

THE SYSTEM OF PROTECTION OF REGIONAL OR MINORITY LANGUAGES WITHIN THE COUNCIL OF EUROPE

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Abstract

The objective of this contribution is to describe how the law deals with the protection of regional or minority languages. This contribution to be published in Portugal in 2024 is particularly appropriate, as Portugal is about to ratify the European Charter for Regional or Minority Languages for Mirandês and Barranquenho.

The main focus will be on the protection by instruments initiated by the Council of Europe. Some remarks, however, will firstly be made on actions carried out by the United Nations, followed by some notes on the European Union's initiatives regarding regional or minority languages.

Keywords: European Charter for Regional or Minority Languages of the Council of Europe, Committee of Experts of the ECRML of the Council of Europe, protection of minority languages

Resumo

O objetivo desta contribuição é descrever a forma como a lei aborda a proteção das línguas regionais ou minoritárias. Esta contribuição a ser publicada em Portugal em 2024 é particularmente apropriada, uma vez que Portugal está prestes a ratificar a Carta Europeia das Línguas Regionais ou Minoritárias para o Mirandês e o Barranquenho.

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O foco principal será a proteção por instrumentos iniciados pelo Conselho da Europa. No entanto, serão feitas algumas observações em relação às ações levadas a cabo pelas Nações Unidas, seguidas de algumas notas sobre as iniciativas da União Europeia relativas às línguas regionais ou minoritárias.

Palavras-chave: Carta Europeia das Línguas Regionais ou Minoritárias do Conselho da Europa, Comité de Peritos da ECRML do Conselho da Europa, proteção das línguas minoritárias

1. Introduction. Protection by the United Nations

Article 2 of the Universal Declaration of Human Rights, adopted by the General Assembly of the United Nations on 10 December 1948 (Resolution 217A (III)) states: “Everyone is entitled to all the rights and freedoms set forth in this Declaration, without distinction of any kind, such as [...] language [...]” (UN General Assembly, 1948). This implies that no discrimination should occur on the basis of the language used by a person. However, in spite of its highly persuasive character, the Universal Declaration is not legally binding. For that reason, it is very important to mention that Article 27 of the International Covenant on Civil and Political Rights (ICCPR) mentions that “in those States in which ethnic, religious or linguistic minorities exist, persons belonging to such minorities shall not be denied the right, in community with the other members of their group, to enjoy their own culture, to profess and practice their own religion, or to use their own language” (UN General Assembly, 1966).

It is appropriate also to point out Article 29 (1) of the Convention on the Rights of the Child (CRC), which includes the obligation to promote “the development of respect for [...] his or her own cultural identity, language and values”. In addition, Article 30 of the CRC mentions the right of minorities to use their own languages (UN General Assembly, 1989).

On 18 December 1992 the United Nations General Assembly adopted a Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities (UN General Assembly, 1992). Moreover, the UNESCO Universal Declaration on Cultural Diversity includes, *inter alia*, the desirability of “safeguarding the linguistic heritage of humanity and giving support to expression, creation and dissemination in the greatest possible number of languages” (UNESCO, 2001).

Furthermore, Article 2 (2)(a) of the Convention for the Safeguarding of the Intangible Cultural Heritage recognises, *inter alia*, languages as intangible cultural heritage: “oral traditions and expressions, including language as a vehicle of the intangible cultural heritage” (UNESCO, 2003)².

In order to raise awareness of the necessity to protect minority languages, 2019 was proclaimed by the United Nations as the Year of Indigenous Languages, with the overall goal of encouraging urgent action to preserve, revitalize and promote endangered languages.

However, the United Nations has not yet initiated an international treaty on the protection of languages as such.

2. Protection in the European Union

Article 3 (3) of the Treaty on the European Union stipulates that the EU “shall respect its rich cultural and linguistic diversity, and shall ensure that Europe's cultural heritage is safeguarded and enhanced” (TEU, 1992). Also, Article 22 of the Charter of Fundamental Rights of the European Union underpins: “The Union shall respect cultural, religious and linguistic diversity” (Charter of Fundamental Rights of the European Union, 2010). Furthermore, Article 167 of the Treaty on the Functioning of the European Union provides for a supporting competence in the field of culture, laying down objectives for EU action, allowing for guidelines and indicators under the ordinary legislative procedure:

² See also de Witte, 2020.

1. The Union shall contribute to the flowering of the cultures of the Member States, while respecting their national and regional diversity and at the same time bringing the common cultural heritage to the fore.

2. Action by the Union shall be aimed at encouraging cooperation between Member States and, if necessary, supporting and supplementing their action in the following areas:

- improvement of the knowledge and dissemination of the culture and history of the European peoples,
- conservation and safeguarding of cultural heritage of European significance,
- non-commercial cultural exchanges,
- artistic and literary creation, including in the audiovisual sector.

3. The Union and the Member States shall foster cooperation with third countries and the competent international organisations in the sphere of culture, in particular the Council of Europe.

4. The Union shall take cultural aspects into account in its action under other provisions of the Treaties, in particular in order to respect and to promote the diversity of its cultures.

5. In order to contribute to the achievement of the objectives referred to in this Article:

- the European Parliament and the Council acting in accordance with the ordinary legislative procedure and after consulting the Committee of the Regions, shall adopt incentive measures, excluding any harmonisation of the laws and regulations of the Member States,
- the Council, on a proposal from the Commission, shall adopt recommendations (TFEU, 2008).

In the context of education, also Article 165 TFEU mentions the cultural and linguistic diversity of Member States.

The report “Towards a comprehensive protection system for minorities” (Carrera et al., 2017) – prepared by the Center of European Policy Studies (CEPS) on request of the European Parliament – pays particular attention to the desirability of the protection of regional/minority languages within the European Union.

Very interesting also is European Parliament Resolution 2018/306 demanding that certain regulatory and legal conditions are to be set up for linguistic minorities in Member States (including a prohibition on the practice of geo-blocking).

Special mention deserves the Minority Safepack initiative³. This European petition campaign got the support of 1,320,000 European citizens and reached the required threshold in 11 Member States, well above the minimum of one million signatures and seven Member States. However, the European Commission decided not to initiate legal acts based on the initiative. Against this decision, an appeal was lodged at the General Court of the European Union, which came to a judgment on 9 November 2022, in which it stated that the European Commission proceeded correctly in refusing to propose legal acts based on the Citizen Initiative. An appeal against this judgment is still pending at the Court of Justice of the European Union⁴.

So far, however, the European Union has not developed a systematic system of protection of regional or minority languages.

3. Protection instruments of the Council of Europe

Several instruments of the Council of Europe deal with the protection of regional or minority languages. The most detailed instrument is without any doubt the European Charter

³ Available at <http://minority-safepack.eu/>.

⁴ Case C-26/23P.

for Regional or Minority Languages (Council of Europe, 1992a). This treaty was prepared within the framework of the Council of Europe and opened for signature in Strasbourg on 5 November 1992. The Charter came into force 26 years ago, on 1 March 1998, after five Member States of the Council of Europe ratified this convention. So far, 25 of the 47 Member States of the Council of Europe have ratified the Charter (hereinafter ECRML)⁵.

The Charter is not the only relevant instrument of the Council of Europe for the protection of regional or minority languages. The European Charter of Local Self-Government (2013), which also covers the use of regional or minority languages in contact with local authorities, is of equal importance. That Charter, which was opened for signature on 15 October 1985 and came into force on 1 September 1988⁶, played an important role in the preparation of the ECRML. The predecessor to the current Congress of Local and Regional Authorities, the Standing Conference of Local and Regional Authorities of Europe, was involved in the preparation of the ECRML, as the engagement of local and regional government in language matters is essential for good governance⁷. The use of languages by local and regional authorities is still on the calendar of the Congress⁸.

Another treaty of the Council of Europe relevant to the protection of regional and minority languages is the Framework Convention for the Protection of National Minorities, or FCNM (Council of Europe, 1995), which was opened for signature on 1 February 1995 and has been in force since 1998⁹. Portugal is already a party to this convention. The Advisory Committee monitoring the implementation of the FCNM pays already some attention to the

⁵ The following countries are Contracting States: Armenia, Austria, Bosnia and Herzegovina, Croatia, Cyprus, Czechia, Denmark, Finland, Germany, Hungary, Liechtenstein, Luxembourg, Montenegro, Netherlands, Norway, Poland, Romania, Serbia, Slovakia, Slovenia, Spain, Sweden, Switzerland, Ukraine and the United Kingdom (including the Isle of Man). Eight other Member States have signed the Charter.

⁶ The European Charter of Local Self-Government has been ratified by all 47 Member States of the Council of Europe.

⁷ For more background information on the drafting and goals of the Charter, see Oszmiańska-Pagett & Crnić-Grotić, 2022.

⁸ See Congress of Local and Regional Authorities of the Council of Europe, 2019.

⁹ Ratified by 39 Member States of the Council of Europe. The following countries of the Council of Europe are not Party to this Convention: Andorra, Belgium, France, Greece, Iceland, Luxembourg, Monaco and Turkey.

Mirandês language¹⁰. However, the attention to minority languages under the FCNM is considerably more general and less detailed than the protection under the Charter.

The preamble to the ECRML states that one of the objectives of this convention is the maintenance and development of regional or minority languages as a manifestation of cultural wealth. It underpins the use of a regional or minority language as an inalienable right. Furthermore, it stresses that the provisions laid down in the Charter are based on the principles of democracy and cultural diversity. However, the preamble also underlines that the protection of regional or minority languages should not happen to the detriment of the official language(s) of the State and the need to learn it (them).

It is remarkable that those who drafted the Charter avoided the use of human rights terminology. However, the Charter does include personal rights with an obvious collective dimension (relating to the group of speakers of the regional or minority language). The Charter is intended to promote the wellbeing of the language and its community of speakers.

The ratification of ECRML and of the FCNM Convention belong to the Copenhagen Criteria for accession to the European Union¹¹. However, it is striking that several European Union Member States did not ratify the Charter¹². This includes three long-time European Union Member States, namely Belgium, France and Italy. It is evident that language issues are very controversial in Belgium, while France has difficulties recognising that minority languages exist in the country. In Italy there is an ongoing discussion under which conditions and for which languages a ratification of the Charter should take place.

The fact that Ireland and Malta have not yet ratified the Charter is obviously related to the position of, respectively, Irish Gaelic¹³ and Maltese as official languages alongside

¹⁰ See Advisory Committee FCNM, 4th Opinion on Portugal, adopted on 28 June 2019, ACFC/OP/IV(2019)002, par. 16, 17 and 20. Available at <https://rm.coe.int/4th-op-portugal-en/1680998662>.

¹¹ Available at http://www.europarl.europa.eu/enlargement/ec/pdf/cop_en.pdf.

¹² As argued by Oszmiańska-Pagett & Crnić-Grotić (2022), it is discouraging that EU States “have not been able to accept the instrument that aims to promote European cultural heritage”.

¹³ See Art. 8 of the Irish Constitution 1937. Irish is the sole national language and first official language; English is also official language. See also the Irish Official Languages Act 2003.

English. Although those countries could protect their minority languages under the Charter as lesser used official languages, it was the Republic of Ireland which asked to include such possibility during the *travaux* on the Charter¹⁴.

It is likely that the non-ratification by Bulgaria and Greece is related to the position of the Turkish speaking minorities in both countries. Also, the three Baltic countries have not ratified the Charter; it is not difficult to guess that this has to do with the position of Russian speakers in those countries.

Special attention has to be given to the discussion in Portugal on the accession to the Charter, which was signed on 7 September 2021. Since then, Portugal has been working on the preparation of the ratification for Mirandês and Barranquenho. Mirandês has already an official status next to Portuguese and is protected by Law 7/99, dated 29 January 1999. A Resolution of Parliament of 26 November 2021 recognised the need for the protection of Barranquenho.

The overall goal of the ECRML is to protect and promote *historical* regional or minority languages in Europe. The Charter only applies to languages traditionally (> 100 years) used by the nationals of a State Party (thus excluding languages used by more recent immigrants)¹⁵. Furthermore, language varieties of the official national language(s)/dialects are also excluded¹⁶.

Admittedly, the distinction between languages and dialects is not clear¹⁷. Neither is the definition of variety of a language. In fact, clarification of both issues can often be qualified as a political statement¹⁸. The Explanatory Report underlines that the Charter

¹⁴ It must be pointed out that in some States, a protected language is spoken by most, or is even official language, in that particular region. Spain protects Basque in the Basque Country, Catalan in Catalunya and Galician in Galicia; Switzerland protects Romansch in Graubünden and Italian in Tesino.

¹⁵ Article 1 (a)(i) ECRML.

¹⁶ Article 1 (a)(ii) ECRML.

¹⁷ Compare the remark of Max Weinreich (1894-1969) „Eine Sprache ist ein Dialekt mit einer Armee und einer Marine“. On Weinreich, see the Jewish Virtual Library (<https://www.jewishvirtuallibrary.org/weinreich-max>).

¹⁸ Compare the qualification of Franco-Provençal and Jurassian in the 7th Evaluation Report of COMEX on Switzerland, MIN-LANG (2019)10, par. 10 and 11.

[...] does not pronounce on the often disputed question of the point at which different forms of expression constitute separate languages. This question depends not only on strictly linguistic considerations, but also on psycho-sociological and political phenomena which may produce a different answer in each case. Accordingly, it will be left to the authorities concerned within each State, in accordance with its own democratic processes, to determine at what point a form of expression constitutes a separate language (Council of Europe, 1992b, par. 32).

However, once a State has granted a language protection under the Charter, this status is irreversible!

The Charter provides for two levels of protection: basic and advanced protection. The basic protection has to be granted to all regional or minority languages traditionally present in the territory of a State¹⁹. The basic protection accorded to these languages is enshrined in Part II of the Charter, which consist of Article 7. A State may decide to grant advanced protection which is regulated by Article 8-13²⁰. These different regimes of protection will be described in the next sections.

The correct application of the Charter is monitored by the Committee of Experts (hereinafter COMEX) of the ECRML of the Council of Europe²¹. This Committee is made up of 25 members (one for each Contracting State²²) and has its own secretariat. The plenary sessions of the COMEX take place at least three times per year in Strasbourg for a period of four or five days, while the Bureau²³ of the COMEX meets as often as necessary. Furthermore, the COMEX has a number of working groups.

¹⁹ Article 2 (1) ECRML.

²⁰ Article 2 (2) ECRML.

²¹ Article 17 ECRML.

²² As soon as Portugal ratifies the Charter, a Portuguese Member will be elected by the Committee of Ministers of the Council of Europe. Portugal will have to propose three possible qualified candidates.

²³ Chair, two vice-chairs and the head and members of the secretariat. The candidates must be independent, e.g., a public civil servant cannot be put forward.

The monitoring procedure is regulated by Article 15 of the Charter: every five years Member States have to submit a periodical report to the Council of Europe²⁴. The first report, however, has to be submitted within one year after accession. On receipt of the periodical report, the COMEX organises an on-the-spot visit (hereinafter OSV) by a delegation (three Members plus secretary). One of the Members of this delegation is the COMEX Member coming from the Member State involved²⁵. The duration of the OSV depends on the complexity of the situation in the country²⁶. During the OSV, the delegation meets with regional and national authorities, as well as with organisations representing the speakers of the protected regional or minority languages. Furthermore, Article 16 provides that “[b]odies or associations legally established in a [State] Party” may request that attention is paid to problems and also to the general policy of the State regarding regional or minority languages. The delegation therefore frequently receives several “shadow reports” relating to the situation of protection of certain regional or minority languages.

After the OSV, the delegation prepares a draft assessment report on the implementation of the Charter in the Member State concerned. This draft of the OSV delegation is then discussed in a plenary COMEX session. After the COMEX plenary has adopted the report, the Member State involved has the possibility to react to the assessment and the draft recommendations, within two months following its communication. In addition to any comments, the State Party may ask the COMEX for a confidential dialogue. If the Party does not ask for such confidential dialogue, the evaluation report, together with any comments received from the State Party, becomes public upon expiration of the two-month deadline in which the Party does not submit comments, or upon receipt of the Party’s

²⁴ It used to take place every three years, but periodicity was modified by the Committee of Ministers of the Council of Europe on 28 November 2018 (CM/Del/Dec(2018)1330/10.4e). After two and half years, the State Party has to provide information on the implementation of a limited number of recommendations, if those have been identified by the Committee of Experts in its evaluation report as needing immediate action. The new rules were enforced on 1 July 2019.

²⁵ This differs from, for example, the monitoring procedure followed by the Advisory Committee of the Framework Convention.

²⁶ In Spain and the United Kingdom, the OSV took five days. In most cases, however, it takes three days.

comments, whichever is the earlier date. In the event that a confidential dialogue has taken place, the Party may submit possible further comments within two months following the communication of the final evaluation report, which becomes public upon receipt of any such comments from the Party, or following the expiration of the two-month deadline, whichever is the earlier date. Any such comments received from the State Party become public together with the evaluation report.

The evaluation report (including draft recommendations) and the comments of the State Party are submitted to the Committee of Ministers of the Council of Europe. After discussion in the Committee of Ministers (all 47 Member States participate, not only 25 Contracting States to the Charter!) a final version is adopted and published on the website of the Council of Europe.

As already mentioned, the COMEX consists of 25 independent Members (one for each Contracting State). In other words, a Member of the COMEX comes from a Member State but does not represent this State and does not receive instructions by this State. In the case of a vacancy, the Contracting State involved submits a list of potential candidates to the Council of Europe. In principle, this list should contain the names and curriculum vitae (in English and French) of three candidates²⁷. The choice/appointment is made by the Committee of Ministers of the Council of Europe. The appointment is for a term of six years with the possibility of another six-year term, which is only possible if the candidate is again included in the list of three candidates put forward by her/his Member State.

²⁷ The curricula vitae must comply with the format available at the COMEX secretariat.

4. The basic protection to be granted to all traditional regional or minority languages on the territory of a State²⁸

In accordance with Part II (Article 7) of the Charter, a Member State must grant protection to a regional or minority language by observing the following fundamental principles:

a) The recognition of the regional or minority language as an expression of cultural wealth. Mentioning a certain regional or minority language in the instrument of ratification of the ECRML confirms this, except if otherwise indicated.

b) Respect for the geographical area of each regional or minority language. This implies that Member States have to be careful with modifications of territorial districts. In other words, new administrative divisions should not create obstacles to the promotion of a regional or minority language. This does not mean that territorial divisions cannot be changed by, for instance, merging two or more districts. If this happens, however, measures have to be taken in order to avoid the rights of speakers of a regional language are jeopardised²⁹.

c) Resolute action to promote the regional or minority languages.

d) Facilitation and/or encouragement of the use of such languages, in speech and writing, in public and private life.

e) Maintenance of ties with other groups speaking the same or similar regional or minority languages³⁰.

²⁸ See Ramallo (2018).

²⁹ See the merger of courts in the Netherlands, in particular the merger of the Court of Appeal Leeuwarden (Friesland) and the Court of Appeal Arnhem (Gelderland) to create Court of Appeal Noord Nederland. See also Oszmiańska-Pagett & Crnić-Grotić (2022).

³⁰ In the case of Mirandês and Barranquenho, should Portugal stimulate the maintenance of ties with similar languages in Spain, such as Mirandês and Asturian?

f) The provision of appropriate forms and means for the teaching and study of such languages at all appropriate stages (preschool, primary school, secondary school, vocational training, university)³¹.

g) Learning facilities for adult non-speakers living in the area where a certain regional or minority language is spoken.³²

h) Study and research at universities or equivalents institutions. This obligation also implies documentation of the language.

i) The promotion of relevant transnational exchanges with speakers of the same or similar languages abroad.

j) Elimination of all forms of unjustified distinction, exclusion, restriction or preference relating to the use of a regional or minority language and intended to discourage or endanger its maintenance or development.

k) The promotion by the State of mutual understanding between all the country's linguistic groups.

l) The consideration of speakers' needs and wishes, i.e., by establishing bodies (including speakers) of advising authorities.

These obligations (called *undertakings*)³³ of Part II focus mainly on *regional* minority languages, but have to be applied as far as possible, *mutatis mutandis*, to *non-territorial* minority languages (Article 7(5)). For many Contracting States, Yiddish or/and Roma/Sinti languages³⁴ are recognised as such non-territorial minority languages³⁵.

³¹ It is obvious that for Part III languages this obligation will overlap with undertakings ratified for a specific language of the list in Article 8 (1) (a) to (e) ECRML.

³² Oszmiańska-Pagett & Crnić-Grotić (2022) mention that “in many cases, languages skipped a generation for various historic, political, or demographic reasons”.

³³ In this contribution the words “obligation” and “undertaking” are used as synonyms.

³⁴ Yiddish is protected in eight State Parties. Roma/Sinti languages are protected in sixteen State Parties (see Council of Europe, 2024).

³⁵ However, it is not impossible to make a reservation regarding Art. 7(5), as has been done by Croatia and Ukraine. See also Oszmiańska-Pagett & Crnić-Grotić (2022).

5. The enhanced protection of regional or minority languages

The enhanced protection of a regional or minority language is covered by Part III of the Charter. This level of protection requires a specific declaration by the State involved and a detailed indication as to which kind of protection will be granted to the language concerned. The State Party will have to make a choice from a kind of “menu card” contained in Articles 8–14 and covering several spheres of life. For that reason, all these articles describe different possible obligations. All together the articles dealing with the protection covered in Part III include 98 possible *undertakings*. However, several of these *undertakings* are alternatives: they describe different levels of a particular possible facilitation. The number of undertakings covering unique topics is 68.

If a State decides to give enhanced protection to a specific regional or minority language, this language should be given the protection covered by at least 35 *undertakings*³⁶. At least three have to be chosen from Article 8 (Education) and three from Article 12 (Cultural activities and facilities), as well as one from each of the Articles 9, 10, 11 and 13. There is no obligation to opt for the measures listed in Article 14.

The main fields of protection of the “menu card” of Part III are:

- Article 8: Education,
- 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: Transfrontier exchanges.

³⁶ Article 2 (2) ECRML.

As already mentioned, States must select at least thirty-five of the *undertakings* from Part III, in addition to the basic protection accorded by Part II (Article 7). If a State decides to protect several regional or minority languages on the level of Part III, the precise undertakings may differ from one language to another, but ideally should comply with the wishes of its speakers and the particular situation of each language. The approach to the protection provided under Part III is flexible, due to the fact that the number of speakers may significantly differ for each language. In such case, it is not realistic to apply to all languages protected under Part III the same menu of protective measures³⁷.

Many provisions in Part III contain several options with varying degrees of stringency, one of which has to be chosen “according to the situation of each language”. If a State chooses a strong and a lighter obligation in the same category, the COMEX only assesses the stronger obligation, which covers also the lighter one. Moreover, if a State opts – by mistake – for a lighter and a stronger obligation in the same category, only the stronger one will count for the calculation, whether indeed the minimum of 35 undertakings is reached.

At the moment of writing this paper, it is not yet clear which undertakings Portugal will choose for the protection of Mirandês³⁸. It is also not known whether Barranquenho will also be protected by Part III or only by Part II (the undertakings listed in Article 7).

6. Which languages are covered by the Charter?

In principle, Contracting States mention the languages covered by the ECRML in the ratification instrument. As already mentioned above, this decision of a State to protect a language as minority language, and therefore recognise this language as a language traditionally spoken in its territory, is irreversible. After ratification, downgrading a protected

³⁷ Although countries like Bosnia and Herzegovina and Croatia have indeed done so. See Oszmiańska-Pagett & Crnić-Grotić (2022).

³⁸ Oszmiańska-Pagett & Crnić-Grotić (2022, endnote 16) are very critical about choosing for all Part III languages the same menu of undertakings.

language to dialect is not allowed. Neither is it possible to downgrade a language protected under Part III to the status of a Part II language.

Mentioning a specific language as a protected regional or minority language is absolutely necessary for a Part III protection. However, the protection under Part II is available for all regional or minority languages found in the territory of the Member State, even if not listed in the ratification instrument. Nevertheless, the consequence of the irreversibility principle is that discussion is no longer possible on whether a language mentioned in the ratification instrument is a variation of the official national language, e.g., Low Saxon and Limburgish³⁹ in the Netherlands. If authorities in the Netherlands started a discussion on the language qualification of these languages, arguing, for example, that they are a variety of the national language, this would imply a violation of the obligation accepted by the Netherlands upon ratifying the ECRML.

Conversely, it could be argued that a specific regional or minority language exists in the territory of a Member State which has not yet been recognised for protection under Part II. This possibility is well illustrated by the discussion on the possible protection of Extremeño, Fala and Portuguese, spoken as regional minority languages in the Spanish region of Extremadura⁴⁰.

Due attention must also be paid to the territorial scope of the ratification, as indicated in the ratification instrument. The United Kingdom did not include the Channel Islands in its instrument of ratification, but it did include Northern Ireland and also, since 2003, the Isle of Man. Since 2020 Manx-Gaelic has been protected under Part III of the Charter.

In 1996, the Netherlands ratified for the *Kingdom in Europe*, which did not include Aruba and the Netherlands Antilles in the West Indies. However, on 10 October 2010, the structure of the Kingdom was modified. The Netherlands Antilles were split up: the islands of Curacao

³⁹ Including Northern Limburgish, Central and Southern Limburgish as well Ripuarian/West Central-German.

⁴⁰ See the 5th Evaluation Report of the COMEX on Spain (2019), par. 59-60 and 71-72.

and Sint Maarten each became autonomous territories within the Kingdom (so called *status aparte*), a status which Aruba already had as from 1986. The islands of Bonaire, Saba and Sint Eustatius became special municipalities of the European part of the Kingdom. This caused an intense discussion as to whether or not the Charter also applies to these three islands since 2010. This was of great importance for Papiamentu, a creole language spoken on Bonaire. This language is definitely not a variation of the official language of the Netherlands, but based on Portuguese and Spanish (including Judaeo-Portuguese) and influenced by Dutch and Venezuelan Spanish). After years of dialogue with the central government in The Hague and following a debate between the government of the Netherlands and the COMEX⁴¹, in January 2024 the Netherlands extended the territorial scope of the Charter to the Netherlands Caribbean islands of Bonaire, Saba and Sint Eustatius. Simultaneously, the Netherlands notified the Council of Europe that Papiamentu on Bonaire would be protected under Part III of the Charter. Papiamentu is also spoken on the island of Curaçao and, known as Papiamentu, on the island of Aruba. However, the system of protection under the Charter does not apply to these two islands, because, due to the autonomy (*status aparte*) of those territories, their governments would have to decide on that issue and would need to apply for the application of the Charter. Papiamentu/u is also spoken in Europe within the Netherlands by people with roots in the Netherlands Caribbean. Certainly, the next discussion will be whether the Netherlands have to protect it in that territory as a non-territorial language under Part II of the Charter.

The number of protected regional or minority languages varies considerably from one State to another. Liechtenstein and Luxembourg ratified the Charter and made a declaration that no regional or minority language is found in its territory. However, due to the ratification of Liechtenstein, the Charter came into force. Denmark protects only one regional language

⁴¹ See the 5th Evaluation Report of the COMEX on The Netherlands (2016), par. 13-16, p. 36; the 6th Evaluation Report of the COMEX on The Netherlands (2019), par. 10, and the 7th Evaluation Report of the COMEX on The Netherlands (2022), par. 11.

(German), whereas Romania protects twenty different regional or minority languages. The number of languages protected by the Charter is 82. Several of these languages are protected in more than one State. 75 languages are protected by Part II only, whereas 125 languages are protected by Part III. The Charter protects a total of 207 linguistic groups (Council of Europe, 2024)⁴².

7. The different fields of protection under Part III of the Charter

7.1. Article 8 – Education

Article 8 describes a total of 26 potential obligations. However, many of these descriptions offer alternative levels of facilitation, of which only one may be chosen. The number of unique undertakings is ten. A Contracting State is required to choose at least three undertakings mentioned in the field of education.

Article 8 provides for different types of protection depending on which obligations are chosen from the “menu card” for the different levels of education. A distinction is made between 1) Preschool education, 2) Primary school, 3) Secondary School, 4) Technical and vocational education, and 5) University. Additionally, attention is paid to adult and continuing language training courses.

For the first four levels of education (preschool to technical/ vocational training), the State can choose between different levels of facilitation: 1) providing teaching in the regional/minority language, 2) providing a substantial part of teaching in the regional/minority language, 3) teaching the regional/minority language as an integral part of the curriculum, 4) teaching the regional/minority language on request if the number of students is sufficient. The ratification instrument has to indicate the level of facilitation.

⁴² See also Ramallo (2017).

Further possible obligations under Article 8 include, *inter alia*, teaching history and culture as reflected by the regional or minority language⁴³, providing teacher training⁴⁴, setting up a supervisory body monitoring the teaching activities⁴⁵, and teaching the regional or minority languages on all appropriate stages of education outside the territories where the language concerned is traditionally spoken⁴⁶.

With respect to these undertakings in the field of education, the following issues are particularly noteworthy:

If the State only takes on the obligation to teach the regional or minority language as an integral part of the curriculum (or alternatively to do so on request if the number of students is sufficient), how many hours of teaching are enough to fulfil this obligation? And does the teaching have to take place at every level and in all the classes of a particular type of school? It is therefore essential that there is a guarantee of continuity for learning the language⁴⁷.

Attention paid to the regional/minority language in the preschool setting is particularly important, as this is where the initial language embedding of a child is established. If this obligation is not chosen under Article 8, this point will nevertheless be assessed by the COMEX under Article 7(1)(f) (basic protection).

In addition, the presence of regional or minority languages in technical and vocational training is of great importance. Students undergoing this type of training will have contact with the speakers of their regional or minority language on a daily basis in their professional life and will therefore play an important role in the trans-generational transmission of their languages. For that reason, it is paramount to pay special attention to the vocabulary of craftsmen.

⁴³ Article 8 (1)(g) ECRML.

⁴⁴ Article 8 (1)(h) ECRML.

⁴⁵ Article 8 (1)(f) ECRML.

⁴⁶ Article 8 (2) ECRML.

⁴⁷ See initiatives like that of Brohy et al. (2019).

7.2. Article 9 – Judicial authorities

Article 9 focusses on obligations regarding the use of regional or minority languages in judicial procedures and regarding some other issues related to legal language. The total number of descriptions of possible obligations is 15, but due to the alternative character of many of them, only six undertakings are unique. A State granting a Part III protection to a language has the obligation to opt for at least one undertaking of this article.

Separate undertakings relate to criminal procedures, civil procedures and administrative procedures. For these three types of procedures, a state can decide to make a choice between three different types of facilitation. The strongest undertaking is to allow the procedure to take place in the regional or minority language. Another possibility is to allow the use of the regional or minority language. The lowest level of facilitation is the commitment that at least evidence will be accepted in the regional or minority languages.

If necessary, the facilitation chosen will be provided by guaranteeing a translation into or out of the official language. In criminal proceedings the use of interpreters and translations should not involve extra expenses for the persons concerned⁴⁸. For civil and administrative procedures, a State can take on the obligation that interpreters and translations will be provided free of charge⁴⁹. In addition, one possible undertaking of Article 9 is to make the most important statutes available in regional or minority languages⁵⁰.

7.3. Article 10 – Communication with(in) administrative authorities and public services

Article 10 describes 21 potential obligations. Some of these are alternatives among which a stronger or less stringent one can be chosen⁵¹.

⁴⁸ Article 9 (1)(a) ECRML.

⁴⁹ Article 9 (1)(d) ECRML.

⁵⁰ Article 9 (3) ECRML.

⁵¹ See e.g. Article 10 (1)(a) with five different levels, and Article 10 (3) with three levels.

This article makes a distinction between three different layers of authorities: 1) the State authorities within a territory where a regional or minority language is spoken, 2) the regional authorities and 3) the local authorities. Furthermore, it contains possible obligations for communications with(in) public services.

The beginning of Article 10 (1) reads as follows: “Within the administrative districts of the State in which the number of residents who are users of regional or minority languages justifies the measures specified below and according to the situation of each language, the Parties undertake, as far as this is reasonably possible”.

A difficult question is, of course, what is the number of speakers that justifies facilitation. Some States use a numerical threshold. The general policy of the COMEX is that these thresholds should not be too high and, if a threshold exists, a flexible application is necessary. The facilitation should never depend on a majority decision of a regional or local government.

The communication with administrative authorities of the State can, according to Article 10 (1) (a), be facilitated by making a choice between the five following levels of protection:

- i to ensure that the administrative authorities use the regional or minority languages;
- ii to ensure that such of their officers as are in contact with the public use the regional or minority languages in their relations with persons applying to them in these languages;
- iii to ensure that users of regional or minority languages may submit oral or written applications and receive a reply in these languages;
- iv to ensure that users of regional or minority languages may submit oral or written applications in these languages;

v to ensure that users of regional or minority languages may validly submit a document in these languages.

A State can furthermore promise to make widely used administrative texts and forms available to the population in the regional or minority languages or in bilingual versions⁵², or to allow the administrative authorities to draft documents in a regional or minority language⁵³.

Article 10 (2) deals with the communication with and within the local and regional authorities. The provision starts again with the phrase: “In respect of the local and regional authorities *on whose territory the number of residents who are users of regional or minority languages is such as to justify the measures* specified below, the Parties undertake to allow and/or encourage ...”⁵⁴. Some of the undertakings mirror the possible obligations in relation to the State authorities, but others go beyond and focus on the use of the regional or minority languages in regional and local assemblies:

- a) the use of regional or minority languages within the framework of the regional or local authority;
- b) the possibility for users of regional or minority languages to submit oral or written applications in these languages;
- c) the publication by regional authorities of their official documents also in the relevant regional or minority languages;
- d) the publication by local authorities of their official documents also in the relevant regional or minority languages;
- e) the use by regional authorities of regional or minority languages in debates in their assemblies, without excluding, however, the use of the official language(s) of the State;

⁵² Article 10 (1)(b) ECRML

⁵³ Article 10 (1) (c) ECRML.

⁵⁴ Our emphasis.

- f) the use by local authorities of regional or minority languages in debates in their assemblies, without excluding, however, the use of the official language(s) of the State.

A very attractive possible obligation is to allow “g) the use or adoption, if necessary in conjunction with the name in the official language(s), of traditional and correct forms of place-names in regional or minority languages”⁵⁵. This obligation implies that the name in the regional or minority language is written, if applicable, using the alphabet of that language including its diacritics.

Article 10 (3) deals with communication with regard to public services, which includes public services by the administrative authorities or by other persons acting on their behalf (for example in case of outsourcing some public services). A State can promise this “within the territory in which regional or minority languages are used, in accordance with the situation of each language and as far as this is reasonably possible”:

- a) to ensure that the regional or minority languages are used in the provision of the service;
- b) to allow users of regional or minority languages to submit a request and receive a reply in these languages;
- c) to allow users of regional or minority languages to submit a request in these languages.

Some additional provisions are mentioned in Article 10 par. 4 and 5:

4. With a view to putting into effect those provisions of paragraphs 1, 2 and 3 accepted by them, the Parties undertake to take one or more of the following measures:

- a) translation or interpretation as may be required;
- b) recruitment and, where necessary, training of the officials and other public service employees required;

⁵⁵ Article 10 (2)(g) ECRML.

- c) compliance as far as possible with requests from public service employees having a knowledge of a regional or minority language to be appointed in the territory in which that language is used.

States may also promise to allow the use or adoption of family names in the regional or minority languages, at the request of those concerned (Article 10 (5))⁵⁶.

7.4. Article 11 – Media

Article 11 (which includes nine different fields of possible actions, five of which have two or three levels of encouragement)⁵⁷ deals with the presence of regional or minority languages in the media. Separate attention may be paid to newspapers, private or/and public radio, as well as private or/and public television. Especially noteworthy is the desirability of support for the training of journalists and other staff in the media using regional or minority languages⁵⁸.

In recent years, the main challenge has been caused by the fact that the media landscape is changing rapidly due to the increasing importance of digital communication via the Internet. It is also evident that there are enormous differences between generations in connection with the use of certain new means of communication.

In periods of financial constraints, the COMEX has taken the view that budget cuts should not frustrate the implementation of undertakings chosen by the State and should not disproportionately affect financial support for regional or minority languages.

The possible obligations under Article 11 include, among others: broadcasters have to offer programs in the regional or minority languages⁵⁹, and States should encourage the production of audio and audiovisual works in the regional or minority languages⁶⁰. At least

⁵⁶ This is the case in The Netherlands for Frisian speakers.

⁵⁷ 15 possible undertakings altogether, of which at least one has to be selected.

⁵⁸ Art. 11 (1)(g) ECRML.

⁵⁹ Article 11 (1)(a)(iii); (b)(ii) ECRML.

⁶⁰ Article 11 (1)(d) ECRML.

one daily or weekly newspaper should exist in a regional or minority language⁶¹, or articles in regional or minority languages should be published on a regular basis in newspapers. Furthermore, existing measures for financial assistance should also be applied to audiovisual productions in regional or minority languages⁶². Also important, the freedom of reception of radio/television in a certain regional or minority language from other countries, where the same of similar language is spoken, should be guaranteed (i.e. disturbing the reception or so-called geo-blocking is not allowed). However, this obligation may be subject to exceptions, “as are prescribed by law and are necessary in a democratic society, in the interests of national security, territorial integrity or public safety, for the prevention of disorder or crime, for the protection of health or morals, for the protection of the reputation or rights of others, for preventing disclosure of information received in confidence, or for maintaining the authority and impartiality of the judiciary”⁶³.

The issue of the changing media landscape was addressed by a report addressed to the COMEX, stressing the need for a dynamic approach: “[b]oth States and the evaluation procedures need to adapt to changing conditions” (Jones et al., 2019, p. 49). A consequence is for example, that it is acceptable that a newspaper is replaced by a digital version, under the condition that it is updated with news at least once a week.

7.5. Article 12 – Cultural activities and facilities

Of course, there is a close link between a regional or minority language and the culture manifested through this language. Article 12 includes ten possible obligations, of which at last three have to be chosen. The Article stipulates that a State can, *inter alia*, take on the obligation to foster access to works produced in the regional or minority languages⁶⁴; to

⁶¹ Article 11 (e)(i) ECRML.

⁶² Article 11 (f)(ii) ECRML.

⁶³ Article 11 (2) ECRML.

⁶⁴ Article 12 (1)(a) ECRML.

guarantee that the staff of cultural entities have full command of the regional or minority languages⁶⁵; to engage the direct participation of speakers in the development of cultural policies and activities⁶⁶; to finance translation and terminological research⁶⁷; to foster activities in a regional or minority language outside traditional territories as well⁶⁸; and to pay attention to regional or minority languages also in the policy of the State abroad⁶⁹.

Given the intimate relationship between minority culture and language, it is not surprising that a country like Spain decided to ratify for its Part III languages all ten undertakings of Article 12.

7.6. Article 13 – Economic and social life

Article 13 contains nine different potential obligations in the field of economic and social life, of which at least one undertaking has to be selected by a Contracting State. The four obligations listed in Article 13 (2) apply not only to the territory where the regional/minority language is spoken and protected, but to the entire Contracting State. These obligations include the elimination of legislative provisions limiting the use of regional or minority languages in documents, such as contracts of employment or instructions for the use of products or appliances⁷⁰; the prohibition of company regulations or clauses restricting the use of regional or minority languages⁷¹; or, more general, to oppose practices designed to discourage the use of such languages⁷². Moreover, a State can also opt for the obligation to facilitate the use of regional or minority languages in economic and social life all over the country⁷³.

⁶⁵ Article 12 (1)(e) ECRML.

⁶⁶ Article 12 (1)(f) ECRML.

⁶⁷ Article 12 (1)(h) ECRML.

⁶⁸ Article 12 (2) ECRML.

⁶⁹ Article 12 (3) ECRML.

⁷⁰ Article 13 (1)(a) ECRML.

⁷¹ Article 13 (1)(b) ECRML.

⁷² Article 13 (1)(c) ECRML.

⁷³ Article 13 (1)(d) ECRML.

Five other potential undertakings are limited to the territory where the regional or minority languages are used, and apply in so far as the public authorities are competent. These are the inclusion of rules in financial and banking regulations allowing for the use of regional or minority languages in financial documents (e.g., payment orders, like cheques)⁷⁴ and promoting the use of such languages in the public sector⁷⁵.

Alongside obligations relating to the use of languages in business, special attention is paid to the facilitation of the regional or minority languages in health services and in care services for the elderly⁷⁶. This obligation is particularly important for older people who grew up speaking a regional or minority language, and who may have started to forget the official language of the State, which they learned later. They urgently need carers who know their regional or minority language.

A very useful obligation is also to ensure that safety instructions are written in regional or minority languages. This includes, among others, medication package inserts⁷⁷. The final provision of Article 13 stresses the need to make information on consumer rights available in regional or minority languages⁷⁸.

7.7. Article 14 – Transfrontier exchanges

Finally, Article 14 gives – through two undertakings – special attention to the use of existing or new international treaties, e.g. providing for exchange programs, which are beneficial for regional or minority speakers when their language, or a similar one, is also spoken in another State, either as the official language of that State or as protected regional or minority language (Article 14(a)). Co-operation across borders should be promoted, e.g., by twinning or city partnerships (Article 14(b)).

⁷⁴ Article 13 (2)(a) ECRML.

⁷⁵ Article 13 (2)(b) ECRML.

⁷⁶ Article 13 (2)(c) ECRML.

⁷⁷ Article 13 (2)(d) ECRML.

⁷⁸ Article 13 (2)(e) ECRML.

8. Format of the COMEX reports

Until 2017, the COMEX prepared rather long assessment reports with many repetitions of text already included in earlier reports. Sometimes it was difficult to find the remarks relevant for a particular regional or minority language. Since 2017, more concise reports have been developed, including tables for each regional or minority language with an assessment of the relevant undertakings.

For Part III languages, an evaluation is provided of all 35+ undertakings chosen by the State from the menu card for a given regional or minority language. It is obvious that the choices made by the State in the ratification instrument are the most prominent ones in the COMEX assessment. Furthermore, it is also assessed whether the general obligations of Part II (Article 7) are met. Part II languages are, of course, only assessed through an evaluation based on the obligations under Article 7.

Regarding each undertaking, the tables indicate whether the obligations are fulfilled / partly fulfilled / formally fulfilled / not fulfilled, or whether no conclusion can be drawn (if, for instance, no or insufficient information is provided). The qualification “formally fulfilled” implies that policies and legislation are in conformity with the Charter, but no implementation in practice is reported. Furthermore, a symbol indicates whether the evaluation of the situation of an undertaking in respect of the language has improved, remains unchanged or has deteriorated since the previous monitoring round (↑ improvement; ↓ deterioration; = no change). Hopefully, this format increases accessibility of the evaluation for the general public, in particular the speakers of the regional or minority languages.

9. Added value of ratification and main challenges of the monitoring system

The most important consequence of the ratification of the Charter is that the protection granted to a certain regional or minority language is irreversible. For that reason,

the protection no longer depends on political priorities only. Furthermore, the periodical evaluation of the protection by the Council of Europe via the COMEX helps States to improve the protection. The COMEX does not only assess countries but often tries to also indicate how the applicable objectives of the Charter can be realised. The evaluation reports function as a dialogue between the Council of Europe and the State.

A disadvantage of the monitoring system of the Charter is the lack of sanctions. If a State does not fulfil a certain obligation consistently, the Council of Europe can only repeat the critical remarks already made in an earlier monitoring cycle. There is no stronger reaction than “naming and shaming”. An additional problem is that several States often submit their periodical reports much too late, although this situation has improved after the periodicity of reports was changed, as States have to submit their reports every five years instead of three, although they also have to submit a midterm report on recommendations for immediate action after 2 ½ years.

Additional challenges to the monitoring system of the ECRM include the need to “update” some obligations under the Charter⁷⁹. This is particularly the case in connection to the media, due to their changing landscape, though it is not clear how this should be done, i.e., via a General Comment or a Thematic Commentary on the interpretation of Article 11 issued by the COMEX.

As already mentioned, it is not allowed to downgrade obligations. However, what should the COMEX do with unrealistic undertakings ratified by States, e.g., promising the translation of all statutes into a minority language with only a few speakers but failing to do so? A possible solution could be to mention the non-fulfilment of such obligations without formulating recommendations on this issue. Would that be acceptable?

Another difficulty is raised when a State promises to protect a language with only a few speakers, as Bosnia and Herzegovina did for Ladino (the traditional language of the

⁷⁹ On this issue see also Oszmiańska-Pagett & Crnić-Grotić (2022).

Sephardic Jews)⁸⁰. The COMEX decided not to assess the fulfilment of the obligations regarding that language due to lack of information on speakers of that language within the country. Also problematic is the promise to protect Hebrew⁸¹, which has not been spoken at all in recent times and is only used in liturgy (remarkably, no State has promised to protect Latin!). As a consequence, the COMEX has decided that Hebrew is not a minority language in the sense of the Charter, because it is not used in everyday life⁸².

There are two obvious long-term challenges for the ECRML. There is an ongoing discussion as to whether sign languages are covered by ECRML. The point of view of the COMEX is that the Charter does not apply. However, would it be possible and desirable to create some kind of protection by applying rules of the Charter by analogy?⁸³ Last but certainly not least, what should be done about new minority languages spoken by migrants? May the view be maintained in the long run that a language can claim protection under the Charter only after the presence of speakers for more than a hundred years in the territory of a State?⁸⁴

10. Closing remarks

The Council of Europe welcomed the signature of the Charter for Regional or minority Languages by Portugal in 2021 and is happy that the Portuguese Parliament endorsed the elaboration of a bill putting forward the ratification the Charter. The COMEX is looking forward to which level of protection will be given to Mirandês and Barranquenho. And of course, the COMEX hopes to welcome a Portuguese member soon.

⁸⁰ More precisely, Bosnia and Herzegovina ratified for *Jewish* (Yiddish and Ladino), although *Jewish* is not a language but a religion. Ukraine has also promised to protect *Jewish*.

⁸¹ As Poland did in the instrument of ratification.

⁸² See the 1st Evaluation Report on Poland (2011), par. 12.

⁸³ Note that Brohy et al. (2019, p. 52-3) do pay attention to sign languages.

⁸⁴ On this issue see Congress of Local and Regional Authorities of the Council of Europe (2019).

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