



**Doc. 12422**

21 October 2010

## The European Charter for Regional or Minority Languages

### Report<sup>1</sup>

Committee on Legal Affairs and Human Rights

Rapporteur: Mr József BERÉNYI, Slovak Republic

### Summary

The European Charter for Regional or Minority Languages (ETS No. 148) is a unique instrument for the protection of endangered languages. If properly implemented, it may help to prevent the extinction of certain languages in regions where they have been traditionally used for centuries.

The Committee on Legal Affairs and Human Rights notes that only half of the Council of Europe's member states have acceded to this legal instrument and asks the question of why so few have done so. It also observes that there are problems with the implementation of the charter in the member states that have ratified it and that some states have trouble acknowledging the existence of regional or minority languages on their territory.

It is necessary to call again on national parliaments to ratify the charter without further delay, notwithstanding the reasons advanced for not doing so. States that have already ratified it should make greater efforts to discharge the obligations resulting from their ratification of this instrument and to exchange information more effectively amongst each other, and with the Council of Europe.

The committee also pays tribute to the charter's committee of experts and its valuable role and as well as its contribution to the protection and promotion of regional or minority languages in Europe. It makes some proposals to increase the committee of expert's resources and ensure the effective implementation of the charter's provisions.

Moreover, reinforced co-operation with other European organisations, such as the European Union, would also be helpful in promoting the ratification of the charter and its proper implementation.

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1. Reference to committee: [Doc. 11480](#), Reference 3406 of 25 January 2008; [Doc. 11595](#), Reference 3456 of 23 June 2008.



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## A. Draft resolution<sup>2</sup>

1. The Parliamentary Assembly stresses the fundamental importance of the protection of minority and regional languages for stability and peace in Europe and recalls its [Recommendation 1492 \(2001\)](#), [Recommendation 1623 \(2003\)](#) and [Recommendation 1766 \(2006\)](#), as well as [Resolution 1713 \(2010\)](#) concerning the rights of persons belonging to national minorities.
2. The Assembly pays tribute to the unique role which the European Charter for Regional or Minority Languages (ETS No. 148) (hereinafter “the Charter”) has played over the past few years in improving the protection of regional or minority languages and preserving linguistic and cultural diversity in Europe. Accordingly, it also applauds the valuable work of the Committee of Experts of the Charter.
3. However, the Assembly notes that the Charter has so far been ratified by only 25 states. Another eight states have signed it, some of which are expected to ratify soon. But to date, almost half of the Council of Europe’s member states have not yet subscribed to this legal instrument. The Assembly deplores that this instrument has not yet become universally accepted throughout Europe.
4. Therefore, the Assembly:
  - 4.1. reiterates its call upon the member states that have not yet done so to sign and/or ratify the Charter as soon as possible;
  - 4.2. calls upon the member states that have ratified the Charter to:
    - 4.2.1. ensure its proper implementation in a spirit of understanding and tolerance; in so doing member states should in particular ensure that the Charter is applied to all the regional or minority languages specified in its ratification, acceptance or approval instrument, by all branches of government (executive, legislative and judicial) and at all levels of power (local, regional and central), irrespective of their constitutional order as federal or unitary states;
    - 4.2.2. co-operate with all relevant actors of civil society concerned in implementing the Charter;
    - 4.2.3. apply the Charter to all the languages traditionally spoken on their territory and to extend its material scope, according to the provisions of the Charter;
    - 4.2.4. ensure dissemination of the Charter and relevant information concerning the latter not only in official but also in regional or minority languages.
5. The Assembly regrets that reservations and restrictive declarations formulated by states that have already signed and/or ratified the Charter have not been revoked and reiterates its request to these states to do so.
6. The Assembly also calls on all member states to step up co-operation with other international organisations such as the European Union and the Organization for Security and Co-operation in Europe (OSCE) in order to consolidate common standards on the protection of regional or minority languages, promote the speedy ratification of the Charter and its proper implementation.
7. The Assembly notes with satisfaction the increasing interest of the European Parliament in the protection and promotion of regional or minority languages and welcomes its efforts to promote the ratification of the Charter. Thus, the Assembly resolves to reinforce co-operation with the European Parliament on these issues, in particular through regular contacts and exchanges of views.

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2. . Draft resolution adopted unanimously by the committee on 22 June 2010.

## **B. Draft recommendation<sup>3</sup>**

1. Referring to its Resolution ... (2010) on the European Charter for Regional or Minority Languages, the Parliamentary Assembly recommends that the Committee of Ministers:

1.1. enhance efforts aimed at the speedy ratification of the European Charter for Minority or Regional Languages (hereinafter "the Charter") by the member states that have not yet done so;

1.2. pursue co-operation with other international organisations, in particular the European Union and the Organisation for Security and Cooperation in Europe (OSCE), with a view to promoting the ratification of the Charter, its proper implementation and the consolidation of common standards on the protection of regional or minority languages.

2. Moreover, recalling the need to ensure the proper implementation of the Charter, the Assembly recommends that the Committee of Ministers:

2.1. take the necessary measures to ensure that information of relevance to the implementation of the Charter is submitted by states parties in good time;

2.2. take the necessary measures to facilitate as far as possible the monitoring work of the Committee of Experts, in particular by reinforcing as a matter of priority the relatively modest resources of its secretariat;

2.3. ensure availability of relevant information on the Charter and good practices in its implementation in both official and regional or minority languages;

2.4. disseminate relevant information on the implementation of the Charter, such as the periodical state reports and the evaluation reports of the Committee of Experts, as broadly as possible and in a timely fashion;

2.5. consider setting up a panel of experts in language promotion that could help authorities and users of regional or minority languages to find workable solutions; this service could be also made available to states that have not yet ratified the Charter;

2.6. ensure the harmonious application of the standards provided by the Charter and the Framework Convention for the Protection of National Minorities (ETS No. 157), in particular by fostering collaboration between the latter's Advisory Committee and the Committee of Experts of the Charter.

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3. . Draft recommendation adopted unanimously by the committee on 22 June 2010.

## C. Explanatory memorandum by Mr Berényi, rapporteur

### 1. Introduction

#### 1.1. My mandate

1. On 25 January 2008, the Committee on Legal Affairs and Human Rights of the Parliamentary Assembly was mandated to prepare a report on the European Charter for Regional or Minority Languages, based on a motion for a resolution presented by Mr de Puig and others ([Doc. 11480](#)). In March 2008, the committee appointed Mr Pysarenko (Ukraine, EPP/CD) rapporteur. In February 2009, Mr Pysarenko resigned as rapporteur and asked me to lead the discussion on this report at the meeting of the Sub-Committee on Rights of Minorities in Monaco on 10 March 2009. Subsequently, the committee appointed me as rapporteur.

2. Following the committee's approval on 27 April 2009, a questionnaire concerning the European Charter for Regional or Minority Languages was sent, on 5 June 2009, to the national parliamentary delegations of the Council of Europe member states in the framework of the preparation of this report. Twenty-nine national delegations have replied to the questionnaire. I am very grateful to those delegations which have reacted to this questionnaire, for providing me with information that has allowed me to draw certain conclusions on the reasons for the low number of ratifications of the charter and the problems encountered in its implementation.

3. Moreover, following the decision of the Assembly's Bureau of 23 June 2008, the motion for a resolution on the "difficult cultural situation of the Istro-Romanian minority particularly threatened", of 21 April 2008, tabled by Mr Vlad Cubreacov and others,<sup>4</sup> has also been taken into account in the preparation of this report.

#### 1.2. Aim of this report

4. The promotion and protection of regional or minority languages fall within the scope of Europe's cultural heritage and diversity, which are one of the main objectives of the Council of Europe. There is a great variety of regional or minority languages spoken in Europe and their situations differ:<sup>5</sup> languages vary in terms of their number of speakers,<sup>6</sup> they may be spoken only in one<sup>7</sup> or more countries,<sup>8</sup> regional or minority languages in one country can be majority languages in other countries,<sup>9</sup> they may be concentrated in one geographical area or spread over a large territory<sup>10</sup> and some of them have no territorial base, even though they may be spoken by a significant number in a given state.<sup>11</sup> The level of their protection shows great discrepancies, from having almost no support at all to having extensive protection measures.

5. A person's right to freely express him or herself in his or her own language, including a lesser used one (for example, a regional or minority language), is an integral part of the human rights protection provided under international instruments, such as the right of access to a court and a fair trial, freedom of expression or the right to education. It is, in particular, closely related with the principle of non-discrimination, a fundamental human right enshrined in Article 14 of the European Convention on Human Rights (ETS No. 5), Protocol No. 12 to the European Convention on Human Rights (ETS No. 177) and Article 4 of the Framework Convention for the Protection of National Minorities (ETS No. 157). As Mr Thomas Hammarberg, the Council of Europe Commissioner for Human Rights, pointed out in his viewpoint of 25 January 2010,<sup>12</sup> minority representatives raise several issues that need to be addressed in line with human rights standards. These are issues such as the spelling of names on passports, the displaying of street names and other topographical indications, the language used in schools, the language requirements when communicating with the authorities and the possibility of establishing media programmes in minority languages.

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4. . [Doc. 11595](#), Reference 3456.

5. . S. Gramstad, "The adaptability of the charter to national situations", in *Implementation of the European Charter for Regional or Minority Languages*, Regional or Minority Languages, No. 2, Council of Europe Publishing, 1999, p. 59.

6. . For instance, Catalan is spoken by nearly 6 million people, while the island of Valle del Fersina/Fersental, in Italy, is inhabited by a few thousand people who speak its regional language.

7. . For instance, Welsh in the United Kingdom and Breton in France.

8. . For instance, Sami in Finland, Norway, the Russian Federation and Sweden and Basque in France and Spain.

9. . For instance, German in Denmark and Hungarian in the Slovak Republic.

10. . For instance, French in the Aosta valley and Albanian, in Italy.

11. . Such as Romani in Hungary.

12. . Viewpoint of 25 January 2010: "Language rights of national minorities must be respected – their denial undermines human rights and causes inter-communal tensions", available at [www.coe.int/t/commissioner/Viewpoints/100125\\_en.asp](http://www.coe.int/t/commissioner/Viewpoints/100125_en.asp).

6. The Council of Europe has already had some important achievements in the area of the protection and promotion of regional or minority languages, notably the elaboration of the European Charter for Regional or Minority Languages (hereinafter “the charter”), which is the only legally binding document specifically devoted to the safeguarding of regional or minority languages. The European Charter for Regional or Minority Languages was opened for signature by the member states of the Council of Europe on 5 November 1992 and entered into force on 1 March 1998.

7. However, the low number of ratifications by member states undermines the efficiency and the importance of this instrument. The current rhythm of signatures has come to a standstill.

8. Moreover, although the monitoring process carried out by the committee of experts of the charter has improved the situation of lesser used languages in almost all states parties, the status of certain regional or minority languages has not changed over the past few years and numerous languages are still considered as endangered.<sup>13</sup>

9. In my report, I will strive to point out the importance of the charter for the protection of European cultural diversity and European languages, including those which are threatened with extinction. Most of all, I would like to reiterate the call for member states, which have not yet done so, to ratify the charter. On the basis of the replies provided by certain national delegations, I will try to show the main difficulties encountered by the national authorities in the implementation of the charter and the potential obstacles for the ratification or signature of the charter in the states which are not parties to it (seen as such by these states). In this context, I must stress that, by sending out the questionnaire, I did not intend to duplicate the work of the committee of experts, but rather to collect further data to complement its work. The replies provided by states not parties to the charter, to which the secretariat of the charter has no access, are also an important source of information, since they shed some light on the possible reasons why this instrument has not yet been implemented.

10. Moreover, the issue of the Istro-Romanian minority in Croatia will also be raised as an example which needs special attention, even though Croatia is a state party to the charter. It also shows that the ratification of the charter does not always provide full protection to all regional or minority languages which require its protection. Even though I will not examine in detail this complex issue, I would like to draw attention to the fact that there are serious problems with the implementation of the committee of experts’ recommendations in certain countries, for instance in the Slovak Republic<sup>14</sup> or Slovenia.<sup>15</sup>

## 2. The European Charter for Regional or Minority Languages

### 2.1. What is the purpose of the charter?

11. “The charter is a convention designed on the one hand to protect and promote regional or minority languages as a threatened element of Europe’s cultural heritage and on the other hand to enable speakers of a regional or minority language to use it in private and public life. Its overriding purpose is cultural. It covers regional or minority languages, non-territorial languages and less widely used official languages.

12. First and foremost, the charter sets out the main objectives and principles that states parties undertake to apply to all regional or minority languages existing within their national territory. Secondly, the charter contains a series of concrete measures designed to facilitate and encourage the use of specific regional or

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13. . See, for instance, the report on strengthening measures to protect and revive highly endangered languages, prepared by the Committee on Culture, Science and Education, [Doc. 12423](#) (Rapporteur: Mr Kumcuoglu).

14. . In its first report on the Slovak Republic of 2005, the committee of experts criticised the Slovak State Language Law. The Committee of Ministers made a recommendation to the Slovak authorities in this respect: see Recommendation RecChL(2007)1, available at: [www.coe.int/t/dg4/education/minlang/Report/Recommendations/SlovakiaCMRec1\\_en.pdf](http://www.coe.int/t/dg4/education/minlang/Report/Recommendations/SlovakiaCMRec1_en.pdf).

In its second evaluation report of April 2009, the committee of experts was not in position to assess the amendments to this law, which were adopted on 30 June 2009. Some of these amendments, including those on supervision and sanctions, cause concerns in minority groups, in particular the Hungarian one. In his opinion of 22 July 2009, the OSCE High Commissioner on National Minorities stated that the amendment pursued a legitimate aim and was in line with international standards. However, he found that some elements of this law raise or – depending on the implementation – might raise issues of compatibility with international norms and with the constitutional principles of the Slovak Republic. It should be noted that the committee of experts will be able to assess the amendments of 30 June 2009 only in its next monitoring cycle in 2011.

15. . For instance, in its recent report on Slovenia, the committee of experts noted that: “There are no indications of a structured application of Part II the Charter to Croatian and German, which remain largely absent from public life in Slovenia”; paragraph 22 of the report ECRML 2010 (5) of 26 May 2010, available at: [www.coe.int/t/dg4/education/minlang/Report/EvaluationReports/SloveniaECRML3\\_en.pdf](http://www.coe.int/t/dg4/education/minlang/Report/EvaluationReports/SloveniaECRML3_en.pdf).

minority languages in public life. Within its scope are the languages traditionally used within a state's territory, but it does not cover those connected with recent migratory movements or dialects of the official language. It is intended to ensure, as far as it is reasonably possible, that regional or minority languages are used in education and in the media, to permit and encourage their use in legal and administrative contexts, in economic and social life, for cultural activities and in transfrontier exchanges.

13. The charter is based on an approach that fully respects national sovereignty and territorial integrity. It does not conceive the relationship between official languages and regional or minority languages in terms of competition or antagonism. Development of the latter must not obstruct knowledge and promotion of the former. A deliberate decision was taken to adopt an intercultural and multilingual approach in the charter, with each category of language taking its rightful place. In each state, the cultural and social reality must be taken into account.

## **2.2. Definitions**

14. The charter does not establish a list of European languages corresponding to the concept of regional or minority languages, but defines the terms used. According to its Article 1, "regional or minority languages" are languages 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; they are different from the official language(s) of that state, and they include neither dialects of the official language(s) of the state nor the languages of migrants.

15. The expression "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 protective and promotional measures as provided for in the charter. The expression "non-territorial languages" means languages used by nationals of the state which differ from the language(s) used by the rest of the state's population but which, although traditionally used within the state's territory, cannot be identified with a particular area thereof."<sup>16</sup>

## **2.3. What commitments do states enter into?**

### *2.3.1. Types of commitments*

16. The languages covered by the charter exist in a very wide range of social, political and economic contexts. Accordingly, the system of undertakings adopted for the charter makes it possible to adapt the scope of the protection afforded to suit the particular situation of each language, and also to take account of the costs of application. The charter is divided into two main parts:

- a general one containing the principles applicable to all the states parties and all regional or minority languages (Part II): see section 2.3.2 below;
- a second part which lays down specific practical commitments which may vary according to the state and the language (Part III): see section 2.3.3 below.

17. Each party undertakes to apply a minimum of 35 paragraphs or sub-paragraphs chosen from among these measures, including a number of compulsory measures chosen from a "hard core". Moreover, each state party has to specify in its instrument of ratification, acceptance or approval, each regional or minority language, or official language which is less widely used in the whole or part of its territory, to which the paragraphs chosen shall apply.

### *2.3.2. Fundamental principles applicable to all languages*

18. The fundamental principles and objectives (Part II, Article 7) are as follows:

- recognition of regional or minority languages as an expression of cultural wealth;
- respect for the geographical area of each regional or minority language;
- the need for resolute action to promote such languages;
- the facilitation and/or encouragement of the use of such languages, in speech and writing, in public and private life;

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16. . This information on the charter comes from the website: [www.coe.int/t/dg4/education/minlang/default\\_en.asp](http://www.coe.int/t/dg4/education/minlang/default_en.asp).

- the provision of appropriate forms and means for the teaching and study of such languages at all appropriate stages;
- the promotion of relevant transnational exchanges;
- the prohibition 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;
- the promotion by states of mutual understanding between all the country's linguistic groups.

### *2.3.3. A choice of 68 concrete undertakings in seven areas of public life*

19. Part III (Articles 8 to 14) lays down detailed rules in a number of fields, some of which develop the basic principles affirmed in Part II. States undertake to apply those provisions of Part III to which they have subscribed. Firstly, they have to specify the languages for which they agree to this part being applied, and then they have to select at least 35 undertakings in respect of each language. A large number of provisions consist of several options, of varying degrees of stringency, one of which has to be chosen "according to the situation of each language".

20. The parties are encouraged subsequently to add to their commitments, as their legal situation develops or as their financial circumstances allow (Article 3.2).

21. The areas of public life, each corresponding to an article of Part III, from which these specific undertakings must be chosen, are the following: education, judicial authorities, administrative authorities and public services, media, cultural activities and facilities, economic and social life and transfrontier exchanges.

### **2.4. Enforcement of the charter**

22. Enforcement of the charter is under the control of a committee of experts which periodically examines reports presented by the states parties. The first report shall be presented within the year following the entry into force of the charter with respect to the state concerned and the other reports at three-year intervals.<sup>17</sup> The state report is examined by the committee of experts, which prepares a report for the Committee of Ministers; such a report contains in particular proposals for the preparation of recommendations of the latter body to the state party.<sup>18</sup>

23. As stressed by Mr Stefan Oeter, Chair of the Committee of Experts of the European Charter for Regional or Minority Languages:

- The role of the independent Committee of Experts, composed mainly of lawyers and linguists, is to monitor the application of the Charter in each individual contracting state in regular cycles and examine how the state is complying with its obligations selected under the Charter. By doing so, the committee enters into a constructive three-way dialogue with the state and the speakers to ensure that effective results are achieved in terms of language protection and promotion. The Charter requires that domestic legislation, language policies and practices are adopted and put in line with the concrete undertakings chosen by the state, but also with the spirit of the Charter for the benefit of regional or minority languages, and the committee oversees this process.
- Today the committee can look back over ten years of valuable monitoring experience. It has set European-wide standards in terms of minority language policy based on the Charter and in synergy with other relevant Council of Europe bodies. We see that the Charter has made a particular contribution to the development of regional or minority languages, as part of our European cultural heritage, and we aim to keep it that way in future.<sup>19</sup>

24. In addition, once every two years, the Secretary General of the Council of Europe has to present to the Parliamentary Assembly a detailed report on the application of the charter. This enables parliamentarians to use political pressure, if necessary, to encourage national governments to take appropriate measures.<sup>20</sup>

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17. . Article 15, paragraph 1, last sentence, of the charter.

18. . Article 16, paragraphs 1, 3 and 4, of the charter.

19. . [www.coe.int/t/dg4/education/minlang/chair/default\\_en.asp](http://www.coe.int/t/dg4/education/minlang/chair/default_en.asp)

20. . The latest report was presented to the Parliamentary Assembly on 16 June 2010 (see [Doc. 12300](#)). The previous one had been communicated in September 2007 (see [Doc. 11442](#)).

### 3. State of signature and ratification of the charter

#### 3.1. Parties and non-parties to the charter

25. At present, the charter has been ratified by 25 states: Armenia, Austria, Bosnia and Herzegovina,<sup>21</sup> Croatia, Cyprus, the Czech Republic, Denmark, Finland, Germany, Hungary, Liechtenstein, Luxembourg, Montenegro, the Netherlands, Norway, Poland, Romania, Serbia, the Slovak Republic, Slovenia, Spain, Sweden, Switzerland, Ukraine and the United Kingdom. Another eight states have merely signed it: Azerbaijan, France, Iceland, Italy, Malta, Moldova, the Russian Federation and “the former Yugoslav Republic of Macedonia”.

26. Among the member states which are not parties to the charter, one can distinguish:

- a. states that have committed<sup>22</sup> themselves to ratifying the charter when acceding to the Council of Europe but have not yet signed it: Albania and Georgia;
- b. states that have committed<sup>23</sup> themselves to ratifying the charter when acceding to the Council of Europe and have only signed it: Azerbaijan, Moldova, the Russian Federation and “the former Yugoslav Republic of Macedonia”;
- c. signatory states (not committed): France, Iceland, Italy, Malta;
- d. states that have not committed to ratification and have neither ratified nor signed the charter: Andorra, Belgium, Bulgaria, Estonia, Greece, Ireland, Latvia, Lithuania, Monaco, Portugal, San Marino and Turkey.

#### 3.2. Non-ratification of the charter: analysis of the replies received to the questionnaire<sup>24</sup>

##### 3.2.1. States parties which have replied

27. Out of 29 delegations which replied to my questionnaire,<sup>25</sup> 18 are parties to the charter and the other 11 are not. The analysis of the replies received from these respondents provides some information on the actual situation of regional or minority languages in these countries and the possible reasons why they have not ratified the charter. This information may be used as a starting point for an initiative calling upon Council of Europe member states to sign and/or ratify the charter.

##### 3.2.2. Existence of languages corresponding to the definition of the charter

28. Five delegations (Azerbaijan, Bosnia and Herzegovina, Italy, Lithuania and “the former Yugoslav Republic of Macedonia”) reported that several languages corresponding to the definition of a minority or regional language from the charter exist in their country. The number of these languages varies from two to 12 depending on the state. The Lithuanian delegation also pointed out that in Lithuania there are traditional national minorities that have their own language. However, their languages cannot – according to the Lithuanian delegation – be regarded as regional or minority languages under the charter, since either only very few people still use these languages or they are not used anymore.<sup>26</sup>

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21. . Bosnia and Herzegovina ratified the charter on 21 September 2010, after the adoption of this report.

22. . The deadline for Georgia was 27 April 2000 (no deadline agreed for Albania).

23. . The deadlines were: 9 November 1996 (“the former Yugoslav Republic of Macedonia”), 13 July 1996 (Moldova), 28 February 1998 (Russian Federation) and 25 January 2002 (Azerbaijan).

24. . The information below concerns states which had not ratified the charter before the adoption of this report by the committee on 22 June 2010.

25. . Andorra, Armenia, Azerbaijan, Belgium, Bosnia and Herzegovina, Croatia, Cyprus, the Czech Republic, Denmark, Finland, France, Germany, Hungary, Italy, Latvia, Lithuania, Monaco, Norway, Poland, Portugal, Romania, Serbia, the Slovak Republic, Slovenia, Sweden, Switzerland, “the former Yugoslav Republic of Macedonia”, Ukraine and the United Kingdom.

26. . Only a few Karaims and Ukrainians continue to use their language. Moreover, the Lithuanian delegation states that Tatars no longer use their native language. Nevertheless, it says in another passage that the Tatar community is publishing a newspaper with sections in the Tatar language. Furthermore, according to the delegation, Russian, which is also spoken in Lithuania, cannot fall within the scope of the charter, because it is used in the entire territory of this country.

29. Another four delegations (Belgium, Monaco, France and Latvia) provided information on the existence of languages in their territory without exactly specifying whether they correspond to the above definition. Belgium mentioned three official languages and Monaco referred to the Monegasque language. France noted the existence of 79 languages in its territory, including in its *départements* and territories outside Europe (DOM-TOM). Latvia indicated that the state finances education in eight national minority languages.

30. Only five delegations from those which have indicated the existence of regional or minority languages on their territory (Azerbaijan, Bosnia and Herzegovina, Italy, Lithuania and “the former Yugoslav Republic of Macedonia”) have replied to the question: “Which of these regional or minority languages would only be covered by Part II of the charter and which of them would receive additional protection under Part III?” Most of the regional or minority languages enumerated would be covered by Part III. In Bosnia and Herzegovina, Part II would apply to one and Part III to 13 of the specified languages. In Italy, Part III would apply to all of the 12 specified languages and in Lithuania, Parts II and III would apply to the two mentioned languages. “The former Yugoslav Republic of Macedonia” cannot yet determine which part would apply to the six enumerated languages.

31. Two delegations (Andorra and Portugal) indicated that no regional or minority language is spoken in their territory.<sup>27</sup>

### *3.2.3. Extent to which the legislation and practice of the concerned state already comply with the provisions of the charter*

32. Four delegations (Azerbaijan, Bosnia and Herzegovina, Italy and “the former Yugoslav Republic of Macedonia”) reported that their national legislation is broadly compatible with the charter, notwithstanding the fact that they have not ratified it yet.

33. Some delegations (Azerbaijan, France, Latvia, Lithuania and Monaco) pointed out that it was possible to receive education in certain non-official languages. Furthermore, in Lithuania, national minorities have the right to use their native language in all communication with administrative authorities. According to the Azerbaijani legislation, it is possible to conduct judicial proceedings in minority languages. Both in Lithuania and Azerbaijan, conditions have been put in place for national minorities to have access to the mass media in their own language.

### *3.2.4. Possible factors (constitutional, legal, procedural, political or other) that have so far prevented ratification of the charter*

34. According to the replies, one of the main reasons given for the non-ratification of the charter is that there is no need or demand for the charter or parts of it to be ratified. This is the case either because there is no regional or minority language in the state concerned (Andorra, Portugal) or because the regional or minority language is only rarely spoken within the state territory (Monaco).<sup>28</sup> Complex national procedures and difficulties in finding consensus on the selection of alternatives are other factors preventing ratification (Bosnia and Herzegovina and “the former Yugoslav Republic of Macedonia”). The need to be coherent with other draft laws and conflicts with the constitution were also given as reasons for non-ratification (France and “the former Yugoslav Republic of Macedonia”). Moreover, Azerbaijan invoked a lack of funds in the state budget to implement the charter in the event of its ratification.

### *3.2.5. Efforts made to resolve the problem of non-ratification of the charter*

35. It is obvious from the answers received that very little effort is currently being made to resolve the problems leading to the non-ratification of the charter. For instance, Azerbaijan stated that it was not ready to ratify the charter due to lack of funds. However, certain delegations such as Bosnia and Herzegovina, Italy and “the former Yugoslav Republic of Macedonia” indicated that certain steps have been taken with a view to ratifying the charter. In Lithuania, a study on the feasibility of joining the European Charter for Regional or Minority Languages should be completed by the end of 2010.

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27. . However, some states, like Liechtenstein and Luxembourg, have ratified the charter even though there are no regional or minority languages in their territory. They did so in order to underline the importance they attach to the charter as an instrument for the protection and promotion of regional or minority languages as a threatened aspect of Europe’s cultural heritage.

28. . Nevertheless, this argument could also act in favour of the ratification of the charter.

### 3.2.6. Prospects for signature and/or ratification of the charter in the foreseeable future

36. Since many states whose delegations have replied to the questionnaire are not making any effort to solve the problems preventing the ratification of the charter, the question concerning the prospects for its signature and/or ratification was rarely answered. However, Bosnia and Herzegovina indicated that further consultations with parliamentary committees of national minorities were being conducted and that the necessary measures aimed at the ratification of the charter were to be adopted by the end of 2009. "The former Yugoslav Republic of Macedonia's" prospects for ratification of the charter in the foreseeable future were quite optimistic, since an interministerial working group was to be established for the purpose of promoting regional or minority languages.

### 3.2.7. Need for clarification and/or assistance from the Council of Europe

37. Following the question: "Would you like to receive clarification and/or assistance from the Council of Europe on particular aspects of the charter or difficulties encountered during the ratification process, for example the choice of undertakings under Part III?", out of the 11 replying delegations that had not yet ratified the charter, only two states asked for additional information. "The former Yugoslav Republic of Macedonia" asked to be provided with comparative experiences of other member states in building political consensus on these issues. Azerbaijan expressed a general wish to co-operate with the Council of Europe with regard to the ratification and further implementation of the charter.

### 3.2.8. Conclusions

38. Several delegations of Council of Europe member states declare that no regional or minority languages exist in their territory and that, therefore, there is no need for ratification of the charter. Some states admitted the existence of national minorities that speak a native language or the existence of a minority language, but denied the need for the charter to be implemented because the languages in question were rarely spoken. The importance of the charter for these already rarely spoken languages needs to be emphasised in this context.

39. Only a small number of the delegations which responded to the questionnaire are making efforts to ratify the charter. Further endeavours are needed in order to convince states of the importance of ratifying the charter.

40. Certain delegations have requested information on other states' experience with the charter's implementation. The promotion of good practices would certainly encourage states to re-consider the ratification of the charter.

41. Since only a few delegations of states that are not parties to the charter (11 out of 23) replied to the questionnaire, more information, especially from other member states that have not ratified the charter, would be needed to have a full picture of the situation.

## 4. Implementation of the charter: analysis of replies to the questionnaire

### 4.1. Concerning the question of whether the charter has been invoked in legal proceedings or by the ombudsperson

42. According to the replies, the domestic authorities refer to the European Charter for Regional or Minority Languages in different ways and contexts. Five delegations of states parties (Armenia, the Czech Republic, Germany, Hungary and Ukraine) reported that the charter has been invoked in domestic proceedings. In addition, in the Czech Republic, the charter has been also referred to by the ombudsperson.<sup>29</sup> Similarly, in Cyprus and Slovenia, the ombudspersons referred to the charter in their reports of 2009 and 2007 respectively. The Cypriot ombudsman also advised the Ministry of Education and Culture to include optional language classes in Cypriot Maronite Arabic in primary schools, following a request by the Maronite Religious Group.

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29. . In a case concerning schools teaching mainly in the Polish language, the question was whether these schools were obliged to provide documentation in Polish as well.

43. In some states parties (Croatia, Finland and Romania), where the charter itself has not been invoked in legal proceedings, national legal acts implementing the charter have been referred to in several proceedings. The Finnish ombudsperson has, for instance, invoked such national acts in its replies to complaints in connection with the use or non-use of the Swedish or Sami languages.

44. Therefore, the disputes in which the charter was invoked included matters related to education,<sup>30</sup> to public services<sup>31</sup> or court procedures.<sup>32</sup> In Sweden, the charter has been referred to by the ombudsperson in legal proceedings as the historical background for the legislation on the protection of minorities.

45. The situation in Ukraine with regard to the charter's implementation seems to be particularly worrisome. The charter has not been applied by Ukrainian courts, even though applicants have directly referred to the need to use its provisions. The Ukrainian courts and the ombudsperson do not invoke the charter's provisions in their proceedings because they are not accepted as law.

#### ***4.2. Concerning the question of whether there is political debate about the implementation of the charter***

46. There are political debates about the charter at national or regional level in 13 states parties (Armenia, Croatia, the Czech Republic, Finland, Germany, Norway, Serbia, the Slovak Republic, Slovenia, Sweden, Switzerland, Ukraine and the United Kingdom). These debates concern the elaboration of legal acts and national mechanisms for a better protection of regional or minority languages (Croatia, the Czech Republic, Slovak Republic, Slovenia, Sweden and Switzerland). Other topics discussed related to the status of minority languages (Finland) or the geographical administrative areas for minority languages (Sweden, Norway). There have also been some debates concerning regressive trends such as the closure of Sorbian secondary schools in Germany or the cancellation of the charter in Ukraine.

#### ***4.3. Concerning the question on possible difficulties in implementing the charter and the need for clarification on its particular aspects and/or assistance from the Council of Europe with regard to recommendations adopted by the committee of experts of the charter and the Committee of Ministers***

47. Six delegations of states parties explicitly reported difficulties in implementing the charter (Armenia, the Czech Republic, Finland, Serbia, Switzerland and Ukraine). The difficulties encountered include problems with adopting a national minorities act (Armenia), certain infringements of the charter at the local level (Czech Republic), the trouble finding an equilibrium between the promotion of a regional or minority language and its daily usage or translation costs (Switzerland), the existence of uncodified minority languages (Serbia) and the non-application of the charter by public authorities (Ukraine).

48. In its reply, Finland did not directly specify difficulties, but pointed out that there might be some potential difficulties with implementing regular reports. It also mentioned that the Sami Parliament claimed to lack knowledge and information with regard to the charter. Similarly, Hungary did not directly refer to any difficulties, but indicated some areas (police, minority programmes in the public media), where there are shortcomings with regard to the charter's implementation.

49. Three delegations of states parties (Croatia, Serbia and Ukraine) made requests for clarification and best practices. These requests concerned the question of an appropriate mechanism for the determination of the territorial scope of the charter (Croatia) and the handling of uncodified minority languages (Serbia). Ukraine asked for explanations on the scope of application of the charter, the mechanism to determine regional or minority languages and other issues concerning the charter's implementation.

50. Three delegations of states parties (Czech Republic, Switzerland and Sweden) pointed out that reforms to improve the implementation of the charter were underway.

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30. . For instance in the Czech Republic and in Germany, where the legal proceedings concerned the closure of Sorbian secondary schools.

31. . Cases in Finland concerned childcare and health services in Sami.

32. . In a procedure before a Hungarian court a native speaker of German requested "the translation into German of Hungarian documents pertaining to the procedure, with particular regard to the minutes of the hearings".

#### 4.4. Conclusions

51. The fact that the charter has been invoked in different ways and situations shows an existing demand for the protection of regional or minority languages, especially in the field of education and public services. It goes without saying that education in regional or minority languages is particularly important for the survival of these languages.

52. Political debates on the implementation of the charter in several states parties indicate that the implementation process is still underway. These debates reveal certain challenges in this process. In fact, there are quite a number of difficulties with implementing the charter and they should be overcome. An exchange of experience and best practices between states parties, especially with regard to the mechanisms used for determining which languages are protected under the charter, would certainly be helpful.

#### 4.5. The situation of the Istro-Romanian minority in Croatia: example of the need for protection of languages

53. In its reply to the questionnaire concerning the European Charter for Regional or Minority Languages, Croatia did not mention the Istro-Romanian minority. It does not regard the Istro-Romanian language as falling within the scope of application of the charter. The Istro-Romanian minority group, which is said to consist of 500 to 1 500 members inhabiting eight villages in Istria (Croatia),<sup>33</sup> has not been officially recognised by Croatia.

54. On 12 October 2006, Croatia presented its third periodical report on the European Charter for Regional or Minority Languages. In its evaluation report, the committee of experts expressed that it would welcome information about the Istro-Romanian language in the next periodical report. In reply to this request, the Croatian authorities, in their comments on the third periodical report, declared the following: "As regards the Istro-Romanian language we have the pleasure to inform you 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 is registered in the Register of Cultural Wealth of the Republic of Croatia – the list of Protected Cultural Wealth. In this way, too, care has been demonstrated by which Croatia approaches the protection of all cultural diversities, including the protection of minority languages."<sup>34</sup>

55. The protection of the Istro-Romanian language, which is apparently threatened with extinction, therefore requires further attention. Official recognition of the Istro-Romanian minority by Croatia and its protection under the Charter for Regional or Minority Languages are necessary in order to ensure the full protection of this language. I hope that the forthcoming report of the committee of experts will take this into consideration.

#### 5. Conclusion

56. The charter is a unique instrument in the area of protection of languages and national minorities. Thus, it is disappointing that only half of the member states of the Council of Europe are legally bound by this convention. I am of the opinion that the Assembly should reiterate once again its call on member states, and namely the national parliaments, to ratify the charter without further delay, notwithstanding the reasons invoked for refraining from ratifying. The charter, if properly implemented, is an important instrument which may halt the process of the extinction of certain languages in regions where they have been traditionally used for centuries.

57. The results of the questionnaire show that there are also certain problems with the implementation of the charter in the member states which have ratified it. Therefore states should make more efforts to fulfil their duties resulting from the ratification of this instrument and ensure a better exchange of information amongst each other and with the Council of Europe.

58. I would also like to pay tribute to the valuable work of the committee of experts and its contribution to the protection and promotion of regional or minority languages, in co-operation with several stakeholders from the civil society. However, I also need to put emphasis on the practical problems that this body encounters in its daily activities, due to the insufficient resources of its secretariat and the delays in obtaining certain

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33. . For more information on the Istro-Romanian minority see the motion for a resolution of 21 April 2008, [Doc. 11595](#) and the following documents: "Istro-Romanian in Croatia" at [www.istro-romanian.net](http://www.istro-romanian.net) and "Istro-Romanian, endangered language" at [www.istrianeet.org/istro-romanian/intro.htm](http://www.istrianeet.org/istro-romanian/intro.htm).

34. . European Charter for Regional or Minority Languages, Application of the Charter in Croatia, 3rd monitoring cycle, Report of the committee of experts of the charter, ECRML (2008) 1, item 37.

documents from the states parties. Once again, the Assembly should reiterate its call upon member states to reinforce the committee of experts. Moreover, co-operation with other European organisations, such as the European Union, would also be helpful in promoting the ratification of the charter and its proper implementation.

59. I would also like to recall in this context that, in January 2010, Mr Thomas Hammarberg, the Council of Europe Commissioner for Human Rights, pointed out that “language rights have become an issue of contention within several European countries. Their denial undermines human rights and causes inter-communal tensions”.<sup>35</sup> The commissioner stressed that language is an essential tool for social organisation and individual identity and therefore European governments should better take into account the needs of minority groups. Therefore, the ratification of the charter constitutes the recognition of European cultural and linguistic diversity and, by reducing tensions between different linguistic groups, it contributes to the maintenance of peace and stability in Europe.

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35. . Viewpoint of 25 January 2010, “Language rights of national minorities must be respected – their denial undermines human rights and causes inter-communal tensions”, see *supra* note 12

## Appendix

### Questionnaire sent on 5 June 2009

*- to national delegations of states parties to the charter*

1. Has the charter been invoked in legal proceedings in your country or by the ombudsperson?
2. Is there a political debate in your country about the implementation of the charter?
3. Are there difficulties in your country in implementing the charter? Would you like to receive clarification on particular aspects of the charter and/or assistance by the Council of Europe with regard to recommendations adopted by the committee of experts and the Committee of Ministers (If so, please specify)?

*- to national delegations of member states that are not parties to the charter*

1. For the purposes of the charter, "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. Dialects of the official language(s) of the state and languages of recent migrants are excluded from the application of the charter (Article 1.a of the charter).

- i. Which languages in your country correspond to that definition?
  - ii. Which of these regional or minority languages would only be covered by Part II of the charter and which of them would receive additional protection under Part III?
2. To what extent do legislation and practice in your country already comply with the provisions of the charter, notwithstanding the fact that your country has not yet ratified it?
  3. What constitutional, legal, procedural, political or other factor has so far prevented ratification of the charter by your country?
  4. Are efforts currently being made to resolve these issues?
  5. What are the prospects for signature and/or ratification of the charter by your country in the foreseeable future?
  6. Would you like to receive clarification and/or assistance from the Council of Europe on particular aspects of the charter or difficulties encountered during the ratification process, for example the choice of undertakings under Part III? (If so, please specify)