SESSION 4: Standard-setting instruments

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Summary :

The Council of Europe, through the European Charter for Regional or Minority Languages (hereafter the Charter) is contributing to promoting cultural and linguistic diversity. The Charter entered into force 10 years ago and is to date a unique convention worldwide specifically devoted to the protection and promotion of the various regional and minority languages in Europe. As on other continents, globalization is also affecting Europe and it is therefore of utmost importance that States ratify the Charter. 10 years of supervision of the implementation of the Charter reveal that with only a few encouraging exceptions, linguistic diversity is regressing everywhere in Europe and some languages are disappearing, at least for the time being, from areas where they have been historically present and where until recent times they represented one of the distinctive features of those areas’ identity. This paper will explore the reasons for this complex phenomenon and reflect on the results of the monitoring mechanism of the Charter. The Anniversary is a good opportunity to address the effectiveness of the Charter, its impact on national policies, legislation and practice. In other words on how its application has led to States taking concrete measures for the benefit of minority languages.

Introductory remarks : Why does Europe need a specific treaty on regional or minority languages ?

With only a few encouraging exceptions, linguistic diversity is regressing everywhere in Europe and some languages are disappearing, at least for the time being, from areas where they have been historically present and where they have until recent times represented one of the distinctive features of those areas’ identity. According to estimates, one language is dying every two weeks on average. Although most of the losses are expected to occur in South America, North East Asia, and Siberia, there are some weakened languages in Europe too, and the aim of the Charter is to prevent such loss.

Some of the reasons why linguistic diversity is digressing in Europe are explained in the evaluation reports adopted by the Committee of Experts to the Charter over the past 10 years. The reports underline several factors that seriously affect regional or minority languages, such as : the enormous pressure by the majority language media;

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1 See the 2005 and 2007 Secretary General’s Reports to the Parliamentary Assembly on the application of the Charter, at http://www.coe.int/t/dg4/education/minlang/sgreports/default_en.asp
2 some 3,000 out of the estimated 6,000 languages around the world are likely to die before the end of the century.
3 An overview of the evaluation reports adopted by the Committee of Experts can be consulted at http://www.coe.int/minlang/
In addition, see Jean-Marie Woehrling, The European Charter for Regional or Minority Languages - A critical commentary, Council of Europe Publication, 2006.
a lack of understanding in the society about the value of linguistic diversity and of the bilingualism that can be acquired through being raised in a regional or minority language context; a pragmatic (but short-sighted) vision that tends to privilege at all costs the learning of international languages of more immediate practical use; last but not least, ignorance (at best) or intolerance on the part of large parts of the majority population vis-à-vis the regional or minority language(s) still spoken in their country⁴.

We will see, in the course of this presentation, how those factors, which fall within the scope of the normative provisions of the Charter, have been dealt with by the Committee of Experts. The Committee of Experts’ experience shows that a language which remains absent from public life will become stunted and ultimately die out.

But before going more in depth into the Charter, allow me to mention other Council of Europe treaties which contribute to the protection of linguistic rights, thereby promoting linguistic and cultural diversity throughout Europe⁵.

Before the Charter entered into force, linguistic rights were mainly protected by the European Convention of Human Rights. In terms of linguistic rights, the ECHR sets down mainly negative rights⁶, in the sense that it obliges states to abstain from acting in certain ways, as opposed to positive rights⁷. These include, of course, the freedom of expression and the prohibition of discrimination in the enjoyment of the rights and freedoms set forth in the Convention, including on the grounds of language.

Limits of this ‘negative rights’ approach became apparent from a relatively early stage. In 1968, in the landmark case on the use of languages in education in Belgium, the European Court of Human Rights concluded that Protocol 1, Article 2 of the Convention, dealing with the right to education, did not guarantee a right to be educated in the language of one’s parents by the public authorities or with their aid.

It was therefore felt necessary to have more specialised treaties: the Framework Convention on the Protection of National Minorities and the European Charter for Regional or Minority Languages⁸. The drafting process of those two treaties shows that a different attitude to the question of linguistic rights has been chosen: on the one hand a minority rights general instrument that covers linguistic rights, and on the other hand a cultural instrument devoted to languages, without focusing on the status of the speakers themselves. Although different in nature and in their objectives they have a common goal – to establish minority civil and political rights and minority

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⁴ see 2005 report quoted in footnote 1.
⁵ The Europe I am referring to is the Council of Europe 47 member States.
⁷ Possibly the only exception to this is the positive linguistic right defined under Article 6 of the ECHR. This Article, dealing with the right to a fair trial, provides under its paragraph 3 that:

a) to be informed promptly, in a language which he understands and in detail, of the nature and cause of the accusation against him;

b) to have the free assistance of an interpreter if he cannot understand or speak the language used in court.⁹

⁸ Considering the scope of this presentation, it will not be possible to analyse in depth the rich elements resulting from the monitoring process carried out by the Advisory Committee of the Framework Convention on the protection of National Minorities in terms of linguistic rights. The Framework Convention addresses a wide range of issues relating to minority protection, such as linguistic rights, effective participation in public affairs, freedom of assembly, etc. An abundant literature exist in respect of this Convention, and relevant information can be found at: http://www.coe.int/minorities
linguistic rights as a standard for Europe. These two complementary instruments, which both entered into force in 1998, provide indeed for clear positive rights for linguistic minorities.

Let’s turn now to the European Charter for Regional or Minority Languages, which is the core instrument of my presentation.

I – What kind of treaty is the Charter?

A. An “à la carte” menu

Regional and minority languages in Europe are diverse and heterogeneous: the numbers of speakers of these traditionally spoken languages range from a few hundred to several million, some are co-official, others are only spoken at home. All these languages nevertheless have one factor in common: they are all to some extent in a vulnerable position, some of which are even threatened by extinction – a trend that can only be reversed if states take resolute action.

From a treaty law perspective therefore, the Charter is a somewhat complex instrument. Considering the great variety of language situations in Europe, the drafters adopted a legal technique whereby States have positive obligations of two different sorts, each corresponding to a specific operative part of the Charter: Parts II and III respectively.

- On the one hand, Part II of the Charter lays down the aims and principles which are to be the States’ long-term policy targets. It applies to all regional or minority languages spoken within the State, even if States do not recognise them.

- On the other hand, Part III of the Charter caters for the (demographically) stronger languages and provides a menu of specific undertakings, in the fields of education, justice, dealings with the administrative authorities, media, cultural activities, economic and social life and transfrontier co-operation. The States have the possibility to choose the languages which will be covered by this part of the Charter, as well as to tailor their undertakings to the specific situation of each language (provided that a minimum of 35 undertakings is selected). However, the broad element of choice does not mean that governments are free to act arbitrarily, since the Charter requires that they exercise their discretion “in accordance with the situation of each language”. This is a problem posed by a number of instruments of ratification in countries where the State applies the same Part III provisions to languages which are in a different situation.

9 Whereas some States, for example Switzerland or Finland, have a long tradition of protecting and promoting regional or minority languages in public life, others lack awareness of the need for a language policy and confine the use of these languages to the private sphere. In that respect, it is important to remember that there is no division between Western and Eastern European States, as there are countries in both such as Hungary which have also developed tools for protecting and promoting languages.
This unique Council of Europe treaty is designed to accommodate the variety of different language situations in Europe and therefore to guarantee optimal protection at the right level and address the needs of the speakers.

So far, 23 member States of the Council of Europe have ratified the Charter, a further 10 have signed it. As far as EU member States are concerned, only 15 have ratified and a further 4 have signed. There are regrettably 8 EU member States that have neither signed nor ratified the Charter, for a variety of reasons. In that respect, it is worth recalling the words of the Secretary General of the Council of Europe who, among others, stressed 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.”

B. The effectiveness and the impact of the Charter

Given that the Charter does not secure any enforceable rights for language groups or their individual members, it makes no provision for any judicial authority to supervise implementation, as is the case with the European Court of Human Rights. The protection system set up by the Charter is based on a monitoring mechanism, whereby a Committee of independent experts supervises the implementation of the Charter in each State Party.

Monitoring takes place in three-yearly cycles and involves periodical reports by each State on its implementation of the individual Charter undertakings. In performing its functions, the Committee of Experts carries out a fact-finding visit on the spot. The result of this work is the adoption, by the Committee of Experts, of an evaluation report including a number of observations to the State authorities on how to improve the situation of each language covered. The evaluation report, together with the State’s comments, is submitted to the Committee of Ministers of the Council of Europe, which may decide to make the report public and to address a number of recommendations to the State concerned.

According to François Grin, “the discussion of effectiveness is rooted in the philosophy of the Charter, which can be said to be a “third-generation” instrument, whose focus is on results; and reaching results is, at heart, a question of effectiveness. Let us remember that the aim of the Charter is to protect and promote languages as elements of diversity; the first problem, therefore, is to reach this goal effectively. Effectiveness, however, is not something that happens automatically, even though it is very necessary”.

This is precisely how the Committee of Experts interprets the Charter. Coming back to the factors that affect linguistic diversity, they can obviously be remedied only over a longer period and by a substantial and sustained effort – in fact, to quote the terms of Article 7 of the Charter, by “resolute action”. Therefore it becomes all the
more vital that the Charter should not be perceived as being just about intervening on the formal contents of the legislative provisions. That is why the reports of the Committee of Experts underline that the Charter is above all about achieving results, and this usually calls for a much more proactive and structured approach.

Assessing the impact of any international convention is not an easy task as it is difficult to determine whether internal factors led to the adoption of that treaty or if the external effect of the treaty had an impact on the internal situation. However, the monitoring mechanism has shown that domestic legislations or policies to protect or promote regional or minority languages have been adopted, revised or implemented since the adoption of the Charter14.

As stated above, one of the most important features of the Charter is its monitoring mechanism, involving three-yearly monitoring cycles, with periodical state reports and the monitoring of the Charter’s implementation carried out by an independent Committee of Experts. So far, the Committee of Experts has adopted 36 evaluation reports on the fulfilment of the States Parties’ undertakings, including observations on how to improve the existing situation of languages covered by the Charter. The reports which have already been considered by the Committee of Ministers have been made public and are available online15.

The Charter has for instance given language status to some minority languages which were previously perceived as dialects, such as Kven in Norway, Low German in Germany, Cypriot Maronite Arabic in Cyprus, Limburgish in the Netherlands. In many states Romani was explicitly recognised as a "non-territorial" minority language. The ratification in favour of Yiddish had a positive effect, for example, in the Netherlands and both the authorities and the speakers realised its cultural value and potential for promotion.

The Charter has also led to the adoption of several domestic acts needed to guarantee the linguistic rights of the speakers, for example:

- The German Land of Schleswig-Holstein adopted a law regarding the use of North Frisian in relations with administrative authorities.
- the Sámi Language Act has been adopted in Finland.
- Acts on the use of Sámi, Finnish and Meänkieli in courts and administration have been adopted in Sweden.
- In 2001, Austria amended its Broadcasting Act and included the provision of regional or minority language programmes in the public service mandate of the ORF.
- The Croatian authorities stated that the long process of adoption of the 2000 Act on the Use of the Languages and Scripts of National Minorities was speeded up by the application of the Charter.

The Charter has also led to the adoption of measures and domestic policies that have strengthened the linguistic rights of the speakers, for example:

14 See the Secretary General's report to the Parliamentary Assembly of the Council of Europe, 2007 and for an overview of the impact of the Charter, see also the presentation of Vesna Crnic-Grotic at the Conference celebrating the 10th anniversary of the Charter and the Framework Convention on the Protection of National Minorities, available upon request.
- Following the Recommendation of the Committee of Ministers in 2001 to “create conditions that will facilitate the use of North Sámi before judicial authorities”, Norway set up the first bilingual court, where Sámi is now being used in 25% of the cases.

C. What lessons can be drawn from the last decade?

On the one hand, one can recognise the value of the reporting since States parties become more aware of the situation of the regional or minority languages spoken on their territories and their obligations vis-à-vis the Charter when writing national reports. On the other hand speakers of regional or minority languages and other interested parties can get an insight into the country’s position and policies with respect to regional or minority languages as the reports are made public\(^\text{16}\).

In addition, the regularity of reporting allows a permanent dialogue to be built up between states parties and the Committee as well as between states parties and the relevant speakers in that country. In other words, the Charter has not only fostered dialogue between the speakers and the State authorities, but has also led to an increased and improved institutionalised representation and consultation of speakers at local, regional and state level in order to make their voice heard\(^\text{17}\).

Despite this impressive track record, it should not be overlooked that a number of structural problems continue to hamper the Charter’s effectiveness. The Committee of Experts often observes in its reports that the domestic legal framework is generally good and is improving, but that the practical implementation is lagging behind.

II - Persisting problems: implementation of the Charter at national level

A. Recurring reasons explaining the failure to implement the Charter

When reading the evaluation reports of the Committee of Experts, one realises that the majority of measures taken by governments so far are of a relatively formal nature. However, adopting a good law on minority language protection is not enough: the law must also be implemented in practice, and this requires a wide range of practical and substantive measures, which are very often lacking. This is the message that emerges clearly from the monitoring carried out by the Committee of Experts so far.

There are various recurring reasons for this:

- **Question of competence between state and regional or local level:** The Committee of Experts has addressed cases where the responsibility for the practical implementation of the Charter lies to a large extent within regional or local authorities (for instance in the UK, in Spain or in the Netherlands). In such cases, the Committee of Experts constantly recalls that the central

\(^{16}\) See Vesna Crnic-Grotic, footnote 14 above.

\(^{17}\) Ibidem
authorities have nevertheless the overall and final responsibility for the implementation of the Charter.

- **Lack of resources:** The Committee of Experts has constantly emphasised that, for certain undertakings to be implemented, the states must ensure that any additional costs arising from the protection and promotion of regional or minority languages are covered. Otherwise there is a strong risk that the measures taken will be no more than a token gesture. In this context, however, it should also be emphasised that the cost implications are not always as dramatic as estimated, which leads me to my last point.

- **Lack of political will:** The Committee of Experts has observed that – in general – the treatment of regional or minority languages does not so much depend on the ruling party of a state but lies more deeply rooted in the historical development of the country. Therefore it is all the more imperative to take measures to raise the awareness of the majority population.

Despite the fact that the Committee of Experts stresses the need for minority language protection to be grounded in domestic legislation, it so far has always taken a very pragmatic approach to the monitoring of the implementation of the obligations chosen by the States and is orientated towards concrete results and inevitably, policy aspects. It therefore expects resolute action from states parties.

**B. Case-studies on the implementation of the Charter in the field of education and in the media**

Turning now to the provisions of the Charter, allow me to underline how State parties implement the provisions of the Charter with regards to education and the media. For a language to be used in the private and public sphere, its presence in the media is as crucial as its use within families or at school.

In both fields, the practice of the Committee of Experts is also rich in lessons.

- In **education**, a structured and overarching approach, covering all the stages of the educational system is often lacking. First of all, the inadequate provision of language teaching, in particular the shortage of adequately trained teachers at all levels of education, remains one of the principal problems affecting most regional or minority languages. The situation is aggravated by the frequent lack of adequate supervision mechanisms. Very few States have set up a body in charge of monitoring the measures taken and progress achieved.

- In the **electronic media**, which are probably the most influential means of communication in today’s societies, the presence of regional or minority languages is in many cases little more than symbolic. Misunderstandings persist regarding the encouragement and/or facilitation of the broadcasting of regional or minority language programmes in the private sector. Many State authorities consider private broadcasts as merely complementary to the public service provision and do not take positive measures to increase the (marginal) presence of regional or minority languages in private broadcasting. On the
These aspects touch upon another important issue that the Committee of Experts has repeatedly underlined in its reports, namely the importance of attaching a positive value to the knowledge of regional or minority languages. Clearly, both an adequate recognition of the language in the educational system and a meaningful presence in the electronic media are a major means of raising the social status of regional or minority languages and thus of conveying a positive image not only to the majority population, but also to the regional or minority language speakers themselves, whose self-esteem often needs to be bolstered. Raising the social status and conveying a positive image of regional or minority languages are in fact crucial elements for a successful protection and promotion.\footnote{See the Secretary General's report to the Parliamentary Assembly of the Council of Europe 2005, footnote 1.}

**Conclusion:**

We have good reason to celebrate the Charter this year, but we are still aware that regional or minority languages remain a threatened aspect of Europe’s cultural heritage and that many challenges still lie ahead of us. Europe is not isolated. It is part of a globalised world, and the whole of humanity is affected by the loss of any language. The International Year of Languages should constitute a momentum for countries of all continents to ensure linguistic and cultural diversity by securing the linguistic rights of their citizens.