has been spoken in the Continental European part of the Kingdom of the Netherlands since the 18th century. The expert committee therefore encourages the Dutch authorities to clarify the traditional presence of

44 Bart Jacobs & Marijke J. van der Wal, 'The discovery, nature, and implications of a Papiamentu text fragment from 1783', *Journal of Pidgin and Creole Languages*, 30:1, 2015. p. 44–62.

45 B.D. van der Velden, *Papiamentu, a language historically spoken in the European part of the Netherlands*, available via Academia.org.

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Papiamentu in the European part of the Netherlands in the next monitoring round.[46]

There was some development. In 2020, the Dutch government appears to be leaning towards a more proactive policy. The chosen approach involved a two-stage process. Initially, a policy document (Bestuursafspraak) was drafted, demonstrating the Dutch government's intention to make the ECRML applicable. Subsequently, a selection of applicable obligations from Part III of the ECRML was made public.

11. Bestuursafspraak

During the annual budget debate in October 2020, the Minister of the Interior committed to develop a policy for the protection of Papiamentu. After a year of online meetings between NGOs and civil servants from ministries and the Bonaire island administration, an "Administrative Agreement for Papiamentu on Bonaire" (*Bestuursafspraak*) was signed in March 2021. The two NGOs, Akademia Papiamentu and SPLIKA, played a crucial role in the meetings and the drafting of the Administrative Agreement.

The goal of the administrative agreement is to protect and promote Papiamentu and to enhance the language's position in the existing legislation and regulations. The aim is that by 2030, all children leaving school will not only speak Papiamentu, but also be able to read and write it. Furthermore, through the Bestuursafspraak, funds to enhance proficiency in Papiamentu among civil servants working on Bonaire must be created. Additionally, the ministries signing the Bestuursafspraak opened the road for the recognition of Papiamentu on Bonaire under the ECRML. Papiamentu should be protected in Bonaire under Part III of the ECRML. Finally, the status of Papiamentu in the Netherlands will also be assessed, when possible under Part II of the ECRML.

46 Report submitted by the expert committee to the Committee of Ministers of the Council of Europe in accordance with Article 16 of the Charter, Sixth Report, Netherlands, MIN-LANG (2019) 15final.

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12. The Declaration of Applicability of the ECRML on Bonaire

There is no clear legal framework in Dutch constitutional law for a parliamentary procedure leading to the application of Part III of the ECRML to Papiamentu on Bonaire. As previously indicated, Papiamentu is also spoken in two other countries of the Kingdom. For the Dutch government, there is no need to act for the other countries, as the Explanatory Note states: "The Charter will not apply to Aruba and Curaçao because Papiamentu is an official language in those countries and the Charter pursuant to Article 1(a)(ii) can only be applied to regional languages and languages different from official languages." A missed chance! The Explanatory Report to the Charter shows that the drafters also made room for the protection of non-dominant languages that do have an official status: "If a State wishes such a less widely used official language to benefit from the measures of protection and promotion provided for by the Charter, it is therefore enabled to determine that the Charter shall apply to it. Such an extension of the application of the Charter to an official language then holds good for all articles of the Charter, including Article 4, par. 2."[47] Aruba and Curaçao can therefore also request a declaration of applicability of the ECRML, an approach that could curb the fragmentation the language is currently suffering from.

13. What to choose from the Selection Menu?

To declare the ECRML applicable to Papiamentu on Bonaire, a list of applicable commitments from part III, with an explanatory report, was drafted by the Ministry of Interior. There are several policies available to select commitments from the menu. A first option would be to select commitments that align with the legislation and practice in the Netherlands Antilles, since Bonaire was part of that entity until 2010. Article 7(1)(b) of the ECRML requires: "respect of the geographical area of each regional or minority language to ensure that existing or new administrative divisions do not constitute an obstacle to the promotion of the regional or minority language in question". In other words, a change in administrative borders may not impede the use of minority languages. To meet the criteria of

47 Explanatory Report Charter, par. 51. In: *The European Charter for Regional or Minority Languages : collected texts*, Strasbourg: Council of Europe 2010. (https://rm.coe.int/16800cb5e5).

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Article 7(1)(b) of the ECRML, it is essential to explore the existing legal and factual opportunities for the use of Papiamentu before October 10, 2010.

A second option is to take the socio-linguistic reality and needs into account, to choose the aligning provisions in Part III of the ECRML. According to the explanatory report of the ECRML, the state must select, for each regional or minority language, the obligations that are most suitable and align with the language's status. A socio-linguistic research study should be conducted in this case. Whether this necessitates a national legislative change can be taken into account, but this cannot be a decisive reason.

The third option would be to opt for the obligations that apply to Frisian. This approach would ensure that the obligations are in line with the Dutch legal system.

Finally, the policy opted for by the Dutch government, not changing any laws and only choosing obligations from Part III that align with existing national laws to achieve a level of protection, seems to be the worst option.

14. The Advisory Division of the Council of State of the Kingdom

On September 7, 2022, the Council of State of the Kingdom published an advisory opinion on the application of the ECRML on Bonaire. During the process, it became evident that drafting a policy or legislation is difficult due to the lack of necessary socio-linguistic data and facts about the use of the language.

A list of obligations from Part III of the ECRML was chosen for Papiamentu. In the opinion of the Council of State, there was a lack of substantiation regarding the way the Netherlands can guarantee the minimum of 35 obligations selected as applicable to Papiamentu in the "Explanatory note" and the "Appendix to the explanatory note". Thus, the Council of State issued a negative opinion. The key finding, however, was that there was no legal barrier or constitutional obstacle to applying the ECRML to Papiamentu; the Council of State suggested that Part II of the ECRML could be directly applied. Due to the lack of substantiation, the Council of State advised the Government on September 12, 2022, "to temporarily abandon the recognition of Papiamentu on Bonaire under Part III of the Charter and to suffice with declaring Part II of the Charter applicable." It was a finding that did not do justice to the Administrative Agreement for Papiamentu on Bonaire, and the persistent demand from Bonaire for the ECRML's applicability over the past 15 years.

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15. Education

The Council of State noted serious shortcomings in the "Explanatory Memorandum" and Appendix regarding efforts in education. Concerning education, States Parties may commit to selecting, without prejudice to education in the official language, one of the following measures:

Article 8 Paragraph 1 under b.

i. to provide primary education in the relevant regional or minority languages; or
ii. to provide a significant part of primary education in the relevant regional or minority languages; or
iii. to provide, within primary education, for the teaching of relevant regional or minority languages as an integral part of the curriculum; or
iv. to apply one of the measures mentioned under i to iii at least to students whose families request this and whose numbers are considered sufficient;

In June 2022, the government opted for Article 8, Paragraph 1 under b, the obligations i and iii.[48] However, this article does not provide for a combination of commitments. It is implied by the use of the word "or" that a state can only select one of the Roman numerals; no combination is allowed. Reed Dickerson explains this logic of legal drafting: it "tells you to "take your pick". So much is clear. Beyond this point, difficulties arise. One difficulty is that each of these two words is, on some occasions, ambiguous. Thus, it is not always clear whether the writer intends the inclusive "or" (A or B, or both) or the exclusive "or" (A or B, but not both)."[49] The Explanatory Report of the ECRML clarifies that the word "or" in this context refers to an exclusive "or".[50]

To return to the data that are needed to make a balanced and responsible choice for language policy at school based on socio-linguistic facts, reference can be made to the recently defended and published doctoral

48 22 June 2022, Toelichtende Nota.

49 Reed Dickerson, 'The Difficult Choice Between "And" and "Or"', 46 *ABAJ* 310, 313 (1960).

50 Explanatory Report Charter, par. 45. In: *The European Charter for Regional or Minority Languages: collected texts*, Strasbourg: Council of Europe 2010. (https://rm.coe.int/16800cb5e5).

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dissertation by Melissa M. J. van der Elst-Koeiman. She substantiates, based on empirical data, the importance of the mother tongue within bilingual reading education on the islands of Aruba, Bonaire, and Curaçao, taking into account the specific post-colonial setting.[51]

The ECRML has not yet garnered the attention of the legislator, as evidenced by the recent bill for the Primary Education Act BES (36 699) submitted to Parliament in the spring of 2025. There is no reference to the ECRML in the Bill, the explanatory memorandum, or the advice from the Council of State. This reflects a troubling disregard for applicable international law in the Netherlands, where Paragraph 1, sub-paragraph b(i) ECRML should serve as the starting point for future legislation in primary education on Bonaire.[52]

16. Language choices in the courtroom

In civil proceedings, a Member State can choose the obligation that guarantees that judges, at the request of one of the parties, conduct the proceedings in the regional or minority language (Article 9(1)(b), point i ECRML). A less far-reaching measure is contained in Article 9(1)(b) point ii ECRML, which allows litigants appearing in person before a judge to use the regional or minority language without incurring additional costs for translators. From Article 9 has been chosen the 1st paragraph, under b, item i, and the comparable far-reaching use of Papiamentu is also made possible in criminal and administrative proceedings. For the Council of

51 Melissa M. J. van der Elst-Koeiman, *Mother Tongue Literacy Matters, The Role of Papiamento in Advanced Bilingual Reading Education in the Dutch Caribbean*, S.l. : s.n. 2024, ISBN 9789464734966.

52 Similarly, the ECRML is largely absent from the Dutch Education Council's five-year evaluation of education on the BES islands. The Charter is mentioned only once, in relation to the role of Papiamentu in primary education. The report fails to recognize, however, that the ECRML is a binding international legal instrument that establishes the minimum obligations of the Netherlands. Onderwijsraad, *Onderwijs in Caribisch Nederland. Deel B: Thema's uitgelicht op Bonaire, Saba en Sint Eustatius*, 3 June 2026, p. 19. In the Dutch Government's response of 30 June 2026 to the recommendations of the UN Committee on Economic, Social and Cultural Rigts concerning the International Covenant on Economic, Social and Cultural Rights (ICESCR), no reference is made to the ECRML in relation to Recommendation 51(d), in which the Committee called for greater attention and policy measures to promote and protect Papiamentu and cultural heritage, by introducing regional languages into education and cultural programmes.

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State, this is too broad an application. They claim that "many professionals in Bonaire (including judges and lawyers) [have a diverse background and] a significant proportion come from the European Netherlands". How far removed is this comment from the daily reality in the court. During Judge Angeline Martijn's installation speech at the Court of First Instance on September 16, 2022, she spoke the following words in Papiamentu: "For example, I was encouraged by the supervising judges to speak the language that the parties spoke during the hearing of cases, and not only the three official languages of the court – Dutch, Papiamentu, and English – but also Spanish. […] Article 6 of the European Convention on Human Rights (ECHR) guarantees the accessibility of us as judges and a fair trial for everyone."[53]

To provide an appropriate legal framework for Papiamentu, the Kingdom Act on the Joint Court of Justice must be adapted. There must be a minimum obligation that what is "spoken in Papiamentu or English, if it is included in the minutes, it must be incorporated in that language in the minutes" (comparable to Article 6(1) of the Frisian Language Act).[54] The most accurate representation in the minutes is important because in appeal and cassation, the parties and witnesses involved are normally not present, and the case will be decided based on written documents.

17. Language use by administrative authorities and public services

Article 10 of the ECRML provides a "menu" of commitments regarding the use of language by administrative authorities and public services. It is peculiar that the "Appendix to the explanatory note" containing an inventory of legislation and regulations crucial for the recognition of Papiamentu on Bonaire under Part III of the ECRML does not include a reference to the Bonaire Island Regulation on Languages in Administrative Communication.

Paragraph 2 of Article 10 ECRML addresses the use of a regional or minority language by regional or local authorities. Nevertheless, on the BES, there is no provincial intermediate layer, and provincial tasks are divided between the Public Entity and the State. The Council of State has indicated

53 Installation speech by Angeline Martijn, September 16. 2022, posted on the Facebook pages "GEAAruba", "hvjCuracao", "GEABonaire" and "courthouseSXM".

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that, in the absence of a regional authority, the provisions of Paragraph 2 of Article 10 can therefore only be declared applicable to local authorities:

The Department notes that the article includes several provisions that apply to 'regional authorities' or 'local authorities'. The government declares these provisions applicable, specifically referring to the Island Council. [...] The Department raises concerns about the application of provisions on both regional and local authorities, since there is only one level of government. The Department advises the government to explain this in more detail and, if necessary, to declare only the provisions regarding local authorities or regional authorities applicable. This means that additional provisions from the Charter must be declared applicable to meet the minimum obligation of 35 applicable provisions.

The Council of State "questions whether provisions on both regional and local authorities should be declared applicable, where ultimately it concerns one level of government." The number of commitments that can be chosen will therefore shrink further. Is there a way out of this? It should be clear that the "or" in Article 10 paragraph 2, as Reed Dickerson writes, is intended to be an "inclusive "or" (A or B, or both)".[55]

That the and/or part of the provision, without explicitly stating in the treaty text what the intentions are, can lead to an incorrect ratification, which can be demonstrated by the choice made by the Dutch government from the selection menu with regard to Article 9 and Papiamentu. Article 9(1)(a)(i) requires the Member State 'to provide that the courts, at the request of one of the parties, shall conduct the proceedings in the regional or minority languages', followed by an 'and/or' and sub-paragraph ii that guarantees 'the accused the right to use his/her regional or minority language'. It should be clear that the rights under sub-paragraph (ii) fall entirely within the possibilities offered by sub-paragraph (i), the rights in group ii is a proper subset of group i. Consequently, the Member State may choose either Article 9(1)(a)(i) or (ii), but not both, since the rights contained in (ii) completely fall within the sphere of (i).[56] Because this issue occurs in Article 9(a) and (c), only two options from the selection menu can be recognised for Papiamentu, rather than four. In accordance with Article 2(2), therefore, not the required 35 provisions, but only 34 can be identified with regard to Papiamentu.

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56 *La Charte européenne des langues régionales ou minoritaires*, p. 175.

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18. The ECRML applicable to Papiamentu on Bonaire (Part III)

The initial attempt to implement the ECRML failed, and the Ministry of the Interior had to start over. However, in this process, the Ministry did not adhere to the recommendation made by the Committee of Experts, which was to "continue involving Papiamento/u speakers in the current process to determine which provisions could be accepted under the ECRML."[57] The procedure to make the ECRML applicable can be compared to a black box, with language speakers and NGO's observing it from a distance, waiting to see the outcome; there was no interaction between the government and NGO's as advised by the Committee of Experts in this process.

The Kingdom Council of Ministers decided on September 29, 2023, to use the fast lane and opt for the applicability of the ECRML to Papiamentu on Bonaire (Part III) and in the Netherlands (Part II), via a preliminary scrutiny procedure in Parliament.[58] The announcement of the applicability of the ECRML was to be sent to parliament on 22 November 2023. There were no objections raised in the following month.

On 22 January 2024, the Secretariat General of the COE registered a declaration from the Minister of Foreign Affairs of the Netherlands, stating that the Kingdom of the Netherlands accepts the application of the ECRML for the Caribbean part of the Netherlands (the islands of Bonaire, Sint Eustatius, and Saba), including the provisions of Part III of the ECRML that it will apply to the Papiamentu language on the Island of Bonaire.

On 1 July 2024, a letter from the Minister of Foreign Affairs of the Netherlands was registered at the Secretariat General of the COE in the presence of representatives of SPLIKA, Academia Papiamentu, and the Island government of Bonaire. The Kingdom of the Netherlands declared

57 Committee of Experts of the European Charter for Regional or Minority Languages, Seventh Evaluation Report On The Netherlands, Adopted on 18 November 2022.

58 Ministerraad van het Koninkrijk, Besluitenlijst van de vergadering gehouden op 29 september 2023. In the Netherlands, the Government, treaties that are not at odds with the constitution, can be presented to Parliament in a shortened procedure. It is sent 'to both chambers of Parliament before ratification. If Parliament does not react within a period of 30 days, the treaty is agreed to by silent consent. If 15 members or more of the First Chamber or 30 members or more of the Lower House declare that the treaty needs explicit consent, then the treaty has to pass both the Houses like a bill of law. This procedure is called the "voorhang" procedure.' Seppe Tiitinen, 'Role of Parliament in the conduct of foreign relations', Report prepared by Mr. Seppe Tiitinen (Finland), adopted at the Beijing Session (September 1996), Retrieved from http://www.asgp.co/node/29429.

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that the principles outlined in Part II of the ECRML will be applied to the Papiamento (Papiamentu) language used in the Netherlands (in Europe).

19. Final remarks

The ECRML aims to protect and promote the use of vulnerable languages, and the progress in Papiamentu development is remarkable. The efforts made by the Papiamentu residents of Bonaire to secure protection under Part III of the ECRML through motions in the Island Council, letters of the Executive Council, multiple visits to the Committee of Experts, and the Administrative Agreement represent an unprecedented approach. This also underscores the significance of maintaining a dialogue with the people for whom human rights treaties are designed, as demonstrated through the Committee of Experts.

The COMEX is the real gateway to the ECRML, where a path to the courts to enforce these linguistic rights does not seem an option. The dialogue the COMEX engages in, was for the citizens of Bonaire a procedure with guarantees.[59]

Since 2009, the Akademia Papiamentu has played a central role in strengthening Papiamentu through cultural initiatives, including lectures, an annual dictation contest, and book publications. Regular cultural events bring together Papiamentu speakers from different countries, while the annual "Arte di Palabra" recitation competition, established in 1999, engages

59 The right to education in one's own language is for example defined in a series of international treaties, such as the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families. Many of these instruments were used as legal grounds by Turkish-origin migrant workers in the Netherlands. While there was once an opportunity for Turkish-speaking children to receive education in their native language in the Netherlands, it was eliminated in 2004. Subsequently, three Turkish-Dutch associations took legal action in The Hague to restore their educational rights. The initial court ruling in The Hague on November 13, 2013 (ECLI:NL:RBDHA:2013:15232) stated that although the international treaties acknowledged language rights in education, this was considered a social right rather than a fundamental human right. The court emphasized that the government has the authority to establish policies in this area and possesses a certain degree of discretion ('beleidsvrijheid'). The court acknowledged the benefits for parents and children in having education in their mother tongue, as argued by the Turkish-Dutch advocates from various sources. However, the court concluded that these arguments do not impose a legal obligation on the state (par. 4.26 of the judgment).

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students from Bonaire, Aruba, and Curaçao.[60] In addition, participants from the islands have taken part in international miniature boat competitions—recognized by UNESCO as intangible cultural heritage—for nearly fifty years, with Bonairians frequently achieving top results.[61] Some issues remain. There is a need for reliable sociolinguistic data on languages used on Bonaire, and the inclusion of such a provision in the ECRML would be valuable.

There are still governmental agencies that remain out of sight. To what extent are the publications of planning agencies and high councils of state, such as the national Ombudsman, sufficiently accessible to residents of Bonaire?[62] For these organs, as well as the Rijksdienst Caribisch Nederland (National Office for the Caribbean Netherlands, representing the Dutch ministries on Bonaire and the other islands), language policy plans should be drafted that outline language training for civil servants, language choices vis-à-vis citizens, and the use of languages during crises.

The journey from the initial encounter with the legal implications of the state reform to the eventual extension of the ECRML's application to this regional language in the Caribbean spanned 17 years. While progress was not always linear, the process was marked by periods of significant advancement—at times within just a few months. Only because Bonaire was an integrated part of the Netherlands (in Europe), it was possible to achieve recognition. For members of Academia Papiamentu and SPLIKA, the opportunities to engage directly with the Committee of Experts were meaningful milestones, underscoring the importance of sustained dialogue and collaboration in advancing linguistic rights.

60 http://artedipalabra.com/historia/.

61 Intangible Heritage, 2nd year, 2013, no. 3.

62 Tweede Kamer der Staten-Generaal, 2012–2013, 2013Z11114, Vragen van het lid Hachchi (D66) aan de minister van Binnenlandse Zaken en Koninkrijksrelaties over Nederlandstalige beleidsplannen die niet vertaald worden voor Bonaire, St. Eustatius en Saba (ingezonden 4 juni 2013).

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25 Years of the Language Charter – a view from within the Committee of Experts

Vesna Crnić-Grotić

1. Introduction

In what follows, I will present "a view from within" as the longest serving member of the Committee of Experts and its former chair. Anniversaries are an opportunity for taking stock of the results, of the successes but also of the failures. The European Charter for Regional or Minority Languages has been in force for 25 years, since 1 March 1998, however, only for its original States-parties. The original parties were: Croatia, Finland, Hungary, Lichtenstein, the Netherlands, Norway and Switzerland. According to Article 19 of the Charter it took five States-parties for entry into force so it was a very positive thing that seven States ratified. Germany's ratification followed soon (16.9.1998) so the Charter entered into force in January 1999 for that country. Between 2000 and 2011 the Charter entered into force for 17 more States: 2000 Sweden, 2001 Austria, Denmark, Slovenia, Spain, United Kingdom, 2002 Armenia, Cyprus, Slovak Republic, 2005 Luxemburg, 2006 Serbia, Montenegro, Ukraine, 2007 Czech Republic, 2008 Romania, 2009 Poland, 2011 Bosnia and Herzegovina.

Nine States have signed the Charter but have not yet ratified: 1992 Malta, 1996 North Macedonia, 1999 France and Iceland, 2000 Italy, 2001 Azerbaijan and the Russian Federation, 2002 Moldova and 2022 Portugal. Realistic is to expect Portugal to go ahead with the ratification, while hopes for the Italian or French ratifications are not very flourishing. The same disappointment is connected to the failed promises given by some of the signatory States when joining the Council of Europe.[1]

1 On the eve of 10th anniversary of the Charter, in 2007 the Secretary General of the Council of Europe reminded member States of their failure to fulfil their promise: "This regret has been expressed in all previous Biennial Reports and concerns in particular those States which are under an explicit obligation to the Council of Europe to accede to the Charter. However, the delay in ratification amounts to 11 years in the cases of "the former Yugoslav Republic of Macedonia" and Moldova, almost 10 years for Russia, 7 years for Georgia, almost 6 years for Azerbaijan and 3 years for Bosnia

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2. Making of the Charter

Europe has been aware of the need to protect national and religious minorities in Europe throughout its history especially after wars that raged across its territory. One of the first modern peace treaties concluded after the Thirty Years' War in Westphalia in 1648 dealt with, among other issues, the position of religious minorities. The practice continued after World War I when a number of treaties were concluded containing provisions for the benefit of national, linguistic and religious minorities that were left "on the wrong side of the border" after some tectonic territorial changes and the break-up of the old empires, producing in particular the Eastern European and Balkan States. The peace treaties included provisions relating to the protection of minorities, providing essentially for equality of treatment and opportunities for collective activities. These provisions were supervised by the League of Nations, to whom there was a right of petition.[2] This practice of making special treaties for minorities was not so dominant after World War II, although some of the peace treaties dealt with the exchange of populations (e.g. Italy, Hungary) leaving pockets of those who would not move as new minorities. The new era in Europe was marked by the Cold War and division into blocks – East and West – with each of them claiming that minorities do not represent any problem. The former claimed that everybody is privileged to be living in the socialist paradise and the latter claimed that every person has protected human rights and freedoms and

and Herzegovina. Some countries have no timetable for ratification, others, namely Albania and Georgia, have not even signed it." Among these States, only Bosnia and Herzegovina ratified the Charter in 2010. Biennial report by the Secretary General to the Parliamentary Assembly, September 2007, available at: https://assembly.coe.int/nw/xml/XRef/X2H-Xref-ViewHTML.asp?FileID=11741&lang=EN#P68_8320.

2 Shaw, M. International Law, 6th ed., Cambridge 2008, p. 271. The minorities regime of the League of Nations consisted of five special minorities treaties binding Poland, the Serbo-Croat-Slovene State, Romania, Greece and Czechoslovakia; special minorities clauses in the treaties of peace with Austria, Bulgaria, Hungary and Turkey; five general declarations made on admission to the League by Albania, Latvia, Lithuania, Estonia and Iraq; a special declaration by Finland regarding the Aaland Islands, and treaties relating to Danzig, Upper Silesia and Memel. See generally Thornberry, P., International Law and the Rights of Minorities, Oxford 1993, pp. 38 ff.

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that there was no need for a special protection of members of minorities or, indeed, group rights.[3]

Nevertheless, the 80-s of the 20th century brought about a change within the Council of Europe which, at that time, only had Western European States' membership. At first, the work aimed at the protection of minority languages. In 1981 the Parliamentary Assembly of the Council of Europe adopted Recommendation 928 on the educational and cultural problems of minority languages and dialects in Europe.[4] The European Parliament of the then European Community accepted the challenge and passed a resolution on the same questions which was a fine example of co-operation between two of the most important European organizations.[5]

The Standing Conference of Local and Regional Authorities of Europe took the initiative to draft a separate legal instrument addressing the protection of regional or minority languages or their speakers.[6] The initiative was supported by the Parliamentary Assembly of the Council of Europe including the approach taken by the Conference (that subsequently became the Congress) that the new instrument would be a convention, so legally binding, but still flexible enough to be "applied to the widely different situations throughout Europe without interfering with the territorial integrity or official languages of contracting States."[7] The flexibility of the instrument was apparent in the so-called (á la carte or) *menu system* allowing States

3 The only international legally binding instrument referring to minorities was the UN International Covenant for Civil and Political Rights adopted in 1966. Its Article 27 contains the duty of the States Parties "not to deny" members of minorities "in community with the other members of their group, to enjoy their own culture, to profess and practise their own religion, or to use their own language".

4 Already in 1957, the Consultative Assembly (later the Parliamentary Assembly) adopted Resolution 136 stating that the European Convention on Human Rights does not answer the concerns of minorities. In 1961 the Parliamentary Assembly in its Recommendation 285 called for a protection measure "to supplement the European Convention in order to safeguard the rights of minorities to enjoy their own culture, to use their own language, to establish their own schools and so on. Explanatory Report to the European Charter for Regional or Minority Languages, para. 3.

5 Resolution of the European Parliament of 16 October 1981 on a Community charter of regional languages and cultures and a Charter of rights of ethnic minorities (OJ C 287, 9.11.1981, p. 106). It was based on the Arfé report. See Piccoli, L., The European Union and minority languages: Evolution, achievements and contradictions in the light of the Treaty of Lisbon, Interdisciplinary Political Studies, 2011.

6 In Resolution 192 in 1988 the Conference proposed the text of the Charter. Before the drafting of the text, a public hearing attended by some 250 people representing over 40 languages was held in 1984.

7 Parliamentary Assembly Opinion 142 (1988).

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to choose specific options for specific languages spoken on their territory. Furthermore, the Assembly emphasized that the objects of protection were languages and not their speakers, a rather novel approach that was based on the cultural aspect of regional or minority languages.[8]

In response, the Committee of Ministers established an *ad hoc* committee of experts on regional or minority languages in Europe (CAHLR), an intergovernmental body. It drafted the text of the future convention without, however, departing from the original ideas of the Standing Conference. The committee was in a position to consult other committees and bodies within the Council of Europe as well as the European Commission for Democracy through Law (the Venice Commission).[9] The final text of the draft charter was presented to the Committee of Ministers of the Council of Europe and adopted as a convention on 25 June 1992. Finally, it was opened for signature in Strasbourg on 5 November 1992. It entered into force on 1 March 1998 after the seventh ratification instrument was deposited.

By coincidence, at the same time, the Council of Europe completed its work on another convention dealing with national minorities – the Framework Convention for the Protection of National Minorities (FCNM) that entered into force also in 1998. The two instruments are the only two multilateral treaties dealing with the protection of national minorities and their languages based, however, on very different concepts of protection of languages. The FCNM is based on the specific legal protection of linguistic groups or minorities with specific languages. Minorities are granted a political status enabling them to enjoy their specific language rights. According to Woehrling, one of the drafters of the Charter, such an approach can have "very positive results" providing the adherence of the State in which

8 Apparently, this approach was supposed to encourage France to ratify the Charter. However, France signed it only to have the Constitutional Council ruled in1999 that it was against the French Constitution. Subsequently, France introduced the changes in its Constitution proclaiming the need to protect the cultural heritage of regional languages. In 2020 the Parliament with a rather strong opposing views adopted the Law on the heritage protection of regional languages (Loi relative à la protection patrimoniale des langues régionales et à leur promotion). However, in 2021 the Constitutional Council ruled that it was partly against the Constitution (Décision n° 2021–818 DC du 21 mai 2021).

9 The Venice Commission is the Council of Europe's advisory body on constitutional matters. It consists of constitutional law specialists and it provides legal opinions on policies and legislation. https://www.venice.coe.int/WebForms/pages/?p=01_Presentation.

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it is to be implemented.[10] The European Charter for Regional or Minority Languages, however, is protecting minority languages as a cultural heritage of the country, a novel approach, as mentioned before, with the emphasis on regional and minority languages and not on their speakers.

The concept of language is defined in Article 1.a) of the Charter:

> "a "regional or minority languages" means languages that are:
>
> i traditionally used within a given territory of a State by nationals of that State who form a group numerically smaller than the rest of the State's population; and
> ii different from the official language(s) of that State;
>
> it does not include either dialects of the official language(s) of the State or the languages of migrants;"

The emphasis in this definition is on the traditional use of a certain language by the population of the State, regardless of its size or its legal status within a certain territory of the State. Languages protected are considered "historical regional or minority languages of Europe", according to the Preamble of the Charter. Although the drafters were aware of the diversity of such languages they abstained from listing them or giving examples. They deserve protection under the Charter if the number of people using them "justify the adoption of the various protective and promotional measures provided for in the Charter". The distinction between regional and minority languages depends on whether they are identified with a particular minority group. So far, the Committee of Experts has established Kashub in Poland and Low German in Germany as regional languages under the Charter.[11]

The Charter also recognizes "non-territorial languages" spoken traditionally on the territory of the State Party but "cannot be identified with a particular area thereof", as is usually the case with Roma languages.[12]

10 Woehrling, J.M., Introduction in Lopez, Vieytez, Libarona, Shaping Language Rights, 2012, p. 16.

11 Distinction between a language and its dialects is less clear-cut and will depend on various linguistic, historical or cultural factors. The Committee of Experts would ask the authorities to find a solution together with the speakers.

12 Article 1.c. Woehrling claims in his commentary of the Charter that the definition of regional or minority languages is contained only in Article 1.a and that it does not cover non-territorial languages. Indeed, the Explanatory Report, § 36, is explicit: "Non-territorial languages are excluded from the category of regional or minority

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Furthermore, Article 3 the Charter recognizes "less widely used official languages" offering a possibility to some States Parties to grant protection to co-official or national languages.[13]

3. Parts II and III of the Charter

The Charter has two relevant operative parts. Part II of the Charter (Article 7) declares "Objectives and principles" and it applies to all regional or minority languages corresponding to the definition in Article 1. Part III of the Charter, however, is different. It consists of articles 8 to 14 and it offers undertakings of different stringencies in the fields of public life: education, judicial and administrative authorities, media, culture, economic and social life and, finally, transfrontier co-operation. When signing or ratifying, States are entitled to select a list of undertakings from Part III (35 of 68) for all or some of the regional or minority languages spoken on their territory. This "menu system" makes the Charter a very peculiar treaty because the parties do not have the same obligations so their "successes" or "failures" cannot really be compared.[14]

The obligations may be limited to the relevant parts of the State territory where the regional or minority language is spoken "by a sufficient number of people justifying the measures", such as in administrative authorities.[15] Some States Parties use percentages to determine where such territories are, however, the Committee of Experts has not approved this approach. Namely, in the Committee of Experts' view, percentages may be misleading,

languages because they lack a territorial base". However, the Committee of Experts took a different view and considers these languages as regional or minority languages. Woehrling, J.M., The European Charter for Regional or Minority Languages, A Critical Commentary, Strasbourg 2005, p. 69.

13 For example, Finland covers Swedish as the less used national language and Switzerland covers Italian in the Canton of Ticino. Spain protects official languages other than Spanish in some of its autonomous provinces (e.g. Catalan in Catalonia, the Balearic Islands and Valencia (as Valencian), Basque in the Basque Country and Navarre and Galician in Galicia) although not invoking Article 3 of the Charter.

14 Under Article 9 Spain opted to have judicial proceedings in the co-official languages while Denmark only has to allow documents and evidence to be produced in German as the only regional or minority language protected by Denmark under Part III.

15 The State Party will have to allow/ensure the use of the regional or minority language by these authorities at municipal, regional or State level where the speakers are. Some other undertakings, however, will be applicable to the entire territory of the State Party, e.g. recognition of documents.

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especially in bigger settlements or regions where a small percentage may actually hide a considerable number of speakers. In addition, the percentages change from one census to the next and then the rules may change to the detriment of the language.[16] In some cases, the Committee of Experts noted that there are in fact no territories to be covered by the ratification since a particular minority does not reach the required threshold in any administrative unit.[17] Finally, the counting of members of a minority departs from the basic concept of the Charter – i.e. to protect languages and not members of a minority!

Selection of undertakings sometimes results in problems of implementation. Most often, the same choice for very different languages in terms of their size or development means that the State will not be able to fulfil its obligations for the smaller languages, for example, in administration or public services. While commendable, ratification for Romani under Part III by some German *Länder* resulted in mere tokenism and not in a real implementation of the Charter. On the other hand, a bigger language may be confined to a limited choice of undertakings. The same selection of undertakings is quite common in former socialist/ communist countries, e.g. Croatia. The languages protected under the Charter in Croatia have between 20.000 and 1.000 speakers. Is it possible to ensure the same services for them? For example, Italian in Istria enjoys protection in many municipalities but also across the Istrian County. Ukrainian or Ruthenian, on the other hand, have no municipality where these languages would be in co-official use in administration. The example of Poland is even more extreme – undertakings under Part III were selected for a number of languages: Armenian, Belarusian, Czech, German, Karaim, Kashub, Lemko, Lithuanian, Romani, Russian, Slovak, Tatar, Ukrainian and Yiddish. The problem is that some of these languages, Karaim, Tatar and Yiddish, have no speakers. Nevertheless, the Charter can be – and is in fact used also

16 Slovakia demands that the percentage of 15 % is confirmed in two consecutive censuses. Croatia requires that at least 1/3 of the population belongs to a particular minority. When the percentage of the Serbian minority dropped only slightly in Vukovar to 29,73 % the local authorities immediately suspended linguistic services in the Serbian language and the Cyrillic script. Evaluation reports available at: https://www.coe.int/en/web/european-charter-regional-or-minority-languages/reports-and-recommendations#{%2228993157%22:[18]}.

17 Slovakia ratified Article 10 for Bulgarian, Croatian and Polish without these minorities reaching the threshold in any municipality which makes the ratification pointless.

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for revitalisation efforts, as is the case in many States Parties for Yiddish.[18] Another example is Manx, the language spoken on the Isle of Man, but left without its original speakers in the 20th century. The language today is protected under Part III since the United Kingdom upgraded its ratification to Part III in 2020.

Some States misunderstood the difference between Part II and Part III. Spain for example, was very surprised that every language traditionally used in Spain and complying with the definition in Article 1, enjoys the protection under the Charter without any special declaration and not only those that are in co-official use in several autonomous provinces. That is the case, for example, with Catalan in Aragon or Amazigh in Melilla.[19] In Croatia, the Committee of Experts had to draw the authorities' attention to the fact that there are several languages in traditional use that are covered by at least Part II like Istro-Romanian and Slovenian.

Moreover, there were cases where the Charter's language is misunderstood. It is sometimes quite cryptic and not easily interpreted. The COMEX soon recognized the issues in connection with Article 11 on media. From the article it was not clear that there are separate paragraphs covering private and public TV and radio and the difference between a channel or a programme. More recently, the issues were also raised with respect to new digital media that did not exist, obviously, 30 years ago. The Committee of Experts realized the need to adapt the reading of the Charter to new realities.[20]

4. Monitoring

The monitoring is based on the State's periodical reports, on-the-spot-visits to the country and the information gathered from the speakers, NGOs registered in the State Party and the authorities. Under Article 16 States

18 Some positive movements were noticed regarding Yiddish in the Netherlands. However, according to the 7th report Yiddish is currently in a weak position due to the sharp decline of students at the Cheider Jewish school in Amsterdam. The establishment of a Chair of Jewish Studies at the University of Amsterdam in 2021 is a positive development.

19 The Committee of Experts is looking at the historical presence of these languages but also whether the languages are still used.

20 New technologies, new social media and the European Charter for Regional or Minority Languages, Report for the Committee of Experts, 2019.

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Parties have to submit periodical reports to the Secretary General of the Council of Europe. The report should be in a prescribed form and contain the relevant information on the policy and the measures taken. The first report is due within one year after the entry into force of the Charter with respect to that State. Subsequent reports should follow at three yearly intervals. However, the monitoring period was extended by the Committee of Ministers from the Charter's three years to five years with the additional interim report in the middle.[21] A practical problem was that the monitoring would take at least a year from the receipt of the periodical report to the adoption of the evaluation report by the Committee of Experts. This report was submitted to the Committee of Ministers for adoption of the recommendations and publication. It would often happen that the report would get blocked in the Committee of Ministers due to various political reasons and disagreements leaving the State Party very little time to implement the recommendations before submitting a new report. In addition, State reports were sometimes delayed adding more time to the monitoring cycle. Over the years some States Parties missed some reporting cycles altogether[22] and that created a problem that the Committee of Ministers decided to resolve by strengthening the monitoring mechanism. Now there are strict dates set in advance for submitting periodic reports with, as mentioned before, interim reports in the middle.[23] These reports are limited to the information about the response to the "recommendations for immediate actions" (RIAs) identified by the Committee of Experts. These recommendations are relating to issues that are urgent but also feasible in the short period covering the mid-term report in which the State Party has to report on the measures taken. In this way it became easier for the States Parties to submit their reports in a timely fashion and also to respond to the recommendations without allowing big time lapses between the reporting cycles. It remains to be seen whether this change will help in the monitoring. So far, the practice has not been very encouraging. For example, in the case of Slovakia, the Committee of Experts in its evaluation report adopted in

21 Strengthening the monitoring mechanism of the European Charter for Regional or Minority Languages, decision by the Committee of Ministers CM(2018)165, with effect from 1 July 2019; available at: https://search.coe.int/cm/Pages/result_details.aspx?ObjectId=09000016808f22ea.

22 For example, among the original parties, Norway and Switzerland submitted their 8th reports in 2020 and 2021 respectively, while the Netherlands submitted its 7th report in 2021 and Croatia submitted its 7th report in 2023!

23 The dates are set in the Appendix of the CM Decision until 2024/2025.

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2019 recommended, among others, that Slovakia implements Article 10 for Bulgarian, Croatian and Polish "in co-operation with the speakers and in accordance with the undertakings ratified, irrespective of thresholds".[24] In accordance with the Slovak ratification instrument these languages should be used in public administration but in practice their use is barred by the 15 % threshold. However, in the Information on the implementation of the recommendations for immediate action (InfoRIA) submitted in December 2020 the Slovak authorities did not provide any relevant information on this issue. On the other hand, positive developments were reported in the field of education for several languages or about the use of public signage in Hungarian.[25]

States Parties make their national reports public and so does the Council of Europe on its web-pages. The 2018 reform explicitly allows the Committee of Experts to submit a proposal to the Committee of Ministers regarding the commencement of the monitoring of the Charter without a periodical report when a Party is more than twelve months behind in submitting a report.[26]

Under Article 17 of the Charter the monitoring body of the implementation of the Charter is the Committee of Experts. Each State Party has one national but independent member. Each State Party nominates three candidates and one is appointed by the Committee of Ministers (CM) for a mandate of six years. So far, the usual background of the Committee of Experts members has been either legal or (socio)linguistic but there have been several other profiles, too. The Charter did not have any limitations as to the number of mandates of the Committee of Experts members, but the Committee of Ministers 2018 decision on the reform of the Charter limited the number of re-appointments to one starting with 1 July 2019. Some States Parties, however, fail to nominate candidates for the COMEX. Currently this is the situation with regard to Bosnia and Herzegovina, but for some time it was also the case in respect of the United Kingdom and Denmark.

24 Fifth report of the Committee of Experts in respect of the Slovak Republic, CM(2019)126.

25 The Committee of Experts has been objecting to the thresholds since 1999. Subsequent legislative amendments lowered the threshold from 20 to 15 % (confirmed in two consecutive censuses since 2011) but it *de facto* excludes 9 out of 11 minority languages from protection under Article 10 of the Charter. Evaluation of InfoRIA by the Committee of Experts, MIN-LANG(2021)1.

26 Over the last several monitoring rounds the UK government does not report on the Northern Ireland so the COMEX had to collect information during its visits.

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After receiving a State report the COMEX selects a three-member working group that includes the national member of that State.[27] The working group visits the country and makes a draft report with the assistance of the secretariat for the plenary that discusses and adopts its own evaluation report with a proposal for the recommendations for the Committee of Ministers. The Committee of Experts' report also includes its own recommendations, among others, those for immediate action that States Parties should report on in their interim report.

The monitoring relies on the information provided by the authorities and the stake-holders. The national member also helps find relevant information. During the on the spot visit the working group is speaking to different groups and actors working in the field trying to get as much (correct and relevant) information as possible but sometimes that is not enough. It has happened that in some cases the COMEX has been missing the relevant information through several cycles. In such cases the COMEX had to conclude that the undertaking in question was not fulfilled.

In order to make the reporting easier, the Committee of Ministers approved the format for national reports but also the format of the Committee of Experts' report. Before the reform in 2018 the Committee of Experts reports used to be quite lengthy due to detailed information and the elaborated views of the Committee of Experts. Nevertheless, the Committee of Ministers introduced "tables" with arrows and equal signs decoding the State's performance. Arrows going up show an improvement on the side of the State Party in respect of an undertaking, equal signs signify no change in performance, while an arrow going down means that the protection under the relevant undertaking has declined. Whether the reports became better with these tables is debatable, but they did help shorten the reports and make them easier to read.

One of the biggest changes introduced by the 2018 reform was the option to make the Committee of Experts' reports public before they went through the Committee of Ministers. It helped in raising the relevance of the evaluation reports and the visibility of the Committee of Experts' work. It also "knocked out the air" of the mostly bilateral quarrels in the

27 Some concerns have been raised about the participation of the national member in drafting the report. Nevertheless, he or she is an independent expert and not representing the State. Furthermore, according to the Rules of Procedure, the national member is not allowed to vote. The COMEX will make a visit to the State Party without the national member if necessary.

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Committee of Ministers that would keep the reports for up to two or more years on their desks.[28] They could only argue about the proposal for their recommendations since they were not allowed to change the Committee of Experts' reports, anyway. Under Article 16.3 the report is accompanied by any comments made by the State Party. Following the reform, before the publication of the evaluation report there is a possibility for States Parties to ask for a "confidential dialogue" with the Committee of Experts.[29] This dialogue can only be about factual errors and not about the assessments made. The Committee of Experts is not obliged to accept the interventions and can then publish the report on its web page.[30] States Parties are also expected to disseminate the evaluation report and the Committee of Ministers' recommendations, including in their national language(s). Translation to minority languages is desirable, however, rarely done in practice.

Finally, the Committee of Experts is assisted by the secretariat provided by the Secretary General of the Council of Europe (Article 17.3). The members of the secretariat play a very important role in the monitoring system. They are dedicated professionals who help prepare the reports, organize visits, co-operate with States Parties and bodies within the Council of Europe. They also assist the Secretary General in preparing his or her biannual report on the Charter to the Parliamentary Assembly in accordance with Article 16.5.

28 This was the case of the 2nd report on Serbia. Serbia submitted its report on 23/9/2010, the Committee of Experts adopted its evaluation report on 4/5/2011 and the Committee of Ministers adopted the recommendations on 11/6/2013.

29 CM(2018)165, 1.e: "…a Party may submit comments on the Committee of Experts' evaluation report within two months of its transmission. In these comments, the Party may ask the Committee of Experts for a confidential dialogue, which functions according to rules established by the Committee of Experts." Rule 16.4 of the Rules of Procedure provide that the comments by the State Party "shall comprise information of a factual nature". Rules of Procedure of the Committee of Experts of the European Charter for Regional or Minority Languages, MIN-LANG (2019) 7.

30 Consequently, according to rule 16.6: "If a comment concerns a factual error in the evaluation report whose correction would not result in a revised conclusion on the fulfilment of a Charter provision or recommendation, the Secretariat may correct it accordingly and inform the Committee. If the correction of a factual error would also result in a revised conclusion on the fulfilment of a Charter provision or recommendation, these changes shall be adopted by the Committee."

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5. Conclusion

In its 25 years of monitoring the Committee of Experts has published 145 evaluation reports (including reports submitted by Lichtenstein and Luxembourg – States Parties that have no minority languages) and 16 Info RIAs. A big corpus of legal views and opinions on the Charter and its undertakings must be considered in its interpretation. It is safe to claim that the application of the Charter and the monitoring carried out by the COMEX has helped the situation of many regional or minority languages in Europe or, better to say, in the States Parties. The awareness of the existence, and the needs of regional or minority languages has improved, although the observed general deterioration of minority rights in Europe cannot be ignored.

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From Analogue to Digital:

Working Methods of the Committee of Experts and their Evolution

Mahulena Hofmannová

1. Introduction

Drafted and concluded under the auspices of the Council of Europe in the 1990s, the epoque of a turning point of European history, the Charter still represents an important tool of a trilogue between the speakers of the protected languages, national authorities charged with their protection and the international structure allowing for reflecting the needs of the beneficiaries of the Charter and identifying potential solutions to be adopted in all States Parties.

The author of this contribution was asked not to report on the substantive provisions of the Charter and their interpretation, but on the working methods of the COMEX established in line with Article 17 of the Charter, and their development. To cope with this task, this chapter summarizes some experiences from the work of the COMEX- its plenary sessions, working groups, and on-the-spot visits. It seeks to answer the following questions: How does the COMEX work? How does it collect information? Which criteria are applied for evaluating the implementation of the Charter provisions? How is the information assessed in the plenary of the Committee of Experts?

As some of the working methods of the COMEX are prescribed directly by the text of the Charter, others from sources outside of the treaty rules, and some have an informal character, the contribution will be divided in the following parts: the first paragraphs will discuss the working methods which are prescribed by the Charter provisions. The second part will examine the tools adopted by the Decisions of the Committee of Ministers, whereas the third part will discuss the methods developed in the practice of the Committee of Experts – such as the examination of the switch from traditional to digital media of minority speakers. The supervision of the implementation of the evaluation, and detailed examples of the monitoring in specific countries will not be addressed in this chapter as they will be dealt with in other chapters of this book.

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Under the concept of 'working methods', this contribution refers to standard procedures applied to reach a specific aim. This aim is clearly pre-defined in the Charter's Preamble – to contribute to Europe's cultural wealth and traditions, and to promote the protection of minority and regional languages. The main standard procedures are formulated by the provisions of the Charter – such as examination of the periodical reports of the States Parties, and preparation of reports for the Committee of Ministers. Naturally, and particularly in complex situations, the provisions of the Charter as an international treaty are interpreted in line with the general and supplementary methods of treaty interpretation as codified in Articles 31 and 32 of the Vienna Convention on the Law of the Treaties (VCLT).[1]

2. Working Methods Formulated by the Charter

To reach the aims formulated in the Charter Preamble, the main contribution of the Committee of Ministers is the monitoring of the situation of the minority and regional languages in the States Parties of the Charter, and the conduct of a dialogue with the speakers and the authorities tasked with facilitating the improvement of the languages' situation. The basis for this work is the instrument of ratification in which the Contracting State specifies those regional or minority languages to which the detailed Part III of the Charter (Article 3) shall apply; at the same time, the ratification automatically results in the application of the more general Part II of the Charter to all regional and minority languages situated in the States Parties' territories. To further improve protection, the ratification instrument may be extended by the Signatories in the future.

The principal methods of evaluating the level of respect for these substantive obligations can be found in Part IV of the Charter. According to these provisions (Articles 15–17), the Parties are obliged to present to the Secretary General of the Council of Europe periodical reports on the measures taken in line with their duties. To prevent some of the most endangered languages from being assimilated or becoming extinct, the original periodicity of the reports was three years (Article 15); this differed from the general five years reporting period applied by the Advisory Committee

1 Vienna Convention on the Law of Treaties, 23 May 1969, UNTS, vol. 1155, p. 331.

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of the Framework Convention for the Protection of National Minorities[2] and other monitoring bodies of the Council of Europe.[3] The Charter's reporting period was later modified in 2018 by decision of the Committee of Ministers of the Council of Europe (CM/Del/Dec(2018)1330/10.4e) and extended to five years, aligning the reporting period with that of the Framework Convention.[4]

These State reports, accompanied by information submitted by the "bodies and associations legally established in a Party" are examined by the Committee of Experts (Article 16) which prepares a report for the Committee of Ministers. The Explanatory Report to the Charter[5] emphasizes that this procedure is not a quasi-judicial procedure, as the COMEX is "only instructed to monitor the implementation of the Charter and receive information to that end. The bodies referred to in Article 16 may not ask it to act as a more or less judicial appeal body" (para 129). In practice, it is difficult to comply with the literal meaning of this statement: Undoubtedly, the recommendations of the Committee of Experts only have a non-binding character; on the other hand, this body cannot merely "monitor" and "receive information" and refrain from the evaluation of the implementation of the treaty obligations. Indeed, formulating its own opinion on the implementation of the Charter provisions is an integral element of the COMEX's work.

In line with its task to "examine" the State reports, the Committee of Experts may verify information submitted by the States concerned and call on them to provide further explanations or information. The reports of the COMEX contain not only its evaluation of the situation of the protected languages and the recommendations to improve their protection, but also proposals to the Committee of Ministers for making their own recommendations (Article 16 para 4). According to the Charter, the procedure also includes the biannual reporting of the Secretary General of the Council of

2 See R. Hofmann, T. H. Malloy, D. Rein (eds.), The Framework Convention for the Protection of National Minorities, A Commentary, Brill/ Nijhoff 2018, 380 pp.

3 To compare, see Reflection Document, CM (2018) 165, Entry into Force of the European Charter for Regional or Minority Languages (ETS No. 148), in: European Charter for Regional or Minority Languages, Collected Texts, 3rd Edition 2023, p.71.

4 Decision of the Council of Ministers, 28 November 2018, in: European Charter for Regional or Minority Languages, Collected Texts, 3rd Edition 2023, p. 65 ff. See also part III of this contribution.

5 European Charter for Regional or Minority Languages and Explanatory Report, Council of Europe Publishing, Council of Europe version 1993, reprinted 1999.

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Europe on the application of the Charter to the Parliamentary Assembly (Article 16 para 5).

3. Working Methods fixed in the Decisions of the Committee of Ministers

The originally simple three-steps working procedure starting from a State report, followed by the evaluation report drafted by the Committee of Experts and reflected in the Report of the Committee of Ministers grew in the course of years into a much more sophisticated system recognized in several Decisions of the Committee of Ministers.[6]

The first Decision of the Committee of Ministers dealing with the procedures of monitoring States Parties' compliance with the Charter was adopted on 18 December 1997.[7] The document charged the Secretariat of the Charter with the preparation of an "outline national report" which substantially influenced the form of State reports required under Article 15 of the Charter. The second Decision entitled "Publication of Questionnaires Submitted to Governments on the National Reports and the Replies to them" of 7 April 2007[8] synchronized the publication of the information collected by the COMEX during the monitoring cycle with the publication of the evaluation reports: The Committee of Ministers decided that the questionnaire and the replies to it would be made public at the same time as the evaluation report. This was a factual amendment to Article 16 para 3 of the Charter which stipulates that the evaluation report may be made public (only) by the Committee of Ministers.

The title of the Decision adopted on 28 November 2018[9] "Strengthening the Monitoring Mechanism of the European Charter for Regional and Minority Languages" is self-explanatory. The 20th anniversaries of the Charter and the Framework Convention saw discussions in the meetings of the Rapporteur Group on Legal Cooperation (GR-J) whose members experienced substantive delays in the submission of State reports to the COMEX, late adoption of the Committee of Ministers Recommendations and thus

6 See Jörg Polakiewicz, Council of Europe (COE), Oxford Public Encyclopedia of International Law, 2019, https://opil.ouplaw.com/display/10.1093/law:epil/9780199231690/law-9780199231690-e607, last visit 20 June 2023.

7 Entry into Force of the European Charter for Regional or Minority Languages (ETS No. 148), in: European Charter for Regional or Minority Languages, Collected Texts, 3rd Edition 2023, p. 63 ff.

8 Supra note, p. 64.

9 Supra note, p. 65.

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the late publication of evaluation reports. However, the essential elements of the reform and the Decision were initiated by the Committee of Experts in light of the reporting delays. To make the procedure more effective, the COMEX proposed the possibility of monitoring the implementation of the Charter in a Contracting Party without a State report (point 1d of the Decision), to publish its Evaluation reports before the adoption of the recommendations of the Committee of Ministers (1e), to introduce a reminder procedure in case of delayed reports (1c) and to standardize the procedure of calculating the due dates for the State reports (1b).

The most tangible element of the Decision is the extension of the three-years reporting period laid down in Article 15 of the Charter to five years (1a). It reflected the political wish to simplify the reporting burden imposed under the two monitoring mechanisms of the Council of Europe, both of them focusing on some aspects of the linguistic rights of national minorities and evaluated by the Committee of Experts and also the Advisory Committee of the Framework Convention for the Protection of National Minorities.[10] The new procedure was to streamline the monitoring procedure by making it organizationally easier for the implementing States Parties and more realistic and reliable for the evaluating COMEX.

This change took place with the alignment of the Charter monitoring cycle and the regime of the Framework Convention. The Committee of Ministers' Decision stipulates that as of 1 July 2019, the State periodical reports under the Charter should no longer be presented in the three-years cycle as enshrined in the Charter, but in an extended, five-years cycle. Surprisingly enough, this should not be understood as though the due dates for the State reports under the Framework Convention had been taken over by the Charter. The joint due dates continue to be determined for each State considering both the previous Charter and Convention due dates.[11]

This substantial deviation from the text of the Charter was explained in the Preamble of the Decision: It mentions a "consensus among the States Parties to the Charter on the changes to be made in the operation of its monitoring mechanism". The "precedent" it followed was the revision of the European Social Charter by a unanimous decision of the Committee of Ministers.[12] Certainly, the text of the Charter for Regional or Minority Languages does not contain specific provisions on amending its provi-

10 Supra note 7, p.70.
11 Supra note 7, Appendix, p. 68–69.
12 Supra note 7, para 9, p. 72.

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sions; nevertheless, an amendment of an international treaty excluding parliaments of the States Parties completely from this procedure must be considered as a more than "pragmatic" solution. From the perspective of international treaty law, this procedure can be qualified as a "subsequent agreement" or "subsequent practice" interpreting the Charter in line with Article 31 VCLT. However, as this consensus was reached among the present States Parties, it is effective *inter partes* only; for the new Parties ratifying the Charter, this interpretation is not compulsory and can be, at least theoretically, subject to negotiation.[13]

Within two and half years after the submission of the State report, the States Parties should present information on the implementation of recommendations (InfoRIA) identified by the COMEX as being for "immediate action" (1a). In line with the extension of the reporting period, these mid-term reports were introduced as a reaction to the recommendations for immediate action "halfway through the monitoring cycle".[14] These reports should inform on actions taken with respect to the most urgent issues raised by the COMEX. The reports on the "Evaluation of the Implementation of the Recommendations for Immediate Action" became a common practice of the Committee of Experts, although it is not always easy to draw an exact line between the measures needing an immediate reaction and other, less urgent measures.

This Decision also codifies the so-called "confidential dialogue" (1e). This procedure can be initiated by a Contracting Party following the transmission of the Committee of Experts' evaluation report and is intended to add to the consolidation of the evaluation and the position of the Contracting Party. A further novel aspect is that where no request for a confidential dialogue is made by the Contracting State, this is taken as an indication to publish the evaluation report of the COMEX, possibly with some comments of the Contracting Party, "upon expiration of the two-month deadline".

13 Draft conclusions on subsequent agreements and subsequent practice in relation to the interpretation of treaties, 2018, Adopted by the International Law Commission at its seventieth session, in 2018, and submitted to the General Assembly as a part of the Commission's report covering the work of that session (A/73/10, para. 51). Yearbook of the International Law Commission, 2018, vol. II, Part Two.

14 Supra note 7, para 16.

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Finally, the Decision encourages the Committee of Experts to make wider use of its "rapid reaction capacity" and "ad hoc missions" already incorporated in its Rules of Procedure.[15]

4. Working Methods enshrined in the Rules of Procedure

The details of some of the working methods of the Committee of Experts have been foreseen in its Rules of Procedure adopted in its original version in 2004 and revised several times, most recently in 2019 – following the adoption of the 2018 Decision of the Committee of Ministers.[16] The Rules may be amended by a simple majority of the votes cast (Rule 21).

The first rule worth mentioning extends the scope of Article 16 of the Charter: In addition to the right of the COMEX to consult the bodies and associations "legally established in a Party" (Article 16 of the Charter), the COMEX may consult and hear "any person, organization or government representative whom it considers to be in a position to assist in the performance of its functions under the Charter" (Rule 12). This means that not only bodies established "in a Party" but also entities acting in foreign States may be consulted if such a step contributes to the result of the monitoring.

Second, according to Rule 13, the COMEX may also cooperate and exchange information with the Advisory Committee of the Framework Convention and other bodies of the Council of Europe with relevant expertise. This is merely a specification of Rule 12 allowing the COMEX to consult "any organization", but it also clearly symbolizes the new lines of cooperation between the two bodies.

The procedure for monitoring the implementation of the Charter in the States Parties is detailed in Rule 17. It recommends that for the examination of each periodical report, the COMEX may appoint a Rapporteur and a Working Group. This is relevant as it implies that not the entire Committee of Experts, but only this Working Group composed of the Rapporteur, the member of the COMEX in respect of the State Party concerned, and a third member of the COMEX, may carry out an on-the-spot visit to the State Party concerned. Furthermore, assisted by the Secretariat, this Working

15 Rules of Procedure of the Committee of Experts of the European Charter for Regional and Minority Languages, 18 March 2019, in: Entry into Force of the European Charter for Regional or Minority Languages (ETS No. 148), in: European Charter for Regional or Minority Languages, Collected Texts, 3rd Edition 2023, p. 91 ff.

16 Ibid.

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Group has to prepare a draft evaluation report based on the periodical report, reply to questionnaires, written communications, and information from other sources to be submitted for examination. The information on the implementation of the recommendations for immediate action is examined in the same way.

Furthermore, the Rules establish the competence of the Committee of Experts to adopt opinions on "relevant opinions" of other bodies of the Council of Europe, statements on current developments in the area of minority and regional languages protection, and to participate in activities carried out by the Council of Europe as "rapid reaction" to significant changes in the policies or practices of States which may affect the promotion or protection of regional or minority languages.

5. Informal Working Methods Developed by the COMEX

To facilitate its 'daily' work, the Committee of Experts has developed a series of working methods which are applied in its activities.

5.1. Tables

In the case of countries with complicated ratification schemata, the detailed reporting on the legal and factual situation of any language covered by the Charter led to reports which exceeded a hundred pages and were – with the exception of real specialists – hardly comprehensible. To avoid this situation, the COMEX has decided, in a new outline for its evaluation reports, to replace a part of the flowing text of the evaluation reports with simplified tables which reflect the level of the implementation of the provisions. At the same line, the objective of the sections with tables and recommendations was not only to shorten the reports but also to provide those who work on the implementation with practical, language-specific working documents.

The introduction of the tables in 2017 was picked up by the Secretary General of the Council of Europe in his Biennial Report to the Parliamentary Assembly in 2018[17] which stated: "The overall objective of this reform was to support the authorities and the linguistic groups in the implemen-

17 Application of the European Charter for Regional or minority Languages, Biennial Report by the Secretary General of the Council of Europe to the Parliamentary Assembly, Doc. 14530, 18 April 2018.

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tation process by providing them with clear conclusions on the state of implementation of each undertaking and corresponding lists of prioritised recommendations. The list of recommendations could also significantly facilitate the development of targeted co-operation projects."

This method has undoubtedly reduced the number of pages needed for describing in detail the unchanged situation of many languages and, as such, has saved numerous trees from being used for producing paper. Yet whether or not this instrument actually simplified the work of the experts and provided those who work on the implementation of the Charter with practical, language-specific working documents remains under debate in the COMEX.

5.2. Digitalisation

Another area which requires a flexible approach of the COMEX concerns the use of digital media.[18] The authors of the text of the Charter wished to be as precise as possible and formulated some of the provisions in an absolute manner – the Parties "have to ensure" radio stations, TV channels, newspapers or newspaper articles, audiovisual productions, and "guarantee" the freedom of direct reception of radio and TV broadcasts from neighboring countries, just to mention a few examples. This desire to be precise was the guarantor of both good luck and bad luck at the same time.

Obviously, technical developments overruled some of these requirements, rendering them outdated. The youth is hardly listening to traditional radio programs or watching TV today; young speakers of regional and minority languages are searching for information mostly using broadband connections and communicating via social media. The switch from analogue to digital broadcasting and geo-blocking used by private TV and radio cable operators is making the obligation to guarantee transfrontier retransmission impossible to implement. How to evaluate the level of implementation of media undertakings in such a situation?

After detailed discussions and a thorough study, the Committee of Experts has adopted a flexible approach: The Working Group on the Adap-

18 E.F.G. Jones, J. Lainio (ed.), et al., New technologies, new social media and the European Charter for Regional or Minority Languages, Council of Europe 2019, https://rm.coe.int, last visit 5 June 2024.

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tation of Suggestions in New Technologies, New Social Media and the European Charter for Regional or Minority Languages suggested evaluating the undertakings one by one, always from the perspective of whether the Contracting Party has had a realistic opportunity to promote the regional or minority language and whether this space for action has been used or not.

Digitalization caused profound changes not only in the world of media but also in the area of education. Covid-19 and the confinement measures required a flexible approach and an extended teaching in and of minority and regional languages was introduced to overcome social distancing obstacles. Many of these measures remained, however, in force also after the end of the quarantine. Some of these measures, especially in the remote areas, may have a positive impact on education, by allowing all pupils and students to participate regularly in the education of such languages.

By contrast, other aspects of these developments may be questionable: digitalization may well have contributed to inequality during the Covid-19, as not all speakers of minority languages were equipped with the technology necessary to allow easy access to the lessons. Following the end of the quarantine, some online courses replaced regular education and gave the original Charter provision a different touch: can the obligation of States Parties to make available primary education in the relevant minority or regional language be fulfilled by online lectures? Does not the school have more than an educational focus, namely also a societal, integrative function? While no one seriously claims that pre-school education can be organized online, the tendency to replace in-person teaching and economize on the costs of maintaining school buildings by cheaper online teaching may be perceived on all other levels of education – from primary to tertiary education.

5.3. Artificial Intelligence

After digital turn, now the use of artificial intelligence (AI) is also influencing the working methods of the COMEX. In its Statement "On the Promotion of Regional or Minority Languages through Artificial Intelligence",

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adopted in March 2022,[19] the Committee of Experts encouraged the States to develop, in cooperation with the users of regional or minority languages and the private sector, a structured approach to the use of AI applications in the different fields covered by the Charter.

AI is understood as a complex system of intelligent machines capable of analysing their environment and making decisions based on these analyses.[20] In relation to the Charter, it may further shape in particular the evaluation of measures taken in the field of education and in all areas where translation to and from minority and regional languages appears.

In the field of education, online learning of languages based on AI is used broadly; public support of platforms for online language learning of regional or minority languages may help implement Article 8 of the Charter.

Machine translation can have an impact on the evaluation of provisions requiring the translation of judicial documents in regional or minority languages (Article 9 of the Charter).[21] Chatbots introduced by administrative authorities in protected languages and public services performing specific tasks, such as providing answers to standard questions, may call into question the substance of the duty to allow users of protected languages to submit requests to administrative authorities (Article 10 of the Charter). Speech synthesis algorithms can allow for bilingual announcements in public transport improving the implementation of Article 10 para 2 of the Charter related to topographic signs.

In the sphere of media covered by Article 11 of the Charter, AI can support the automatic generation of subtitles. Cultural activities may be facilitated by creating terminological databases in minority of regional languages (Article 12 para 1 h of the Charter). Economic and social life can be influenced by using machine translations for safety instructions, information on consumer rights, contracts, payment orders, and other documents (Article 13 of the Charter). The large data sets in regional and minority languages needed for the use of AI can be obtained from neighboring countries through closer cross-borders co-operation; such cooperation could be regarded as fulfilling Article 14 of the Charter on transfrontier exchanges.

19 In: M. Gerken, Facilitation the Implementation of the European Charter for Regional and Minority Languages through Artificial Intelligence, Council of Europe Secretariat of the European Charter for Regional and Minority Languages, 2022, p. 22.

20 Supra note, p. 4.

21 Ibid., p. 13.

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In this technologically complex situation, the question is whether it is still appropriate to require that States include in their financial and banking regulations provisions which allow the use of minority languages in drawing up cheques (Article 13 para 2 a of the Charter)? Is the availability of machine translation an argument for not translating contracts of employment or safety instructions, or not offering treatment in minority languages in hospitals or retirement homes as required under Article 13 para 2 of the Charter?

It seems that the answer lies again in the approach of the States-Parties' authorities: Are they making available machine translation, are they supporting platforms for online-learning? In other words: do they demonstrate a resolute action in promoting regional or minority languages in line with Article 7 para 1c of the Charter?

5.4. Gender aspects

A more recent element of the work of the COMEX is to take a closer look at the gender aspects of protecting languages. Naturally, the right to use minority languages must be gender-neutral; the COMEX, however, becomes sometimes sensitised on the gender specific distribution of the burden of the preparation of State reports on the one hand, and on the composition of delegation of speakers' representatives during the on-the-spot visits on the other hand. Furthermore, addressing specific challenges related to the use of minority languages in young and mixed families requires the support of the COMEX: To prevent the loss of these languages within such families, the authorities may choose to promote their use through a targeted information campaign.

5.5. On-the-spot visits

As already mentioned, the COMEX has developed its own working methods when carrying out on-the-spot visits. As stipulated in the Rules of procedure (Rule 17), the Working Group composed of the Rapporteur, the member in respect of the Contracting Party concerned, and a third member of the COMEX, may carry out an on-the-spot visit to the Contracting Party concerned. This is an occasion to understand some open issues contained in the State reports, to learn on the spot the difficulties that

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minority language speakers are facing, and to discuss with the authorities the practicability of the undertakings imposed by the Charter and the steps towards their implementation. The suggestions for questions to be raised and the places to visit are prepared by the Secretariat of the COMEX on the basis of the State report.

The selection of the spots to be visited must be both practicable from the position of the speakers and the Working Group and typically includes at least one place outside of the capital. The meetings are not open to the public, as key participants from among the speakers may face difficulties in some States Parties for their participation. Such meetings take place preferably in politically neutral buildings, such as universities. The composition of the delegation of the speakers is usually determined by associations of national minorities aware of the situation on the spot. The average visit takes three to four full days and is preceded by a thorough study of the documents. The working language of these visits is English, whereas German and – in Switzerland – French and Italian are also used for individual meetings. The dialogue is facilitated by interpreters hired by the Secretariat.

For the members of the Working Group, the outcome of the on-the-spot-visits is usually overwhelming: not only the possibility to see whether or not bilingual topographic signs have been posted, to carry an open discussion with the minority language teachers about their the experience with the multilingualism of the authorities, but the whole confrontation with the local situation cannot be replaced by the longest written report. Each member of the COMEX has the possibility to participate in the on-the spot-visits; however, as its number during the year is limited by the number of submitted reports and in order to give the opportunity to participate in an on-the-spot-visit to all members, a member can participate in such an OSV two times a year on average.

5.6. Evaluation of the implementation of the undertakings

In contrast with the participation in Working Groups, each member of the COMEX participates in the evaluation process and the preparation of the reports. The fact that the periodical reports of States Parties are "examined" by the COMEX implies an assessment of the level of implementation of Charter undertakings of States Parties. Contrary to traditional human rights treaties, the provisions of the Charter are formulated in a binary manner not allowing for an application of the proportionality principle.

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Furthermore, the Committee of Experts is not composed exclusively of lawyers. In fact, the quality of its work is guaranteed through a mixed membership composed of linguists, historians, teachers, academics etc., and also lawyers.

The method of evaluation is a difficult weighing procedure. The simplest evaluation of the implementation of a provision is the finding of 'fulfilled', which means that the policies, legislation, and practice of the States Parties in respect of the protected language are in conformity with the Charter. The opposite, 'non-fulfilled' means that no action in policies, legislation, and practice has been taken to implement the undertaking. Between these two findings, the provision may be 'partly fulfilled' which describes a situation when policies and legislation are wholly or partly in conformity with the Charter, but the undertaking is only partly implemented in practice.

A Charter provision can be also 'formally fulfilled' meaning that the relevant policies and legislation are in conformity with the Charter, but there is no implementation of the undertaking in practice. The COMEX may also be 'unable to conclude'; this may follow from the fact that no or insufficient information had been provided by the authorities. Finally, the Committee of Experts may 'ask for further information' and invite the authorities to provide the relevant data in the following reporting round.

In the COMEX, substantial discussions typically surround the decision whether to evaluate an undertaking as 'formally fulfilled' or 'not fulfilled': The opinions may diverge as to the extent of the duty of the authorities for a 'resolute action' if the minority speakers for some reason, such as geographical distance or the wish not to open their language to external communication, do not use the existing domestic legal framework for protection and promotion.

The evaluation of the undertakings leads to diverse measures: The COMEX can commend the developments but may also require the adoption of a specific measure, urge or even strongly urge an action to be taken by the Contracting Party. The evaluation report must be adopted by at least a ¾ majority of voting members; in practice, the reports are overwhelmingly adopted by consensus, which demonstrates the quality of the preparatory work of both the Working Group, the COMEX and the Secretariat and their dedicated search for the right approach.

The thorough discussions in the Committee of Experts are substantially supported by the work of the Secretariat which has an enormous institutional memory – a knowledge of previous reporting rounds, of the situation

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in other States Parties, and also of open issues discussed in parallel monitoring bodies. Only recently, a HUDOC database and search engine has been set up also for the Committee of Experts which enables its members to speedily to find earlier reports and recommendations.[22]

6. Conclusion

The task of this contribution was twofold: On the one hand, it was to deal with the working methods of the Committee of Experts, while on the other hand, it was to describe their development.

Starting with the first part, we could observe that the COMEX is bound by the working methods codified in the text of the Charter, by the Decisions of the Council of Ministers of the Council of Europe, and by its own Rules of Procedure. Besides these formalized procedures, the Committee of Experts applies informal working methods which were developed in its practice.

Second, it can be observed that no one of these methods is static, not even those codified in the Charter: At the moment when it became obvious that the three-year monitoring cycle was too demanding and not aligned with the cycles of other monitoring bodies, the text of the Charter was amended by a Decision of the Committee of Ministers – a relatively 'unorthodox' approach in the light of the law of treaties. It is true that the Decision has introduced the mid-term reporting for the two-and-a-half-year term, which can even be considered as a shortening of the three-year reporting cycle to a two-and-a-half-year cycle. However, despite the fact that this step is seen as an improvement of the reporting structure by the Reflection Document of the Council of Ministers,[23] from a legal point of view, this new instrument is not part of the treaty text and can be considered as a recommendation by the States Parties, not as a legal obligation. Even if it could be considered as a 'subsequent agreement' or 'subsequent practice' interpreting the Charter, this interpretation is effective

22 Https://hudoc.ecrml.coe.int/#{%22sort%22:[%22ecrmladoptiondate%20descending,ecrmlpublicationdate%20descending,ecrmlsectionnumber%20ascending%22]}, last visit 26 June 2024.

23 Reflection Document, CM(2018) 165, Entry into Force of the European Charter for Regional or Minority Languages (ETS No. 148), in: European Charter for Regional or Minority Languages, Collected Texts, 3rd Edition 2023.

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inter partes; for the new Parties ratifying the Charter, this interpretation is not compulsory.

The Rules of Procedure expressly envisages further developments and can be amended by the COMEX reflecting the changing legal and factual situation. The informal methods of the Committee of Experts can be amended even more easily – theoretically, this body may develop a modified questionnaire, or evaluate a level of implementation of a specific undertaking in light of new developments, such as in the area of technology. An example would be the transition from analogous technologies to digital ones and the transfer of numerous traditional applications of minority and regional languages from legacy media to the digital world which required a fresh approach to the interpretation of numerous Charter provisions.

These changed perspectives must not disregard the main purpose of the Charter – to protect and promote regional and minority languages, including the languages in danger of extinction. Each development in a Contracting Party which changes the schema formulated by the Charter provisions, especially in the area of digitalization and the use of AI, has to be considered under the perspective of how it serves the protection of the language, how it helps strengthen its position in public life. It is important that the introduction of HUDOC and a close cooperation with other monitoring bodies contribute to the collection of reliable data from the States Parties. The Committee of Experts with its interdisciplinary membership, expertise, and devotion to its tasks, together with the experienced Secretariat offer the best guarantee for a correct reflection on these developments.

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Monitoring the Monitoring

Quantitative and qualitative analyses of the ECRML evaluation and the future of the Language Charter

Gerencsér Balázs Szabolcs

1. Introduction and aims of the analysis

The Language Charter's unique monitoring mechanism, carried out by the COMEX, relies on periodic country reports, on-the-spot visits, and dialogue with governmental and non-governmental actors to evaluate compliance and issue recommendations. This chapter critically interrogates this evaluative process through a comprehensive mixed-methods approach, combining both quantitative and qualitative analyses of the Charter's monitoring documents.

This study has three primary aims: to assess the procedural efficiency and institutional performance of the Charter's monitoring mechanism; to evaluate internal and external factors that enhance or hinder its effectiveness; and, thirdly, to explore whether the Charter is adequately equipped to address contemporary challenges, including digital transformation, geopolitical shifts, and evolving linguistic landscapes. The methodology integrates a detailed statistical analysis of 153 state reports submitted between 1998 and 2025 to examine submission delays and procedural durations, alongside a qualitative analysis. The research also engages in normative and comparative legal inquiry, situating the ECRML's mechanism within the broader ecosystem of international human rights monitoring frameworks.

By identifying patterns of monitoring delay, institutional strengths and weaknesses, and opportunities for reform, the study not only maps the operational realities of the ECRML's implementation but also supports its long-term sustainability. Ultimately, the work offers a data-informed, interdisciplinary critique of treaty monitoring, contributing to policy debates on minority rights, international law, and linguistic justice in the 21st century.

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2. The Monitoring Mechanism of the European Charter for Regional or Minority Languages in the Context of Human Rights Monitoring Mechanisms

2.1. The ECRML Monitoring Mechanism in general

The monitoring mechanism of an international treaty is essential for guaranteeing its proper implementation.[1] These mechanisms establish a constructive dialogue with states and non-state actors involved in the territorial situation, following a holistic approach to monitor the conduct of all international law subjects involved in the area. Unlike judicial mechanisms, their goal is to address recommendations to states and non-state actors, rather than to rule on individual petitions.[2]

Legally, the ECRML obliges States Parties to recognize regional or minority languages as an expression of cultural wealth and to facilitate their use in public and private life. This includes commitments in areas of education, judicial authorities, administrative authorities, media, cultural activities, and economic and social life. The Charter outlines two levels of commitment: Part II details general objectives and principles applicable to all regional or minority languages within a state's territory, while Part III specifies more comprehensive measures for languages that the state chooses to safeguard more extensively.

The ECRML operates in conjunction with other international legal instruments of the Council of Europe, notably the Framework Convention for the Protection of National Minorities (FCNM). While the FCNM focuses broadly on the rights of national minorities, including aspects of language use, the ECRML provides a more detailed and specific framework dedicated exclusively to linguistic rights. This specialization allows for targeted measures addressing the unique challenges faced by speakers of regional or minority languages.[3]

Thus, the ECRML has an established monitoring mechanism to ensure its effective implementation. This monitoring mechanism involves regular

1 Berkes Antal: *International Human Rights Law Beyond State Territorial Control.* Cambridge University Press, Cambridge, 2021. https://doi.org/10.1017/9781108886543.009.307.

2 Berkes 2021, ibid.

3 Xabier Arzoz: Accommodating Linguistic Difference: Five Normative Models of Language Rights. *European Constitutional Law Review.* 2010, 6 (1): 102–122. doi:10.1017/S1574019610100066.

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reporting by the state parties on the measures taken to give effect to the provisions of the Charter, and visits by the Committee of Experts to the States Parties involving interviews with both state authorities and speakers' organizations and bodies. The COMEX, a body of independent experts, adopts recommendations addressed to the States Parties on the basis of these reports and visits.[4] These are then considered by the Council of Ministers of the Council of Europe and adopted at the institution's discretion.

The monitoring process under the Charter is designed to be constructive, with the aim of providing guidance and support to the state parties in their efforts to protect and promote regional or minority languages. The process is also transparent, with the state reports and the recommendations of the Committee of Experts being made publicly available.

The monitoring mechanism of the Charter is more specific than other human rights monitoring mechanisms, as it involves a detailed examination of the implementation of the Charter's provisions in law and in practice.[5] This method of evaluation is also interdisciplinary, since compliance with the law is not only a formal matter, but also a substantive one, which requires sociological, sociolinguistic and other analyses, such as linguistic attitudes or language ideologies.

2.2. Comparison with Human Rights Monitoring Mechanisms

In comparison to human rights monitoring mechanisms[6] of the United Nation's framework, such as the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights, the monitoring mechanism of the Charter is more comprehensive and specific.[7]

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4 François Grin: *Language Policy Evaluation and the European Charter for Regional or Minority Languages.* Palgrave Macmillan UK eBooks. Palgrave Macmillan, 2003. https://doi.org/10.1057/9780230502666.

5 Lauren Barredo – Irène Akua Agyepong – Gordon Liu – Srinath Reddy: *Ensure Healthy Lives and Promote Well-Being for All at All Ages.* United Nations Chronicle/UN Chronicle. United Nations Publications. 2015. https://doi.org/10.18356/3bfe3cfa-en.

6 As Tove Skutnabb-Kangas explains, linguistic rights are in direct connection with human rights. She uses the term "*linguistic human rights*", which let us make this Charter be comparable to other human rights instruments. Tove Skutnabb-Kangas: Linguistic Human Rights. In: Peter M. Tiersma – Lawrence M. Solan: *The Oxford Handbook of Language and Law*. OUP, Oxford, 2016. 237.

7 Grin 2003.

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Additionally, the Committee of Experts, which oversees the implementation of the Charter, is composed of independent experts with specific and recognized expertise in the field of minority language protection, ensuring a depth of understanding and specialized knowledge that is often lacking in more generalized human rights monitoring mechanisms. The added value of the evaluation is also helped by the wide range of experience of the experts, including lawyers, linguists and even journalists.

Furthermore, the Charter's monitoring mechanism is more robust in terms of the level of detail and the frequency of reporting required from state parties.

According to the Council of Europe's other treaties, state parties are required to submit periodic reports on their implementation of the treaty's provisions at regular intervals, typically every 4–5 years, although in practice these reports are often combined and reviewed less frequently.[8] We will see a similar phenomenon in the implementation of the ECRML as well. On the other hand, under the Charter, state parties are required to submit a comprehensive report on the implementation of the Charter's provisions every 5 years. This frequency of reporting, coupled with the specialized nature of the monitoring, allows for a more detailed and up-to-date assessment of the state's efforts in protecting regional or minority languages.

2.3. The Charter as an 'à la carte' instrument

Another unique aspect of the Charter is it's *à la carte* nature, which allows state parties to select the specific provisions of the Charter that they wish to apply. This flexibility, while potentially limiting the comprehensiveness of the monitoring, also ensures that state parties can take on obligations that

8 Kalliopi Chainoglou: International Covenant on Economic, Social and Cultural Rights (ICESCR). In: Andreas J. Wiesand – Kalliopi Chainoglou – Anna Sledzinska-Simon (eds): *Culture and Human Rights: The Wroclaw Commentaries*. De Gruyter, Berlin – Boston, 2017. https://doi.org/10.1515/9783110432251-086, 199. The CoE Committee of Ministers states, "A five-year cycle is the most common practice among the monitoring bodies of the Council of Europe, including the Framework Convention, the European Commission against Racism and Intolerance (ECRI), the Group of States against Corruption (GRECO) and the Group of Experts on Action against Trafficking in Human Beings (GRETA), while the European Social Charter uses a four-year monitoring cycle and Moneyval uses a six-year evaluation cycle." CM 1330th meeting, 28 November 2018, CM(2018)165. para 7.

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are better suited to their particular linguistic landscape, financial means and political context.

By contrast, the UN human rights treaties typically require state parties to apply the entirety of the treaty provisions, leaving little room for tailoring their obligations to their specific circumstances. In this regard, the Charter's monitoring mechanism, with its specialized focus, robust reporting requirements, and flexibility for state parties, represents a more nuanced and effective approach to ensuring the protection of regional and minority languages compared to more generalized human rights monitoring mechanisms.

The Charter seeks to respond as closely as possible to the specificities of each country. By recognising local conditions, the Charter also tries to meet the principle of subsidiarity. This allows state parties to apply the Charter's provisions at the most appropriate level of government, whether that be at national, regional, or local level, based on the particular circumstances and needs of the regional or minority languages within their territory.

The monitoring mechanism of the ECRML, with its specialized focus, robust reporting requirements, and flexible approach therefore represents a unique and potentially more effective model for ensuring the protection of linguistic rights compared to more generalized human rights monitoring mechanisms.

3. The Normative Background of the Charter's Evaluation Procedure

The Charter is a legally binding international treaty that aims to protect and promote the use of regional or minority languages within the member states of the Council of Europe. The evaluation of the implementation of this Charter is a crucial aspect of ensuring its effectiveness and achieving the desired outcomes.[9] By narrowing down the scope of languages subject to legal protection, the text also defines a specific subject area: an intersection, a common subset, of the protection of minorities and languages, which lies only between these two. The text is therefore neither purely minority protection nor single language protection. It is a specific combination of these two, based on the particular historical, linguistic

9 Leigh Oakes: *Normative Language Policy and Minority Language Rights: Rethinking the Case of Regional Languages in France.*" Springer Science+Business Media, 2016. https://doi.org/10.1007/s10993-016-9411-5. 365.

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and territorial endowments of Europe, but with a potential to serve as a model of protection beyond the confines of the old continent, presenting an alternative response to global language problems.

The first important feature is that the Language Charter recognises the use of minority or regional languages as a *right*. The third paragraph of the Preamble recognises and treats the use of mother tongues as an inalienable right in both the private and public spheres. The elaboration of this important declaration will be the system of *stricti iuris* obligations contained in Parts II and III.

Another outstanding feature of the Preamble is that it considers the use of minority languages as a *fundamental value* and part of the European cultural heritage. In this way, the Charter has included minority languages in the European cultural tradition and made their protection a democratic value. The Charter does this by recognising, from first to last sentence, that linguistic diversity in Europe means not only the variety of languages, but also the different (historical, social, geographical, etc.) characteristics of language protection in different countries. The optional system of obligations in Part III can address this diversity helping to *make* the obligations *more specific*. Linguistic diversity in Europe is not a right, but a matter of *fact*, which does not need to be specifically constituted, but simply referred to in the text.

The normative background of the evaluation procedure of the Charter is rooted in the recognition of the importance of minority language rights and the need for language planning to support the maintenance of these languages in multilingual contexts.[10] The strategic view is recognized as a necessary component of supporting minority languages, as "*laissez-faire* policies mean that the languages of power and prestige will eventually take over in all situations of contact".[11] The Charter itself is grounded in the principle of promoting the use and visibility of regional or minority languages, which is seen as essential for preserving cultural diversity and ensuring the linguistic rights of minority populations.[12] The evaluation of the implementation of the Charter is not merely a technical exercise,

10 Zoha Bayat – Ruth Kircher – H. Van de Velde: Minority Language Rights to Education in International, Regional, and Domestic Regulations and Practices: The Case of Frisian in the Netherlands. *Current Issues in Language Planning*. 2022 24(1), https://doi.org/10.1080/14664208.2022.2037291. 81–101.

11 Sue Wright: *Language Policy and Language Planning – From Nationalism to Globalisation*. Springer, 2016. 225–247.

12 Oakes 2016, 365.

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but one that is deeply imbued with normative considerations regarding the moral imperative of protecting the language (or what should be, the linguistic rights of minority groups).

The Charter itself establishes a comprehensive framework for the evaluation of its implementation, involving regular monitoring and reporting by the Committee of Experts and the submission of periodic state reports.[13] In Article 16 of the Charter, states are required to submit periodic reports on the measures taken to give effect to the undertakings they have made under the Charter.

This evaluation process is underpinned by the recognition that language policies can have profound implications for the linguistic rights and cultural identities of minority populations. The country report contains an assessment of progress and challenges in implementing the Charter, as well as recommendations for further action.[14]

The monitoring cycle established by the Charter is designed to ensure ongoing accountability and to provide a mechanism for identifying areas where additional support or intervention may be required to ensure the effective implementation of the Charter's provisions.[15] In three five periods the States Parties have to submit periodic reports on the measures taken to give effect to the undertakings they have made under the Charter, which are then examined by the COMEX.

The COMEX, composed by independent experts, then issues a report and puts forward proposals and recommendations to the Committee of Ministers. During the examination, according to the Rules of Procedure,[16] the Committee may consult with relevant authorities and organizations and it may invite them to provide information. Rule 17 of the Rules of procedure regulates the Examination of Information submitted by States Parties. It establishes the general working method with a group of three experts that first examines the report of the State Party and carries out an on-the-spot evaluation visit.

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13 Kovács Péter: A Kisebbsegvedelmi Egyezmények Kontrollmechanizmusának Hatékonyságárol. (On the Effectiveness of the Minority Rights Conventions' Control Mechanisms) *Studia Iuridica Auctoritate Universitatis Pecs Publicata,* 2010. 146. 3.

14 Grin, 2003., see also Bayat et al., 2022.

15 Snežana Trifunovska: Report on the Linguistic Rights of Persons Belonging to National Minorities in the OSCE Area. In: Trifunovska, S. (eds) *Minority Rights in Europe European Minorities and Languages.* T.M.C. Asser Press. 2001. https://doi.org/10.1007/978-90-6704-655-8_16. 347–388.

16 Rules Of Procedure of the Committee of Experts of the European Charter for Regional or Minority Languages. Min-Lang (2019) 7.

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The Experts may take other sources of information into account to assess the implementation of the Charter, including information received from representatives of regional or minority language speakers and from other monitoring bodies. Experts may also use sources in order to collect additional information and to target relevant issues. Therefore, the COMEX has the possibility to draw on additional sources of information such as shadow reports from NGOs and other civil society stakeholders.[17] Moreover, the experts may ask for additional information or clarification from the State Party at any stage of the monitoring process.

The COMEX may adopt recommendations to initiate immediate action in accordance with Article 16.3 of the Charter. Also, the Rules of Procedure foresee the application of special norms in case of delay by the State Party, to which I will come back in the following chapters.

Once the evaluation report is ready, the State Party has up to two months to provide comments (Rule 18). The procedures also allow the COMEX and the State Party to engage in a constructive dialogue to address any concerns or recommendations.

The evaluation report contains conclusions and recommendations to the Committee of Ministers, which is responsible for the overall supervision of the implementation of the Charter according to Article 16.4. The Committee of Ministers then adopts a resolution on the basis of the COMEX report, which may include recommendations to the State Party concerned.

The implementation and monitoring framework established by the Charter is therefore underpinned by a strong normative basis that recognizes the importance of protecting and promoting the use of minority languages as a matter of human rights and cultural diversity.

This approach is further reinforced by the connections between the Charter and other international human rights instruments, such as the International Covenant on Economic, Social and Cultural Rights[18] and the International Covenant on Civil and Political Rights[19], which establish the broader normative framework for the protection of minority language rights. Ultimately, the evaluation process aims to ensure that states are held accountable for their commitments under the Charter and that the languages of minority populations are effectively safeguarded.

17 Grin 2003.

18 Chainoglou, 2016. 199.

19 Theresia Degener – Yolan Koster-Dreese: International Covenant on Civil and Political Rights. *Bulletin of Peace Proposals*. (8)3. 1977. https://doi.org/10.1177/096701067700800313. 283–288.

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In 2018, a major reform of the monitoring mechanism took place to mark the 20th anniversary of the Charter. In order to strengthen the monitoring mechanism of the ECRML the Committee of Ministers adopted a decision[20] requesting that the Language Charter's States Parties submit their periodical reports at five-year intervals, with a shorter mid-term report of a more limited scope being submitted halfway through their monitoring cycle to follow up on the evaluation report's recommendations for immediate action only. The five-year reports would contain comprehensive information about the application of the treaty and replace the earlier three-year reports.[21] In addition, a direct connection between the monitoring of the ECRML and the Framework Convention[22] was established. Although the Committee of Ministers acknowledged that these two instruments "have distinct aims and purposes and that they remain two separate instruments, giving rise to distinct obligations, with separate monitoring mechanisms and expert committees",[23] it noted that there was a valid need for coordinated action.

The next chapter will show that the monitoring mechanism has faced significant obstacles that pushed the Committee of Ministers towards reforms, with the aim of keeping the Charter operational. The question is whether these reforms are sufficient or there is still a need for further improvement.

4. Quantitative analysis of monitoring cycles

At the time of writing the Language Charter has twenty-five States Parties. The States Parties report on the implementation of the commitments they have made under the Language Charter every three years, or rather they should report every three years. Looking at the data available from the public monitoring mechanism, there are hardly any States Parties that can adequately comply with the 3-year reporting cycle. There is no sanction to punish States Parties for repeatedly missing the deadline for submitting their country reports. Yet we can still say that this is the right approach, since the cultural nature of language implies extra-legal tools. A culture of

20 CM/Del/Dec(2018)1330/10.4e.
21 CM(2018)165. Para 10.
22 Framework Convention for the Protection of National Minorities, ETS No. 157.
23 CM/Del/Dec(2018)1330/10.4e para 1b).

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guidance, dialogue and cooperation can do more to enforce these rights, and the Charter, recognising this opportunity, has chosen this path.

In the context of this research, I examined 153 country reports published up until January 2025 and their monitoring process. The research focused on whether each country report is received within, or later than the three-year reporting cycle and, if so, what is the proportion of countries that are behind and what is the extent of the delay.

Cycle	total country reports submitted	Number of states with delays of 1–2 years	Number of states 3 years or more delay
2	25	8	3
3	25	10	3
4	24	9	5
5	22	7	2
6	20	9	3
7	9	2	0
8	5	2	0

Table 1: Delay rate for country reports in years (1998–2025.01.01.)

Cycle	delay over the 3-year-cycle in years (see Table 1, fourth column)
2	4 / 2,5 / 3
3	3 / 3 / 3
4	3 / 5 / 3 / 3 / 3
5	4 / 3
6	3 / 3 / 3
7	0
8	0

Table 2: Delay over the 3-year-cycle in years

All States Parties submitted their first round reports on time. However, in the second round, which was supposed to be due in the 3rd year after the first country report, there were already several states who submitted with delay. Only three states submitted their reports beyond three years (RO, SI, UK).

In the third cycle, again three countries were significantly late, each by 3 years (AM, SK, UK). However, a total of 10 States Parties submitted their report one year after the deadline.

In the fourth round, the proportion of applications not reaching the deadline was similar to the previous round, but the number of significantly late applications increased. Austria stood out with its country reports sub-

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mitted 5 years late. In the third and fourth rounds, a kind of 'rolling' can be seen in the delays, i.e. country reports submitted with minor delays in the past are now resulting in cycle delays.

So far, 22 countries have submitted reports for the fifth round. Of these 18 countries, 80 % have submitted their country reports within 3 or 4 years. The remaining four countries have submitted their country reports at 5 (UA, UK), 6 (SI) and 7 (FI) year intervals. Other countries also with existing minority-rights protection mechanisms submitted their country reports more than three years late (DK, FI, NL, HU).

From the sixth round onwards, the number of States Parties decreases, as the States listed here are the 'oldest parties' to this international treaty. There are 20 countries reporting in this round, but the timeframes are longer: 8 countries report within 3 years, 4 countries within 4 years, 5 countries within 5 years and 3 countries within 6 years.

Nine countries made it to the seventh cycle and five to the eighth, which is obviously a function of time, as States Parties joined the Charter at different times. There are no major delays in these rounds, with DE and HU submitting their next report within 6 years in the 8th round.

However, it is also necessary to note that the 6th cycle was conducted already after 2019, i.e. after the monitoring reform mentioned earlier. Thus, the interim (InfoRIA) reports between cycle reports may have caused some reports to be submitted later.

I also measured the duration of the procedures. I measured the time between the submission of the country report and the issuance of the recommendations by the Committee of Ministers. The calculation in years has been rounded down to take account of the date of publication of the country report on the Charter's webpage.

Cycle	Average procedure length (year)
1	2,16
2	1,6
3	1,3
4	1,23
5	1,19
6	1,28
7	1,12 (few data due to few States Parties)
8	1,5 (few data due to few States Parties)

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Table 3: Average procedure length (year)

I looked at the duration of 143 procedures per cycle and per country. Looking at the duration of all procedures, the average duration of a monitoring procedure was 1,5 years, i.e. from the submission of the country report, through the peer review, to the recommendation of the Committee of Ministers. The longest time was 4 years (SK, 1st cycle), 10 cases lasted 3 years and 42 cases 2 years. This means that in 60 % of the investigations, a decision was reached in about a year.

Based on the above analysis, the reasons for the late submission of country reports can be varied. On the one hand, it could be due to the fact that by the time the State Party receives the recommendations, another reporting cycle had started, so that the State Party submitted the country report later to be able to respond to the recommendations. There may also be a reason for a State Party to submit a cycle report later in case of a backlog of interim reports following 2019. Finally, the reason could also be on the State Party side. Overall, however, it can be noted that States Parties appreciate the flexibility of the procedure and send their country reports (even if late) to the Charter Secretariat.

5. Qualitative analysis of the external and internal factors of monitoring

Data-driven analysis and economic or sociological assessment of international treaties is widely used in scholarly literature.[24] International treaties have become an essential tool for addressing global issues and promoting cooperation among nations. However, the effectiveness of these mechanisms has been a topic of ongoing debate. Applying a SWOT analysis to the study of international treaty monitoring mechanisms can yield valuable insights that can guide efforts to enhance their impact and efficacy. This method of analysis can help identify the inherent strengths and weaknesses of monitoring systems, as well as the external opportunities and threats that may impact their performance.[25] I would like to express my special thanks to the current and former members of the Committee of Experts

24 Steven J. Hoffman – Prativa Baral – Susan Rogers – et al: International treaties have mostly failed to produce their intended effects. *Proceedings of the National Academy of Sciences*, 119 (32) 2022, https://doi.org/10.1073/pnas.2122854119.

25 Christof Heyns – Frans Viljoen: The Impact of the United Nations Human Rights Treaties on the Domestic Level. *Human Rights Quarterly* 23.3 (2001) 483–535.

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who contributed their valuable experience, comments and criticisms to my study detailed below!

It is worth starting with the *internal* factors that are to be found within the Council of Europe, and more precisely, within the Language Charter. Among the *strengths* of the Charter and its bodies, I would mention first and foremost its 25 years of experience and the knowledge base it has built, which contains consistent, open access and comparable data elements. Not only the reports of the States Parties States, but also the COMEX evaluation reports contain legal, social and economic elements on the internal functioning of each State Party and on the situation of languages spoken on their territories. The reports contain the monitoring of the entire Charter and reflection on previous recommendations made by the Committee of Ministers. There is also the possibility to set a thematic scope of the analyses, including pre-identified problem areas.

Another strength of the Charter is its scope and the ability to communicate to the public through its recommendations. By being able to investigate and communicate its findings publicly, but without the possibility of direct intervention, COMEX exercises 'ombudsman-like' powers. This has the advantage of flexibility and transparency. The possibility, confirmed by the Committee of Ministers in the 2018 reform, for COMEX and the State Party to be able to communicate directly is of great relevance. In this way, the inquiry is not just a 'political debate' but a real – even professional – dialogue that can help ensure that language protection is more fully realised. I consider the inbuilt institutional patience to be a strength of the process: as we have seen in the previous chapter, the Charter does not seek to 'police' the States Parties, but wishes rather to be a catalyst for protecting languages.[26] The other procedural advantage is the capacity for immediate action. And in its operation, the COMEX is not alone, but in a close network with the other Council of Europe bodies, the synergy of which is also one of the Charter's strengths.

Furthermore, the Council of Europe and the ECRML take an interdisciplinary approach to languages, i.e. they see the legal, social, economic,

26 However the literature sometimes lacks sanctions. de Groot says: "A disadvantage of the monitoring system of the Charter is the absence of sanctions." Gerard-René de Groot: European Charter for Regional and Minority Languages. In: Tanneke Schoonheim – Johan Van Hoorde (eds.): *Language variation. A factor of increasing complexity and a challenge for language policy within Europe.* Contributions to the EFNIL Conference 2018 in Amsterdam-Budapest: Research Institute for Linguistics, Hungarian Academy of Sciences, 2019. 126.

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administrative and political contexts simultaneously, to which they can adapt their toolbox of actions. The functioning of COMEX, as we have seen in the previous chapter on the legal framework, is governed on the one hand by the Charter itself and on the other by an internal set of procedures. The first is the broad framework in an almost immutable form, the second the detailed rules in a changeable, malleable form. However, they also provide COMEX with sufficient flexibility, i.e. the ability to reform Charter management without having to change its very text. The possibility for improvement is therefore given internally, eg. it could issue a 'statement' in 2023,[27] it can write letters to States Parties regarding issues of concern, and or the method of interim reports was developed with the 2018 procedural reform.[28] COMEX also has the power to be proactive, i.e. it can promote the peaceful coexistence of languages[29] by making proposals for policy or best practice.

However, there are *weaknesses* in the internal functioning of the Charter. One is the too short reporting period. In many cases, the cycles almost 'overlap' recommendations and reports, so there is often no time to work out the impact of recommendations. It cannot be ruled out that implementing a recommendation requires legislation or government action, the impact of which is usually not immediately measurable and takes time. A related peculiarity is that the procedures do not set forth internal deadlines, which on the one hand facilitates flexibility for different linguistic situations in the individual countries, but it also makes the timeliness of the procedure unpredictable. This is why I have included this factor among the weaknesses.

As regards substance, the overly general wording of the reports and the often repetitive panels, which also suggest to States Parties 'administrative compliance' rather than creative proactivity in 'committed language protection', are weaknesses. Similarly, the selection of the relevant NGOs is not transparent enough. It is not clear from the monitoring documents how the CoE encourages the activity of non-governmental actors in regional or

27 Statement by the Committee of Experts on the legal framework for the implementation of the European Charter for Regional or Minority Languages in Ukraine. MIN-LANG (2023) 15.

28 Strengthening the monitoring mechanism of the European Charter for Regional or Minority Languages. CM(2018)165.

29 Gerencsér, Balázs Szabolcs: The Law of Coexisting Languages Examining the Quartet of Language Policy Fields. *Foreign Policy Review*, 2021, (2). pp. 88–102. https://doi.org/10.47706/KKIFPR.2021.2.88-105.

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minority language protection (if ever), which would provide both a broader and better quality data collection and local support for the implementation of the Charter.

The *external* factors are those on which the specific 'treaty body' of the Language Charter has no direct influence, but which do influence the application of the Charter, either on the side of the Council of Europe or on the side of the State Party. Among these, we may consider the multilingualism and multiculturalism highlighted in the preamble to be an *opportunity* and cornerstones of European identity. The cultural diversity that results from Europe's linguistic diversity is a real added value to our personal and community identity. Europe has an active civil society and a strong academic community focusing on languages and minorities,[30] which strongly support the implementation of the Charter, providing both COMEX and the Charter Secretariat with more accurate information and supporting States Parties in their decisions, which depend on the will of their governments to adopt these external factors.

Among the external factors, i.e. those outside the Charter, its Secretariat and COMEX, are those that *threaten* the proper functioning of the Charter, which in some way impede its implementation or the protection of languages and incidentally, the speakers' access to language rights. These include a political environment that is not supportive of language protection, or a lack of substantive rather than formal compliance with the Charter and other minority protection instruments. Related to this is the trend towards new languages, especially the languages of migrants.[31] The Language Charter is a specific instrument because of its minority focus; therefore, its aim is to protect regional or minority languages, which are an integral part of a cultural development that has been going on for more than a thousand years. The two types of language, those covered by the Charter and those not, are unrelated and require different approaches and tools. It cannot be denied that the Charter does not (and cannot) solve all language problems. In the future, therefore, the Charter must continue to follow newer (national) language protection instruments and continue to raise awareness of the importance of autochthonous communities.

30 Alexey Kozhemyakov: The European Charter for Regional or Minority Languages: Ten Years of Protecting and Promoting Linguistic and Cultural Diversity. *Museum International*. 2008, 60(3), 26–36. https://doi.org/10.1111/j.1468-0033.2008.00650.x.

31 Katharina Prochazka – Gero Vogl: Quantifying the driving factors for language shift in a bilingual region, *Proceedings of National Academy of Sciences* U.S.A. 114 (17) 4365–4369 https://doi.org/10.1073/pnas.1617252114 (2017).

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The external impact of digital development, the presence of information and communication technologies in society is inevitable. In many respects, this impact also changes the interpretation of the Charter, since, each of the commitments made in Part III must be accompanied by an assessment of the impact of the digital environment, the Internet or algorithms on, inter alia, media, education, justice or public administration.[32] Indeed, the ever-evolving digital environment brings with it both the possibility of wider access to languages and the threat of marginalisation of minority languages.[33]

6. Quo vadis Language Charter?

The monitoring of implementation has a legal focus in the case of the Language Charter.[34] The Language Charter does not, however, imply individual rights of complaint.[35] Thus, concomitant language rights, both individual and collective, are brought to the attention of the Committee of Experts in the course of the monitoring process, in the form of "shadow reports" submitted by NGO-s in the course of the evaluation.

The unenforceability of any substantive linguistic rights for individuals is also confirmed by the case law of the European Court of Human Rights.[36]

32 Sarah McMonagle: The European Charter for Regional or Minority Languages: Still Relevant in the Information Age. *Journal on Ethnopolitics and Minority Issues in Europe*, 2012, 11, no. 2. 1–24.

33 The example of India shows the marginalisation of minority languages, which is becoming more of a global phenomenon due to the global nature of the instruments. Mohanty, Ajit K.: Languages, inequality and marginalization: implications of the double divide in Indian multilingualism. *International Journal of the Sociology of Language* 2010, no. 205 (2010): 131–154. https://doi.org/10.1515/ijsl.2010.042.

34 Gábor Kardos compares it to the Framework Convention, which has a political instrument. Gábor Kardos: A Kisebbségi Nyelvi Charta és a Keretegyezmény összevetése, és az ellenőrzési rendszer gyakorlati problémái. [Comparison of the Minority Language Charter and the Framework Convention and practical problems of the control system]. In Dóra Görög – Attila Dabis (eds.): *Kisebbségi jogok érvényesülése a Kárpátmedencében [Minority Rights in the Carpathian Basin]*, Budapest, KJI, 2017. 155–156.

35 Kovács Péter: *Nemzetközi jog és kisebbségvédelem [International law and minority protection]*. Osiris, Budapest, 1996. 76–77. and Kardos op. cit. 157.

36 see the Belgian Linguistic Case (2) – Decision of 23 July 1968 'In the case "relating to certain aspects of the laws on the use of languages in education in Belgium" v Belgium' (Application no 1474/62; 1677/62; 1691/62; 1769/63; 1994/63; 2126/64) 1 EHRR 252.

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Since there are no specific language rights laid down in the ECHR, there is no individual right to linguistic protection before the Court. It could be said that the Charter provides a kind of 'ombudsman-like' quasi-legal protection, meaning strong publicity, the power of reporting and the absence of direct instruments, which in turn can indirectly trigger the use of other instruments.

The Preamble contains several elements that go beyond the legal framework of language protection. These include, for example, a strong cultural character (paragraph 2) or the need to encourage language use (paragraph 5). These provisions open up the framework of traditional individual rights protection mechanisms.

The power of the Language Charter lies in *dialogue*. Firstly, both the country reports and the recommendations of the European Council are public. Article 16 channels speakers' reactions to these into the process by including the communities using the protected languages in the consultation. This opportunity for legal opposition/criticism thus both encourages the State Party to report more carefully and promotes the activism of regional or minority language speakers.

It is no coincidence, therefore, that if we read the documents of the Committee of Experts and the Committee of Ministers carefully, we find more and more recommendations for extra-legal solutions. Reading the reports of the Committee of Experts one after the other, we can see a chronological development: the recommendations are increasingly detailed, better structured and based on more information. For example, the promotion of the sensitisation of the majority society or the push for a minority-majority dialogue in certain fields (such as the recurrently contentious issue of textbook publishing in Slovakia).

Public access is also of paramount importance for researchability. The Language Charter Secretariat has now built up a very valuable *data- and knowledge base* through the compilation of country reports and the reports of the Committee of Experts. The monitoring itself (without any further sanctions) therefore provides a more detailed picture of the internal functioning of the States Parties from year to year, holding up a mirror to them. Moreover, aiming to promote language rights, creative ways of recycling the knowledge base could be developed in the future.

Looking towards the future of the Charter, it is inevitable to ask: is the *raison d'être* still there? If we look only at the 25 years of monitoring experience of the Language Charter, the answer is clearly *yes*. The Charter has brought about real and measurable progress in the protection of languages

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and, incidentally, minorities in Europe, and its maintenance and development is therefore necessary. While further reforms seem to be necessary, the Charter, thanks to its flexibility, is, in my view, ready for the next quarter of a century.

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