

INTRODUCTION TO THE EUROPEAN CHARTER FOR REGIONAL OR MINORITY LANGUAGES

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The number of languages in the world is declining, and many languages are in danger of extinction. It is commonly known that, out of the nearly 7.000 languages in the world, almost half of them will have disappeared before the end of the century. In other words, a language disappears every two weeks on average. And, once the last speaker of a language dies, the language is gone for ever – there is no way back.

The Council of Europe believes that languages form a valuable part of Europe's common cultural heritage and that positive and concrete action is required from States to reverse this downward trend.

The European Charter for Regional or Minority Languages is a Council of Europe treaty which was opened for signature in 1992 and came into force in 1998 when the condition of five ratifications was met.¹ To date, it has been ratified by 24 States², and has been signed by a further nine States³ (Spain signed the Charter on 5 November 1992, ratified it 9 April 2001, and it entered into force on 1 August 2001).

The Charter is designed to protect and promote regional and minority languages. It is to date the only international treaty worldwide solely devoted to this purpose. It also aims to enable speakers of a regional or minority language to use their language in private and public life.

Objectives and Core Principles

First, it is important to note that, unlike the Framework Convention for the Protection of National Minorities, another important Council of Europe treaty, the overriding concern of the Charter is not the protection of groups such as national minorities per

¹ Croatia, Finland, Hungary, the Netherlands and Norway.

² Armenia, Austria, Croatia, Cyprus, Czech Republic, Denmark, Finland, Germany, Hungary, Liechtenstein, Luxembourg, Montenegro, Netherlands, Norway, Poland, Romania, Serbia, Slovakia, Slovenia, Spain, Sweden, Switzerland, Ukraine and the United Kingdom.

³ Azerbaijan, Bosnia and Herzegovina, France, Iceland, Italy, Malta, Moldova, the Russian Federation, and “the former Yugoslav Republic of Macedonia”.

se, nor of members of such minorities, but languages themselves. Indeed, the Charter makes no reference to “national minorities” or persons who may belong to such national minorities. The Explanatory Report to the Charter makes it clear that its purpose is cultural, and that it is designed to protect and promote regional or minority languages as a threatened aspect of Europe’s cultural heritage. Thus, the core objectives are cultural diversity and the maintenance and development of cultural wealth.

This is not to say that the Charter is irrelevant to users of regional or minority languages, indeed, it seems difficult to separate a language from the speaker who uses it. In the Explanatory Report to the Charter, it is noted that the Charter “will have an obvious effect on the situation of the communities concerned and their individual members”. But, as I said, the Charter does not create rights for minorities nor does it create any linguistic rights for speakers, but rather puts obligations on the States who have ratified it.

The preamble to the Charter stresses the value of interculturalism and multilingualism, democracy and cultural diversity. However, the preamble also recognises that the protection and promotion of regional or minority languages should not be to the detriment of official languages and the need to learn them, and that such protection and promotion must be within the framework of national sovereignty and territorial integrity. The aim is the creation of societies in which cultural and linguistic difference is a source of stability, rather than the opposite.

Structure

The Charter contains five distinct parts. The first part deals with general and interpretative matters. The substantive provisions are set out in Parts II and III, Part II containing fundamental, overriding objectives and principles, and Part III much more detailed and precise legal obligations. The fourth part deals with the monitoring of implementation of the Charter by States. The fifth and final part deals with matters such as entry into force of the Charter, the method of ratification, and so forth.

A first important question is this: What are regional or minority languages? These languages are fairly clearly defined by reference to objective criteria in Article 1 in Part I of the Charter as those languages that are traditionally used within a given territory of the State by nationals of that State who form a group numerically smaller than the rest of the State’s population. These languages must be different from the official language of the State. Dialects of the official language(s) of the State and the languages of migrants are specifically excluded from the definition. The Charter also offers more limited protection to “non-territorial languages”. These are languages used by nationals of the State and which have been “traditionally used within the territory of the State”, but which are not identified with a particular area. Examples given include Yiddish and Romany.

It is important to note that the objectives and general principles set out in Part II of the Charter apply equally to *all* of the State's regional or minority languages and, to the extent possible, to *all* its non-territorial languages. As these languages are determined based on the objective principles just referred to, the State does not, strictly speaking, have the discretion to apply the objectives and general principles of Part II to some languages but not to others. The more detailed and precise provisions of Part III are a different matter. These apply only in respect of those regional or minority languages that the State has designated in its instrument of ratification. It is possible for the State to add other regional or minority languages at a later stage, and States such as the United Kingdom and the Netherlands have indeed done so.

A second important consideration is that many of the State's obligations under both Parts II and III of the Charter only apply in respect of certain territories within the State, and not throughout the State as a whole. These territories are in some places referred to as "the territories in which regional or minority languages are used".⁴ In other places in the Charter, the State's obligations are limited to those territories within the State in which "the number of residents using the regional or minority language justifies the measures" set out in the provision.⁵ In both cases, though, the authors of the Charter recognise that, under the Charter, States Parties are being asked to take positive, concrete measures in support of minority languages, and that it is difficult to do so in parts of the country where numbers and concentrations of speakers are very low.

The Charter defines the territories in which regional or minority languages are used as the geographical area in which the language is used by a sufficient number of persons to justify the specific measures of support required under the Part II or III article in question. The Explanatory Report clarifies that these territories are ones in which the language is spoken to a significant extent, even if only by a minority within the area, and correspond to the historical base of the language. The Charter does not specify a minimal threshold of speakers in this respect, and the Committee of Experts of the Charter is generally uncomfortable with this notion when States decide to apply one.

Content of the Charter

As already noted, the substantive rules of the Charter are set out in two parts, Part II and Part III.

⁴ Article 7, paragraph 1 (Objectives and Principles), Article 8, paragraph 1 (Education), Article 10, paragraph 3 (Administrative authorities and public services), Article 11, paragraph 1 (Media), Article 12, paragraph 1 (Cultural activities and facilities), and Article 13, paragraph 2 (Economic and social life).

⁵ Article 9, paragraph 1 (Judicial authorities), and Article 10, paragraphs 1 and 2 (Administrative authorities and public services).

Part II contains only one article, Article 7, and it sets out the general objectives and principles which apply in respect of all of the State's regional or minority languages, as well as its non-territorial languages, where possible. Article 7, paragraph 1 provides that States must base their policies, legislation and practice on a number of objectives and principles:

- The recognition of regional or minority languages as an expression of cultural wealth (para. a);
- Respect for the geographical area (para. b);
- The need for resolute action to promote such languages in order to safeguard them (para. c);
- The facilitation and/or encouragement of the use of such languages, in speech and in writing, in public and private life (para. d);
- The provision of appropriate forms and means for the teaching and study of such languages at all appropriate stages (para. f), and the promotion of study and research on such languages at universities (para. h);
- The provision of facilities enabling non-speakers of a regional or minority languages to learn the language (para. g);
- The development of links between groups using such languages in different parts of the State (para. e) and the promotion of transnational exchanges with speakers of such languages in other States (para. i).

Article 7, paragraph 2 contains a broad non-discrimination provision, requiring the elimination of any unjustified distinction, exclusion, restriction or preference intended to discourage or endanger the maintenance or development of a minority language. Article 7, paragraph 3 deals with the promotion of mutual understanding between all the country's linguistic groups. Article 7, paragraph 4 requires States to consult with users of regional or minority languages and encourages the State to establish bodies to provide advice to the authorities on all matters pertaining to regional or minority languages. Finally, Article 7, paragraph 5 makes clear that all of the foregoing principles also apply in respect of non-territorial languages.

Part III translates the objectives of Part II into more concrete undertakings. Part III contains seven articles, ranging from Article 8 to 14, and these contain much more detailed and specific provisions, relating to a number of different important domains. As already noted, however, Part III only applies to those regional or minority languages which the State has designated. The Charter "menu" is flexible: in addition to being able to choose which languages are covered by Part III, the State has a range of options as to the precise Part III obligations it will undertake for each of the Part III languages. This is because the various provisions in Part III are set out in 65 paragraphs and subparagraphs, spread across those seven articles just mentioned, and the State need only choose 35 paragraphs or subparagraphs, as a minimum.

More precisely, the Articles in Part III deal with:

- Article 8 - Education⁶,
- Article 9 - Judicial Authorities,
- Article 10 - Administrative authorities and public services,
- Article 11 - Media,
- Article 12 - Cultural activities and facilities,
- Article 13 - Economic and social life,
- Article 14 - relating to Transfrontier exchanges.

Part III of the Charter therefore provides for a “menu-system”, allowing States to choose from a range of undertakings which correspond best to the actual needs of the regional or minority language in question. Most of the provisions comprise several options of varying degrees of stringency, which should be chosen and applied “according to the situation of each language”. This system allows for an optimal protection of the language.

The Monitoring Mechanism

One of the great strengths of the Charter is its inherent monitoring mechanism which is provided for in Part IV. The Charter employs a system of State reporting under which State reports are examined by independent experts, the Committee of Experts.

State reports must be submitted on a regular basis. The first State report must be submitted within one year of the entry into force of the Charter, and subsequent reports every three years thereafter.

Once the State in question has submitted its report, the monitoring procedure begins. The Committee of Experts has developed innovative working methods which have proven to be effective. Particularly notable are the broad powers that the Committee of Experts has to obtain and solicit information from non-official sources, particularly NGOs. It carries out “on-the-spot” visits, during which members of the Committee of Experts actually visit the State being monitored to meet with both governmental officials and representatives of the language communities.

⁶ To give an example of the “menu- system”, **Article 8.1.b.** of the Charter reads as follows:

“With regard to education, the Parties undertake, within the territory in which such languages are used, according to the situation of each of these languages, and without prejudice to the teaching of the official language(s) of the State: **b. i** to make available primary education in the relevant regional or minority language; *or* **ii** to make available a substantial part of primary education available in the regional or minority languages; *or*: **iii** to provide, within primary education, for the teaching of the relevant regional or minority languages as an integral part of the curriculum; *or* **iv** to apply one of the measures provided for under i to iii above at least to those pupils whose families so request and whose number is considered sufficient. “

With regard to the selection and composition of the Committee of Experts, each State party nominates a list of individuals, and the Committee of Ministers of the Council of Europe appoints one from the list. Thus, there are as many members of the Committee of Experts as there are States Parties. Members are to be of the highest integrity and of recognised expertise in respect of minority language matters. They are free to act independently, and are not subject to instructions from the State that has nominated them.

The Committee of Experts submits its reports to the Committee of Ministers⁷ of the Council of Europe, who may make recommendations to States Parties based upon these reports. So far this has always been the case.⁸

Without question, the ability to receive information from a wide range of sources and the possibility of visiting the State to get a first-hand picture of what is really happening and to open up a dynamic dialogue with both the authorities and representatives of community organisations has significantly increased the amount of information available to the Committee of Experts, and has allowed it to broaden and deepen its understanding of State legislation, policy and practice. Also, the regular monitoring ensures that the Charter remains an effective and living instrument and reminds States that they must implement their international obligations.

Impact of the Charter

Over a decade after the entry into force of the Charter, many improvements of the situation of regional or minority languages can be traced back to the Charter's monitoring system. The Charter has had an impact on national policies, legislation and practice.

Let me give you but a few examples:

An immediate impact of the Charter was that its ratification paved the way for the recognition of several regional or minority languages, for example in the *Netherlands* and in the *United Kingdom*.

In *Cyprus*, Cypriot Maronite Arabic was finally recognised by the government as a regional or minority language in November 2008, and a language revitalization process has been initiated, following the Committee of Ministers' recommendations.

⁷ The Committee of Ministers is the decision-making body and the highest organ of the Council of Europe. It is made up of the Foreign Ministers of all member states or their deputies.

⁸ Except in the case of Liechtenstein and Luxembourg where no regional or minority languages have been identified.

Sweden recently extended the administrative areas in which the Finnish and Sami languages can be used in relation with the administration and some branches of public services.

The *Land* of Schleswig-Holstein in *Germany* adopted a new law for the promotion of North Frisian in public life and considered that this law was necessary to fill legislative gaps existing after the ratification of the Charter. The 2004 Frisian Law contains provisions concerning, *inter alia*, the use of North Frisian in relations with administrative authorities and the employment of Frisian-speaking civil servants. The German authorities reported in 2007 that North Frisian is now used in relations with administrative authorities.

Finland's 2004 Sámi Language Act aims to ensure the right of the users of Sámi to develop their language and to use it in relations with judicial and administrative authorities. As a consequence, the Finnish authorities have adopted measures to improve the language skills of personnel.

According to the German-speakers in *Denmark*, the Committee of Ministers' 2004 recommendation that the Danish authorities should take account of the protection of German in the context of the reform of administrative structures in North Schleswig has contributed to the adoption of a number of special arrangements which aim to secure the special interests of the German minority. In this context, the authorities also ensured that financial grants from local authorities were maintained and that further grants were provided for news broadcasts in German.

It was confirmed by Irish-speakers in *Northern Ireland* that the Committee of Ministers' 2004 recommendation to "facilitate the broadcasting of private radio in Irish" had led to the allocation of a five-year licence to a private radio station.

The Committee of Experts encouraged the *Dutch* authorities in 2001 "to take the necessary measures to permit the use of family names in Frisian in official documents." In 2003, a new decree entered into force, permitting the adoption and use of Frisian family names. The Committee of Experts also recommended that measures be taken to remedy the lack of Frisian-speaking staff in courts. As a result, the Dutch authorities introduced compulsory language courses for new court employees.

In 2001, *Austria* amended its Broadcasting Act and included the provision of regional or minority language programmes in the public service mandate of the ORF. According to representatives of the speakers of the regional or minority languages, the amendment was directly linked to the ratification of the Charter by Austria.

In *Norway*, Sámi was seldom used in courts, partly due to a lack of legal terminology and interpreters. The Committee of Ministers thus recommended in 2001 to "create conditions that will facilitate the use of North Sami before judicial authorities". This

recommendation led to the setting up of Norway's first bilingual court, where Sámi is now being used in 25% of the cases.

Hungary was encouraged by the Committee of Experts in 2001 to modify three laws so as to remove any uncertainty as to the possibility to use a regional or minority language before judicial and administrative authorities. Further to this recommendation, the Hungarian authorities amended the legislation in question by clarifying that everyone may use her/his regional or minority language both orally and in writing, that interpreters must be employed if the person wishes to use his/her language and that translation and interpretation costs must be borne by the State.

The *Croatian* authorities stated that the long process of adoption of the 2000 Act on the Use of the Languages and Scripts of National Minorities was speeded up by the application of the Charter.

These examples highlight that the Charter has improved the situation of regional or minority languages in almost all States Parties, in several cases already during the first monitoring cycle.

Recent Activities

To date, the Committee of Experts has adopted 53 evaluation reports. In 2009, seven new reports were made public, the most recent one being the first report on Montenegro (on 20 January 2010). Later this year, it is expected that the reports on the UK (3rd report), Switzerland (4th) and Luxembourg (2nd) will be made public.

In 2009, the Council of Europe and the European Commission launched a Joint Programme on "Minorities in Russia: Developing Languages, Culture, Media and Civil Society" in co-operation with the Ministry of Regional Development of the Russian Federation. The objective of the Joint Programme is to promote Russia's ethnic and national minorities and to enhance the legal framework for minorities in the light of the Council of Europe standards. Most notably, the Programme, which runs until 2012, is conceived to contribute to the Russian Federation's ratification of the Charter (the Russian Federation signed it in 2001), and to build capacity for minority associations, in particular concerning language protection.

Finally, under the Spanish Chairmanship of the Committee of Ministers of the Council of Europe, a high-level conference entitled "The European Charter for Regional or Minority Languages: Achievements and Challenges" took place in Bilbao in April 2009. A publication based on the presentations given at the conference will be available very soon.

Conclusion

The Charter is a unique instrument devised to protect and promote regional or minority languages. It has proven to be an effective tool thanks to its flexibility and monitoring mechanism which makes it a living instrument. It has had a concrete impact on the situation of languages, and this has been done through a continuous dialogue between the States Parties, the speakers, and the Committee of Experts of the Charter.

Nevertheless, many challenges still remain, such as when instruments of ratification do not match the protection needed for the regional or minority languages (eg. same provisions chosen for all languages), or when countries do not implement the Committee of Ministers' recommendations. Finally, there is a need for further ratifications to make the Charter a truly pan-European instrument.