

## Developments in the Field of the European Charter for Regional or Minority Languages

### I. INTRODUCTION

In 2008 the European Charter for Regional or Minority Languages<sup>1</sup> celebrated its 10th anniversary together with another pivotal treaty in the field of minority protection—the Framework Convention for the Protection of National Minorities. Both treaties symbolize the political determination of most European states to provide protection for their minorities in various fields of public life. The Council of Europe celebrated these two anniversaries in several instances (in Strasbourg,<sup>2</sup> Luleå<sup>3</sup>). This festive occasion was also used to assess the results achieved and to evaluate the tasks still ahead. The Secretary General of the Council of Europe in his fourth biennial report to the Parliamentary Assembly on the charter emphasized that

an ever-increasing international recognition of the Charter can be noticed. The interest that other international organisations take in the Charter underlines its importance as the only binding legal instrument worldwide specifically devoted to the safeguarding of regional or minority languages and thus as a key convention of the Council of Europe.<sup>4</sup>

At the same time, the secretary general had to observe that the number of states parties “was stagnating”. The result was especially poor with respect to some member

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1 European Charter for Regional or Minority Languages, adopted on 5 November 1992, entered into force on 1 March 1998, ETS No. 148 (hereinafter ‘the charter’).

2 Conference: 10 Years of Protecting National Minorities and Regional or Minority Languages: Institutions and Impact, Strasbourg, 11 March 2008.

3 Conference: Celebrating the 10th Anniversary of the European Charter for Regional or Minority Languages, Luleå, 17 October 2008.

4 Biennial report by the Secretary General to the Parliamentary Assembly, Doc. 11442, 24 October 2007; Communication by the Secretary General of the Council of Europe.

states that had been required by the Parliamentary Assembly's decision to commit themselves to accede to the charter in recognizing "the importance of the Charter for peace, stability and respect for cultural diversity in Europe".<sup>5</sup> Out of 11 designated states Albania, Azerbaijan, Bosnia and Herzegovina, Georgia, Moldova, the Russian Federation and "the former Yugoslav Republic of Macedonia" have still not ratified the charter. However, even among the "old" members of the council there are still states that have regional or minority languages spoken in their respective territories but have not as yet ratified the charter. Some of them have even signed the charter more than 10 years ago but have not proceeded with the ratification.<sup>6</sup> The latest ratification came from Romania on 29 January 2008 making it the 23rd state party.

The Committee of Experts continued with the monitoring of the implementation of the charter by states parties in accordance with its Article 15. The value of reporting has been shown to be manifold. In some states, the writing of national reports raised awareness of the situation or indeed the existence of regional or minority languages spoken on their territories and their obligations *vis-a-vis* the charter.<sup>7</sup> Because the reports are public, the speakers of regional or minority languages and other interested parties get an insight into the country's position and policies with respect to regional or minority languages. In some countries, preparing the national report was used as an opportunity to establish contacts between speakers of various regional or minority languages in the state party. During the monitoring process the Committee of Experts visits states parties to meet with representatives of speakers of the relevant regional or minority languages. Because this generally garners media interest, the visit also raises the profile of the charter and heightens public interest in the regional or minority languages spoken in that country. Due to recommendations made by the Committee of Ministers and the Committee of Experts the situation in many countries improved both legally and practically.<sup>8</sup> Sometimes the change required long-term measures, such as the training of staff to speak the applicable regional or minority language. Sometimes, however, practice could be changed by simple measures including posting signs informing speakers that they can use their language in a particular office

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5 *Ibid.*

6 There are now 10 signatures not followed by ratification, including France.

7 Compared with the recognition of Kven in Norway (Norway third evaluation report, para. 13) or the extension of the UK ratification instrument to Cornish or Manx Gaelic (declaration dated 11 March 2003 and declaration dated 22 April 2003). In Spain, a number of languages that have not had a co-official status in autonomous communities were not considered protected by the charter despite their traditional presence (Spain first evaluation report, para. 75; the languages concerned are Galician in Castilla y León, Portuguese in the town of Olivenza, Berber in the Autonomous City of Melilla and Arabic in the Autonomous City of Ceuta).

8 Hungary was among the state parties that accepted the recommendation regarding the status of minority languages before courts and changed its legislation in order to guarantee this right in accordance with the charter. Namely, the right of speakers of regional or minority languages to use their respective language before courts was confined to some form of Article 6 of the ECHR right to use one's own language when one does not understand the official language of the court. However, the right from the charter's Article 9 (ii) guarantees that right regardless of the knowledge of the official language.

or on a particular day or be provided with bilingual forms on the Internet, etc. Many suggestions given by the Committee of Experts are actually measures already existing in some countries and identified as examples of “good practice”. However, much still remains to be done.

All “original” parties that ratified the charter before 1998 are now in the third monitoring round, and many others are going through the second round, which means that a noteworthy dialogue has been established between all interested sides and that these states parties have had sufficient time to respond to most of the recommendations. In the period covered by this article, the third reports for the following countries were accepted by the Committee of Ministers and accordingly became public: Finland, Switzerland, Croatia, the Netherlands and Germany. In the same period, the Committee of Ministers adopted the first report on Luxembourg, the second report on Spain (they became public in December 2008) and the fourth report on Lichtenstein.<sup>9</sup> Several other reports were adopted by the Committee of Experts but have not yet become public pending the adoption by the Committee of Ministers.<sup>10</sup> As far as Luxembourg and Lichtenstein are concerned, these countries have no regional or minority languages spoken in their territory, so the Committee of Experts has not carry out its usual evaluation.<sup>11</sup> Nevertheless, even in these cases the committee requires that the charter and the initial state report be made public.<sup>12</sup>

## II. SECOND EVALUATION REPORTS

### *A. Spain*

The second evaluation report concerning Spain was adopted by the Committee of Experts on 4 April 2008, and the Committee of Ministers adopted its recommendations on 11 December 2008.<sup>13</sup> The report covers the situation as of September 2007 when the working group of the Committee of Experts carried out its on-the-spot visit,<sup>14</sup> and it shows that the complexity of the monitoring system established by the charter sometimes causes delays of considerable length.

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9 Application of the charter in Lichtenstein, fourth cycle, ECRML (2008) 7, and Application of the Charter in Luxembourg, first report (ECMRL, 2008) 6, were adopted by the Committee of Experts on 4 April 2008.

10 The first evaluation report on Serbia and second evaluation report on Austria were adopted in September 2008. Sweden's third and Ukraine's first evaluation reports were adopted in November 2008. All public reports are available at: <[http://www.coe.int/t/dg4/education/minlang/Default\\_en.asp](http://www.coe.int/t/dg4/education/minlang/Default_en.asp)>.

11 A potentially protected minority language was Lëtzebuergesch, which was declared the national language of Luxembourg in 1984. However, the authorities did not use the opportunity offered by Article 2.1 to protect it as a less widely used official language.

12 Luxembourg first report, para. 5.

13 Second report on the Application of the Charter in Spain (ECRML, 2008) 5 (hereafter Spain second).

14 The date of the on-the-spot visit is usually taken as the point of reference regarding the time frame of the evaluation report.

The linguistic situation in Spain is very complex<sup>15</sup> and sometimes even highly politicized. Based on the Spanish Constitution, several autonomous communities have Spanish (Castilian) and one or more minority languages as co-official. Spain decided to cover these languages in Part III of the charter.<sup>16</sup> However, regardless of the formal recognition of the multilingual character of the country, in practice, there still seems to be a lack of awareness among the Castilian-speaking majority population that Spain is a multilingual country and that minority languages deserve promotion and protection. To overcome this problem Spain adopted Royal Decree 905/2007 in 2007, which provided for the setting up of the Council of Official Languages in the General State Administration and the Bureau for Official Languages. Because the said council had not been actually set up at the time of monitoring, the Committee of Experts was not in a position to evaluate its function but saw its important potential in bringing minority languages closer to central state administration.

Two fields covered by the charter remained the point of concern for the Committee of Experts. It is paradigmatic that both of these fields belong to the remit of the central state organs—judiciary and state administration. In the case of the former, the Committee of Experts concluded in the first round of monitoring that large legal and practical obstacles existed to full implementation of the charter's undertakings in relation to proceedings taking place in minority languages.<sup>17</sup> The judges were not required to know a co-official language, and the system of rotation discouraged them from taking language courses. According to new legislation adopted in 2003,<sup>18</sup> linguistic skills in minority languages can be treated as an advantage for some of the posts in court administration and as a requirement for others. However, no changes were made with respect to judges, apparently because of a lack of interest by the General Council of the Judiciary. Regarding the right to proceedings in a co-official minority language, the situation has not changed. According to Article 231 of the Organic Law, the judge has to deny this right whenever one of the parties in the proceedings does not understand that co-official language. This is considered by law a breach of the right to defence. The Committee of Experts considered this provision to be contrary to the

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15 As an illustration, the Spanish periodical report is 371 pages long, and the Committee of Experts' report exceeds 150 pages.

16 Part III applies to the languages recognized as official languages in the Statutes of Autonomy of the Autonomous Communities of the Basque Country, Catalonia, Balearic Islands, Galicia, Valencia and Navarre. As regards Part II, Spain declared that it applies to the languages protected by the Statutes of Autonomy in the territories in which they are traditionally spoken. The Committee of Experts interpreted this as covering: Galician in Castile and León, Aragonese and Catalan in Aragon, Asturian, Asturian-Galician and Aranese. See note 7 for languages that were "forgotten" by the Spanish authorities.

17 Spain opted for Article 9, para. 1, options under *i* "to provide that the courts, at the request of one of the parties, shall conduct the proceedings in the regional or minority languages".

18 Organic Law 19/2003 reformed Organic Law 6/1985 of 1 July 1985 on the judiciary. In their second periodical report, the Spanish authorities admitted that the justice field "is one of the points involving major obstacles for compliance in Spain", because there is a structural problem (second periodical report, at 68).

obligations undertaken by Spain, even though the person can use his or her language through the interpreters.

In the field of public administration, in the first monitoring round the authorities were asked to review the recruitment, career and training schemes for the staff of the state administration offices with a view to ensuring that an adequate proportion of the staff posted in the autonomous communities covered by the application of Article 10 of the charter had a working knowledge of the relevant languages. The authorities responded by setting up of a joint Committee of Experts to analyze the use of co-official languages in the general state administration. However, the conclusion reached by this committee was that the legal setting was adequate because the size and the competence of this staff were “numerically unimportant”. The Committee of Experts obviously did not appreciate such a conclusion and repeated its recommendation.<sup>19</sup>

Most of the Part III languages are best protected by the respective autonomous communities. In Catalonia the newly adopted Statute of Autonomy provides for an increased use of Catalan in all public spheres.<sup>20</sup> In Valencia the new statute proclaimed that Valencian is “the proper language of the community”, whereas in the Basque Country, the regional authorities continued to show a strong commitment towards the promotion of the Basque language. Even the situation regarding Basques in Navarre improved, especially in education, because the authorities decided to recognize *Ikastolas*—schools that offer teaching in Basque (Model D)—throughout the Navarran territory and entitled them to receive state funding.

However, in many cases, Spain opted for the highest level of commitment, which was not always attained in its execution. Good cooperation between the autonomous communities, especially those that share the same language, could help improve the situation. Such cooperation was reported between Catalonia, Balearic Islands and the Basque Country. Lately even the Basque Country and Navarre seem to have attempted to work together, whereas such cooperation is still missing between Valencia and Catalonia, who are still disputing the Catalan–Valencian language name.

### III. THIRD EVALUATION REPORTS

#### *A. Finland*

The third evaluation report concerning Finland was adopted by the Committee of Experts in March 2007, but it was only made public on 21 November 2007 after adoption by the Committee of Ministers.<sup>21</sup>

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19 Recommendation no. 2: “review the recruitment, career and training schemes for the staff of the State administration offices with a view to ensuring that an adequate proportion of the staff posted in the autonomous communities have a working knowledge of the relevant languages.”

20 The statute was later challenged before the Constitutional Court.

21 Third Report on the Application of the Charter in Finland (ECRML, 2007) 7 (hereafter Finland third). The third periodical report was submitted by Finland in February 2006, and the Committee of Experts conducted its on-the-spot visit in November 2006.

In its instrument of ratification Finland decided to place Swedish, as the less widely used official language, and Sámi, spoken by a small community of indigenous people in Sámi Homeland in the north of the country, under Part III protection of the charter.<sup>22</sup> There are three Sámi languages: North Sámi is spoken by 1378 persons, Skolt Sámi by 337 and Inari Sámi by 258 speakers.<sup>23</sup>

Other languages protected by the charter are the Kaló language of the Roma people (hereafter referred to as Romani), Russian, Tatar, Yiddish and Karelian. They are protected by the objectives and principles listed in Part II of the charter.<sup>24</sup> It is interesting to notice that Karelian has not been recognized as one of the protected languages in previous monitoring rounds. According to the Finnish authorities, the Karelian language is one of the minority languages traditionally spoken in Finland, although it does not have the official status as a minority language. It is estimated that 5,000 people speak Karelian.<sup>25</sup> This is one more example of the influence of the charter on the protection of certain languages that had not been protected before the ratification and monitoring of the charter.<sup>26</sup>

With regard to Swedish and Sámi, the Committee of Experts highlighted two particular issues connected with the territory in which the languages are spoken and protected. First of all, for primarily economic reasons, more and more Sámi people have moved to the south, in particular to the capital.<sup>27</sup> Because Finnish legislation limits the application of language rights to the Sámi Homeland, it may soon be the case that the majority of the Sámi speakers no longer enjoy their language rights. Even though the charter speaks of the “traditional presence” of a certain language in the territory of that state, according to definitions given in Article 1, the “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” (emphasis my own). Accordingly, the Committee of Experts suggested that Finland adapt its legislation and other measures to the new reality of the Sámi speakers.

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22 Part III of the charter contains a menu of undertakings that parties can choose from in various fields of public life (education, judiciary, administration, media, culture, social life and transboundary cooperation) to apply to designated territories “where the number of speakers justifies these particular measures”. See, for example, the charter’s explanatory report.

23 The instrument of ratification, however, speaks only of the Sámi language. It is a common practice in all Nordic-country parties to the charter to refer only to a single Sámi language.

24 In particular Article 7.

25 In Finland, the language is mainly spoken in the municipalities of Valtimo, Kuhmo and Suomussalmi, located in the provinces of eastern Finland and Oulu. Finland third periodical report, at 10.

26 Actually, at the time of the report, very few if any special measures have been adopted by the authorities other than recognizing it and funding research on it.

27 According to the information provided by the authorities, approximately 46.5% of all Sámi live outside the Sámi Homeland, including 70% of children under age 10 years (third periodical report, at 8).

The other issue dealt with envisaged municipal reforms. Similar to the case of Denmark,<sup>28</sup> the Committee of Experts warned the authorities to take due account of the existing linguistic rights of Swedish speakers. In Finland, the linguistic profile of a municipality is decided by the number of Swedish speakers residing in it. Should their number fall below a certain threshold a particular municipality is no longer considered bilingual.

In all, Finland continued with its proactive approach to the protection of minority languages spoken on its territory, including full implementation of the new language legislation enacted in 2004. The authorities have worked in partnership with the Swedish Assembly and the Sámi parliament. However, some problems still persist, many of them practical. For example, the provision of health care services or emergency call centres in Swedish are not always available, nor is Swedish practically equal before the courts, because of a lack of Swedish-speaking staff. Still, Swedish remains in a relatively strong position because of its status as the second national language of Finland.<sup>29</sup>

However, while facing some of the same problems (e.g., the provision of health services in Sámi), Sámi is affected by more-serious deficiencies, although there have been some improvements when compared with the previous monitoring round. Education is still suffering from a lack of structured policy and a long-term financing scheme, which affects teacher training, the production of teaching materials and the elaboration of a common regional curriculum. In an especially vulnerable position are the smaller Sámi languages, Inari and Skolt Sámi. They used to have the so-called “language nests”, a specific method used for a revival of practically extinct languages in many indigenous communities.<sup>30</sup> However, the financing of such nests dried up and the project could no longer be sustained. Furthermore, Sámi is not sufficiently present in the media, and its use in courts is only symbolic. The language is still used primarily as an oral form of communication, and education in Sámi is essential to introducing and developing its written use.

With respect to languages that are covered only by Part II of the charter, the Committee of Experts noted that discrimination and stigmatization still affect Russians and Roma in particular and that it also had an effect on the promotion and protection of their languages. Romani needs particular attention, so the Committee of Ministers accepted a recommendation that the Finnish authorities should “develop and implement innovative strategies for the training of Romani teachers and extend the production of teaching materials in Romani”. How effective the authorities will be depends partly on the willingness of the Roma community to open their language to outsiders. However, the Committee of Experts has taken the attitude that it should

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28 See Denmark second evaluation report, para. 15.

29 The Committee of Experts has never examined the situation in the Åland Islands, where Swedish is the official language of all administration and Finnish can be used as the other national language. See Finland first, para. 21.

30 The programs are based on a Maori language revival initiative from New Zealand. The term refers to childcare programs for preschool children taught exclusively in a heritage language. See, for example, <<http://ring.uvic.ca/05feb03/features/language.html>>.



not be used as an excuse for not providing it at least to those children whose parents so wish.<sup>31</sup>

### *B. Croatia*

The third report concerning Croatia was adopted by the Committee of Experts on 21 September 2007, but it took several months for the report to be adopted by the Committee of Ministers in March 2008.<sup>32</sup> This example further accentuates the challenging time frame of the monitoring process envisaged by the charter.

The issues raised in the third monitoring cycle present an ongoing argument between the Committee of Experts and the Croatian authorities. The main problem remains the territorial scope of the application of the charter in Croatia with respect to its ratification declaration.<sup>33</sup> In previous rounds, the Committee of Experts concluded that the declaration appended to the instrument of ratification “may produce consequences contrary to the spirit of the Charter and to the fundamental obligations deriving from the treaty.” The Committee of Experts found it problematic that this declaration effectively left it to local authorities to decide upon the territorial application of the charter. In its monitoring the committee established that there were territories that were not actually designated by national legislation as “bilingual territories”<sup>34</sup> but should nevertheless be covered by the charter. Because Croatia, despite the repeated recommendation made by the Committee of Ministers, made no changes in this respect, the Committee of Experts also decided to evaluate the situation in areas in which there was a traditional presence and a sufficient number of speakers of regional or minority languages covered by Part III, regardless of national legislation.<sup>35</sup>

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31 Compared with Germany’s first evaluation report, para. 65, with respect to Romani.

32 Third Report on the Application of the Charter in Croatia, adopted on 12 March 2008 (ECRML, 2008) 1 (hereafter Croatia third).

33 Declaration contained in the instrument of ratification, deposited on 5 November 1997, provides as follows: “The Republic of Croatia declares, with regard to Article 1, paragraph b., of the Charter, that pursuant to Croatian legislature, the term ‘territory in which the regional or minority languages is used’ shall refer to those areas in which the official use of minority language is introduced by the by-laws passed by the local self-government units, pursuant to Article 12 of the Constitution of the Republic of Croatia and Articles 7 and 8 of the Constitutional Law on Human Rights and Freedoms and the Rights of National and Ethnic Communities or Minorities on the Republic of Croatia.” In 2002 the mentioned internal legislation was abrogated and replaced by a new law.

34 Croatian legislation (the Law on the Use of Language and Script of the National Minorities) speaks of the territories in which a minority language is in “equal and official use” providing there is at least one third of the population belonging to a minority or when stipulated by a treaty or when municipalities and towns have prescribed it in their statutes.

35 Croatia third, para. 12. In their replies, the authorities blamed the limited time they had at their disposal between the adoption of the recommendations in the second cycle by the Committee of Ministers (September 2005) and the deadline for the submission of the third report (September 2006).



This affected in particular some administrative centres for the Czech and Hungarian languages.

Another point of difference between the Committee of Experts and the Croatian authorities concerned the issue of the territoriality of the Slovenian language. Even though Croatia recognizes this language as a traditional minority language, it nevertheless considers it a non-territorial language. Croatia is one of two state parties to use their right to make a reservation to Article 7.5 of the charter, thereby excluding non-territorial languages from the scope of the charter and thus excluding the Slovenian language.<sup>36</sup> However, the Committee of Experts obtained some information suggesting that, in fact, there are villages along the border with Slovenia in which the traditional territorial presence of Slovenian can be established. Accordingly, the Committee of Experts concluded that Slovenian qualified as a language to be protected under Part II of the charter.

Finally, the Committee of Experts “discovered” another language in Croatia—Istro-Romanian—spoken in Istria by a small number of speakers.<sup>37</sup> The authorities reported that in September 2007 the Ministry of Culture rendered a decision by which the Istro-Romanian language was given the status of non-material cultural wealth and as such was registered in the Register of Cultural Wealth of the Republic of Croatia—the list of protected cultural wealth. It will be interesting to follow-up on this issue and see whether the Committee of Experts will be satisfied with this purely cultural approach, which does not set in place any practical measures.

With respect to the other protected languages,<sup>38</sup> the Committee of Experts concluded that the position of Italian and Hungarian remains fairly strong and that the commitment demonstrated by Croatia to protect minority languages showed progress and results. This can be seen in the creation of education advisers for minority languages, the completion of the first term of the local minority councils, as well as a 33% increase in the budget allocation for the needs of national minorities since 2004. However, in the post-war society of Croatia, tolerance *vis-a-vis* some regional or minority languages and the cultures they represent is sometimes still missing. Some languages, like Serbian, are especially affected, particularly in the field of media<sup>39</sup> or in public display of the Cyrillic script.<sup>40</sup> This language also suffers from deficiencies

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36 According to Article 21.1 of the charter, “Any State may, at the time of signature or when depositing its instrument of ratification, acceptance, approval or accession, make one or more reservations to paragraphs 2 to 5 of Article 7 of this Charter. No other reservation may be made.”

37 According to some information available on the Internet, there are only about 200 people, mostly elderly, still speaking it in several villages.

38 Croatia undertook Part III protection of Serbian, Italian, Hungarian, Czech, Slovak, Ruthenian and Ukrainian.

39 Recommendation no. 6: introduce a language-specific and more significant presence for regional or minority languages on public television and develop a presence on the regional radio stations also for those languages that do not yet benefit from it.

40 Due to the similarity of the Serbian language spoken in Croatia with the standard Croatian language, its oral use is rarely an issue. For the clarification of the Serbian language spoken in Croatia see: Croatia second, para. 43.

in education models offered, especially in bigger cities, where the number of speakers is not that high.<sup>41</sup> As far as the co-official use of minority languages is concerned, the Committee of Experts concluded that it seemed to be reduced to an emblematic use and was only used upon request of the speakers, which seemed to happen very rarely. As in the case of other states parties, the Committee of Experts requested a more proactive approach by the authorities at all levels.

### *C. Switzerland*

The third report on the application of the charter in Switzerland was adopted by the Committee of Ministers on 12 March 2008.<sup>42</sup> Switzerland covered Romansh and Italian in the Cantons of Graubünden and Ticino as less widely used official languages by Part III of the charter.

According to the interpretation given by the Committee of Experts, Part II of the charter applies to German in the municipality of Bosco-Gurin (Canton of Ticino) and to Yenish, a non-territorial language, in the municipality of Ederswiler (Canton of Jura). German, of course, is one of the national languages in Switzerland and the official language in some cantons. The application of the charter to an official language would not, strictly speaking, be in accordance with the charter's Article 1.a.ii).<sup>43</sup> However, the Swiss authorities do not seem to object to this approach taken by the Committee of Experts, and they provide information not only on German but also on French. The committee therefore concluded in paragraph 10:

The Committee of Experts has been informed of some cases where French and German are in a minority language situation in some areas where they are traditionally spoken, but have no de facto official status. The Swiss authorities have also provided substantial information in this regard in the 3rd periodical report. These cases create some difficulties in the formal interpretation of the Charter. Nevertheless, since the cases have been raised by the Swiss authorities, and bearing in mind the spirit and purpose of the Charter, the Committee of Experts has decided to deal with them in this report.

This was not the first occasion that the Committee of Experts decided to accept a more teleological interpretation, departing from the verbatim interpretation of the charter. For example, in the case of Cyprus, the Committee of Experts asked the authorities to clarify the factual position of Turkish regardless of the fact that it is

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41 Recommendation no. 3: develop a planned and structured approach to the implementation of regional or minority language teaching (model C) so that it meets the requirements of the charter as outlined by the Committee of Experts.

42 Third report on the application of the charter in Switzerland, adopted on 12 March 2008 (ECRML, 2008) 2 (hereafter Switzerland third). The Committee of Experts adopted it on 19 September 2007, and the on-the-spot visit took place in February 2007.

43 Article 1, Definitions. For the purposes of this charter a "regional or minority languages" means languages that are (1) 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 (2) 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.

legally one of the national languages of Cyprus.<sup>44</sup> The following report from that country will show whether it accepts the view taken by the committee of experts.

There are not too many problematic areas in the application of the charter in this multilingual country. In the previous monitoring round, the committee of experts established the lack of comprehensive federal language legislation, and this is still missing today. However, in October 2006, the Canton of Graubünden adopted a language law that established criteria for the determination of the official language and school language at the local level. The law thus helps to promote Romansh and Italian.

Nevertheless, there are still some difficulties with respect to Romansh, especially in the field of justice and cantonal administration. It is quite often the case that, for many minority languages, their use is less problematic in local communities where they have a strong presence than in more official and distant settings. Mostly, these difficulties result from the lack of a tradition by the speakers of using their language in these fields so the authorities are requested to introduce additional legal and practical measures to encourage the use of Romansh. This can be done by making administrative texts and forms in that language more easily available or by training the staff to learn Romansh. In the case of a language that lacks a standard codified form, such as Romansh, it is useful to have a translation of the cantonal statute book into Rumantsch Grischun, since it provides a basis for developing Romansh as a working language before courts. On the other hand, Rumantsch Grischun remains a problem in itself as an “official” standard form of Romansh because it faces opposition by the majority of municipalities that remain attached to local varieties.<sup>45</sup> The committee of experts repeated its view that the introduction of this standard form should be carried out gradually and with maximum support from the speakers of Romansh.

The position of Italian both in the Canton of Graubünden and the Canton of Ticino is very good, and the latter canton now fulfils all provisions of the charter.

#### *D. Germany*

The third report on the application of the charter in Germany was adopted by the Committee of Ministers on 8 July 2008.<sup>46</sup> The report reflects the complex situation concerning regional or minority languages spoken in Germany, both with respect to their number and the country’s federative structure.<sup>47</sup>

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44 Cyprus first (ECRML, 2006) 3, para. 37–43.

45 Allegedly, they are concerned that this may deter people from using the language, thus increasing its decline. The authorities, on the other hand, adopted a strategy for the medium-term introduction of Rumantsch Grischun as the standard written form to be taught in schools as of 2007. The completion of the replacement of written teaching material in the regional varieties (Idiome) Vallader, Puter, Surmiran, Sutsilvan and Sursilvan is planned for the next ten years or so.

46 Third Report on the Application of the Charter in Germany, adopted on 9 July 2008 (ECRML, 2008) 4 (hereafter: Germany third). In this case, the adoption of the report followed quite quickly after the on-the-spot visit to Germany in November 2007.

47 Germany declared at the time of ratification that the regional or minority languages protected under the charter were Danish, Upper Sorbian, Lower Sorbian, North Frisian,

The issue of competence between the federation and the particular *Länder* in view of the Committee of Experts continues to hamper full implementation of the charter. Although *Länder* are competent to regulate matters dealing with regional or minority languages, the federation remains responsible under international law. It is a rule well settled in international law that a state cannot invoke its own legislation as a reason for non-fulfilment of international obligations.<sup>48</sup> In view of this rule, the Committee of Experts asked the German authorities to coordinate their efforts between various levels of government for the benefit of regional or minority languages and to fully implement the obligations assumed under this treaty.<sup>49</sup>

Nevertheless, there have been some significant improvements, for example, with respect to institutional representation of regional or minority languages at the federal level. In addition to consultative committees relating to Danish and Sorbian in the Federal Ministry of the Interior, new committees were established with regard to Frisian and Low German. Representatives of federal and respective *Land* ministries participate in meetings held with the consultative committees. The meetings are chaired by the federal commissioner for national minorities. In 2005 an independent minority secretary was established, whose primary task is to incorporate national minorities into decision-making processes in Germany and to improve communication with the federal government and parliament. The Committee of Experts commended the federal authorities for their continued efforts, although it had to note that there was still no federal language policy.

A kind of development also took place on the committee's side with respect to its interpretation of Article 11 and broadcasting services. In previous reports, the Committee of Experts insisted on the charter's distinction between "public service broadcaster" and private broadcasters. However, in several states parties this distinction lost its justification, and the committee accepted that several categories of bodies now exist that could be said to deliver a "public service mission" to a greater or lesser extent. The ownership of these bodies or their status seems to have lost its importance. Furthermore, the Committee of Experts realized that there was far greater variety in delivery methods and platforms (digital television and radio, internet broadcasting, etc.). Based on all these new developments the Committee of Experts decided to accept a more flexible interpretation of Articles 11.1. b and c) in particular so as not to exclude public service broadcasting from its ambit.<sup>50</sup>

The biggest problems observed by the Committee of Experts concerned the fate of the more endangered languages, in particular Lower Sorbian and Sater Frisian. Their situation has deteriorated even from the previous monitoring round. They suffer, in particular, from deficiencies in primary and secondary education: the offer of teach-

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Sater Frisian, Low German and Romani. However, these languages get a different level of protection, in particular *Länder*.

48 Article 27 of the Vienna Convention on the Law of Treaties, 1969.

49 Unlike the previous report, however, the German authorities abstained from making any particular comments limiting themselves to state that "the competent authorities in Germany do not invariably share the views and evaluations stated by the Committee of Experts". Germany third, at 121.

50 Germany third, para. 17.

ing in and of these languages is not sufficient; the classes are not given during regular school hours and not all areas in which the language are spoken are covered. Problems affecting these and most other protected languages (e.g., North Frisian, Upper Sorbian, Low German, as well as Romani) also relate to the lack of qualified teachers and teaching material, in addition to a monitoring body in accordance with paragraph i of Article 8 of the charter.<sup>51</sup> The latter obligation is not fulfilled in many other state parties, so the Committee of Experts felt the need to give an explanation of what is required by it. First of all, it does not require “the setting up of a new body”. It is also possible “for existing supervisory bodies to carry out these functions and be integrated into existing administrative structures”. The main point is, however, that “this undertaking goes beyond the inspection and reporting of mainstream education. It requires evaluating and analysing the measures taken and the progress achieved with regard to regional or minority language education.” In particular, this provision requires that the report should be made public.<sup>52</sup>

As for the use of regional or minority languages before judicial and administrative authorities, the same problems persisted. Because the use is legally possible, the German authorities maintained their position that no special legal measures were necessary to implement the charter in these respects. Consequently, the undertakings were only “formally fulfilled”.

As explained above, the Committee of Experts adopted a more flexible approach appraising the fulfilment of Article 11.1.b or c. However, even with such a flexible approach, the Committee of Experts had to conclude that the provision of radio and television broadcasts was still not satisfactory for Sater Frisian, North Frisian, Lower Sorbian and Danish. Of course, not all these languages are in the same position, but the German authorities opted to undertake the same obligations with respect to all of them, which shows a certain lack of proper assessment of their individual needs.

Finally, the situation of Romani remains the same as in the previous monitoring round. Although the attempt to give this language additional protection under Part III of the charter in the *Land* of Hesse<sup>53</sup> deserves high regard, implementation remains unsatisfactory. For example, very little has been done in the field of education that was not regarded as a priority either by the Hessian *Land* Association of German Sinti and Roma or the authorities. In their view, the priority had to be given to the social inclusion of Sinti and Roma and awareness raising with regard to the history and culture of Sinti and Roma among the majority population. While recognizing the significance of these worthy goals, the Committee of Experts nevertheless concluded that such prior-

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51 “i. to set up a supervisory body or bodies responsible for monitoring the measures taken and progress achieved in establishing or developing the teaching of regional or minority languages and for drawing up periodic reports of their findings, which will be made public”.

52 Germany third, para. 219–220.

53 The ratification instrument actually selected some Part III obligations with regard to Romani throughout the territory of the Federal Republic of Germany and in particular *Länder*. The Committee of Experts, however, took the view that such a selective approach to Part III is not in accordance with the charter because it did not reach the minimum number demanded by Article 2.2.

itizing must not exclude the development of the Romani language education especially since such education existed in some of the other *Länder*.<sup>54</sup> The fact that the Romani language of German Sinti and Roma has no standard written form makes compliance with many of the selected undertakings difficult, or even impossible. The situation is aggravated further by the fact that some Romani speakers do not wish their language to have a presence in public life outside the Sinti and Roma community. Nevertheless, the Committee of Experts noted some positive developments in the field of language promotion, such as the Framework Agreement between the *Land* Government of Rhineland Palatinate and the *Land* Association of the Roma and Sinti.

In conclusion, the Committee of Experts found that the promotion of regional or minority languages in Germany remained hampered, to varying degrees depending on the *Land*, by the lack of long-term, structured policies of language promotion and the absence of a proactive approach to this promotion.

### *E. The Netherlands*

The third report concerning the Netherlands was adopted by the Committee of Ministers on 9 July 2008.<sup>55</sup> The whole monitoring process was postponed due to the 15-month delay by the Dutch authorities in submitting the report. So far, the Dutch report has shown the worst breach of Article 15 of the charter, which requires periodical reports to be submitted at three-year intervals after the first report (although some other states parties experienced shorter delays).

The Netherlands decided that it would apply provisions of Part III to the Frisian language in the province of Friesland and Part II of the charter to the Low Saxon<sup>56</sup> and the Limburgish<sup>57</sup> languages. Yiddish and the Romanes (spoken by the Sinti and Roma) languages are treated as non-territorial languages.

As far as Frisian is concerned, the Dutch authorities continue to base the protection and promotion of that language on the Third Covenant on the Frisian Language and Culture, which was adopted by the national authorities and the Province of Friesland

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54 There have been some positive developments in the field of education in Hamburg, Bavaria and in Rhineland.

55 Third Report on the Application of the Charter in the Netherlands, adopted on 9 July 2008 (ECRML, 2008) 3 (hereafter: the Netherlands third). The third evaluation report is based on the information the Committee of Experts obtained from the third periodical report of the Netherlands and through meetings held with representatives of the speakers of the regional or minority languages and the Dutch authorities during the on-the-spot visit, which took place from 5 to 7 September 2007. The Committee of Experts adopted its report on 27 November 2007.

56 Different varieties of Low Saxon are used in the Provinces of Drenthe, Gelderland (regions of Achterhoek and Veluwe), Groningen, Overijssel and Friesland (municipalities of Ooststellingwerf and Weststellingwerf) by about 1.8 million people. The Netherlands third, para. 15.

57 Limburgish is spoken in the Province of Limburg. There are six main varieties of Limburgish: Kleverlands, Michkwartier, Centraal-Limburgs, Oost-Limburgs, varieties on a continuum with Ripuarisch, and Ripuarisch. Approximately 770,000 persons can understand and speak the language. *Ibid*, para. 16.



in 2001. Although this covenant “represents a very flexible approach to a structured language policy”, there are still some deficiencies, especially in the field of education. Based on the recommendations made by the Committee of Experts, the Frisian authorities have taken steps to improve awareness of the advantages of bilingualism, especially among young parents. The number of preschools offering Frisian education increased, and new models of trilingual education in primary schools were introduced. In addition, new textbooks and teaching materials have been developed. At the same time, however, the overall average time devoted to teaching in Frisian remained low (only 30–45 minutes per week) and the number of teachers with formal qualifications to teach in this language remained inadequate. The Committee of Experts concluded that there was a need to “strengthen the teaching of and in Frisian at all levels of education”<sup>58</sup> in accordance with the commitment undertaken by the Netherlands. Problems were also detected with respect to decentralized national authorities located in the Province of Friesland, a practice often identified by the Committee of Experts in state parties. National authorities often consider that only regional and local administration is under an obligation to provide services in the relevant minority language, forgetting that Article 10.1 of the charter specifically refers to “administrative districts of the state”.<sup>59</sup>

As far as the other territorial languages are concerned (Limburgish and Low Saxon), they suffer from the lack of a national language policy, leaving competence solely within the hands of local and regional authorities. Despite the benefits of such an approach, the Dutch authorities also had to be reminded that the delegation of responsibilities did not relieve them from their own responsibility for implementation of the charter under the rules of international law.

In the case of Yiddish, an interesting development can be followed through the reporting cycles. Although there was only some teaching of Yiddish in private institutions in the first monitoring round, a strong impetus was given by the state in the second monitoring round because the Dutch Ministry of Health, Welfare and Sports had subsidized the production of a Yiddish course book and of teaching materials for the Cheider School in Amsterdam. Finally, in the third monitoring cycle, based on a recommendation made by the Committee of Experts, it became possible to include Yiddish in the regular school curriculum of the Cheider School. According to the information submitted by the authorities, there were 250 pupils attending this school, and that number alone indicates the revival that Yiddish underwent in the Netherlands, due in part to the charter. The Committee of Experts continues to encourage the Dutch authorities to support this revival by adopting additional protective measures.

The Romanes story has not yet been successful, because Romanes is not taught at all in Dutch schools and there is no presence of this language in public use. As in some other countries, the problem is connected to the desire of its speakers to keep the language to themselves. However, the Committee of Experts holds a consistent view that this problem should be solved by cooperation with the speakers and efforts

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58 Recommendation No. 1.

59 Recommendation No. 2: “adopt legal and practical measures in order to ensure the use of Frisian in central State administration agencies located in the Province of Friesland.”



should be made to assist at least those speakers who do not oppose the promotion of Romanes.<sup>60</sup>

#### IV. CONCLUSION

As we could see, the Committee of Experts and the Committee of Ministers continue to work together with state parties to the charter on the promotion and protection of regional or minority languages. The period under consideration mainly covered states with a longer experience with the implementation of the charter, so the progress as well as the relevant obstacles are now quite visible.

At the same time, it has become obvious that the charter needs to be promoted by the relevant factions within the Council of Europe, as well as the European Union, in order to be accepted by a larger number of member states. The reluctance, especially by some EU member states, to commit themselves to the legal obligations of the charter shows a lack of political will to go beyond paying mere lip service to a goal as important as the preservation of the cultural heritage of Europe. The Secretary General of the Council of Europe made it absolutely clear in his report to the Parliamentary Assembly:

As Europe's linguistic diversity is regressing everywhere, I can only reiterate the observation made in my previous report that the 'failure to ratify the Charter hitherto cannot at all be explained or justified by the fact that [the member States concerned] do not need it; quite the contrary.' For many European languages, one can note a continuous decline in the number of speakers. If not reversed, this trend will inevitably lead to the extinction of languages in regions where they have been traditionally used for centuries and where they represent an integral part of regional identity.<sup>61</sup>

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60 Recommendation No. 4: "ensure that a structured dialogue is developed with the representatives of the Romanes-speakers and take measures to protect and promote Romanes, in particular in the field of education, in co-operation with the speakers."

61 *Op.cit.* note 4.