

European Charter for Regional and Minority Languages

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ECRML

- **CETS 148**
- **Opened for signature 5 November 1992**
- **25 Contracting States**
- **Younger than Charter for Local and Regional Authorities, which also pays some attention to use RML in contact with local authorities**
- **Older than Framework Convention National Minorities: 10 November 1994, which also includes attention for protection RML**

ECRML: objectives

- PREAMBLE
- Maintenance and development of cultural wealth
- Right to use regional or minority language is inalienable
- Based on the principles of democracy and cultural diversity
- But not to the detriment of the official languages and the need to learn them

ECRML and human rights

- Drafters of the Charter avoided human rights terminology
- However, Charter includes personal rights, but with a collective dimension (of the group of speakers of the RML)

ECRML and European Union

- Ratification of ECRML and of Framework Convention belong to the Copenhagen Criteria for accession to the European Union
- However, old MS like Belgium, *Italy* and France did not ratify
- Idem: Ireland
- Idem: Greece, Malta, *Portugal*
- Idem Baltic Countries

Goal ECRML

- To protect and promote *historical* regional and minority languages in Europe
- Predecessor to the current Congress of Local and Regional Authorities, the Standing Conference of Local and Regional Authorities of Europe was involved in preparation because involvement of local and regional government is essential
- Charter only applies to languages traditionally (> 100 years) used by the nationals of the State Parties (thus excluding languages used by more recent immigrants)

Goal ECRML

- To protect and promote historical *regional and minority languages* in Europe
- Excluded are language varieties of official national language(s)/ dialects
- Borderline language/ dialect not clear
- Answer on question what is variety of official national language?
- Often political answer, but irreversible!

Structure of the ECRML

- **Two levels of protection**
- **Part II: basic protection**
- **Part III: advanced protection**

- **Application of Charter is monitored by COMEX ECRML of CoE**
- **25 member/ one for each Contracting State**
- **COMEX meets at least three times/ year in Strassbourg**

Monitoring implementation of the ECRML

- **Art. 15 Charter: All three years periodical report Member State followed by on the spot visit by delegation of COMEX. (three Members plus secretary). First report one year after accession.**
- **Art. 16: “Bodies or associations legally established in a [State] Party” may ask attention for problems, also on the general policy of the State regarding RML**
- **Report of COMEX delegation is discussed in plenary session**
- **After reaction MS on draft report, discussion and adoption recommendations by Committee of Ministers of CoE (all 47 MS participate, not only 25 Contracting States!)**

Composition COMEX

- 25 Members (one for each Contracting State) who are independent (Art. 17)
- In case of a vacancy the Contracting State involved submits a list of potential candidates to CoE
- Choice/ appointment by Committee of Ministers of the Council of Europe
- Appointment for a term of six years with possibility of renewal

Part II basic protection

- **A) Recognition of regional or minority languages as an expression of cultural wealth** → ratification ECRML confirms this, except if indications for the contrary
- **B) Respect for the geographical area of each regional or minority language** → be careful with modifications of districts e.a.; new administrative divisions should not create obstacles to promotion RML
- **C) Resolute action to promote RML.**
- **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 same or similar RML.**
- **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

Part II basic protection

- **G) learning facilities for adult non-speakers living in the area.**
- **H) study and research at universities or equivalents institutions**
- **I) The promotion of relevant transnational exchanges with speakers of the same or similar languages abroad.**
- **2) Eliminate 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.**
- **3) The promotion by the State of mutual understanding between all the country's linguistic groups.**
- **4) Take into consideration needs and wishes by speakers/ i.a. by establishing bodies (including speakers) for advising authorities.**

Part II protection

- The *undertakings* of part II focuss mainly on regional minority languages,
- **but have to be applied as far as possible *mutatis mutandis* on non regional minority languages**
- for many States e.g. Yiddish or/and Roma/Sinti languages

Part III enhanced protection

- Choice from menu card of Art. 8 – 14
- Minimum of 35 undertakings

Main issues of the menu card of Part III

- **Art. 8 Education**
- **Art. 9 Judicial authorities**
- **Art. 10 Administrative authorities and public services**
- **Art. 11 Media**
- **Art. 12 Cultural activities and facilities**
- **Art. 13 Economic and social life**
- **Art. 14 Transfrontier exchanges**

System of choosing undertakings of the menucard

- **States must select at least thirty-five of the undertakings in respect of each Part III language next to the basic protection of Part II (art. 7)**
- **Many provisions in part III contain several options, of varying degrees of stringency, one of which has to be chosen “according to the situation of each language”**
- **If a State took a strong and a lighter obligation in the same category the COMEX only will assess the stronger obligation, which also covers also the lighter one**

Languages covered

- Contracting States will mention the languages covered by the ECRML in ratification instrument
- Irreversible
- Absolutely necessary and leading for Part III protection
- However: protection under part II available for all RM languages which exist on territory of Member State, also if not listed in ratification instrument

Languages covered?

- Irreversible → no discussion anymore whether a language mentioned in ratification instrument is variation of official national language, e.g. Lower Saxonian and Limburgish in the Netherlands
- However: one can try to argue that a RM language exists on territory MS which was until now not recognised for protection under part II, e.g. discussion on Papiamentu in the Netherlands
- Relevant is territorial scope of ratification instrument, e.g. Channel Islands not included; idem Aruba, Curacao, St Maarten
- Ratification for the ***Kingdom in Europe***, but since 2010 are Bonaire, Saba and Sint Eustatius part of the Kingdom in Europe

Art. 8 Education

- Obligations for different levels of education
- Preschool
- Primary school
- Secondary School
- Technical and vocational education
- University
- Adult continuing education courses

Art. 8 Education

- For all five levels of education choice between different levels of facilitation:
- *Teaching in* regional/ minority language
- *Substantial part of teaching in* regional/ minority language
- **Teaching of** regional/ minority language *as integral part of curriculum*
- **Teaching of** regional/ minority language **on request if number sufficient**
- Ratification instrument has to indicate level of facilitation

Art. 8 Education

- **Further obligations inter alia:**
- **Teaching history and culture reflected by RML (Art. 8(g))**
- **Training of teachers (Art. 8(2))**
- **Provide also for teaching on all appropriate stages of education outside traditional territories (Art. 8(2))**

Art. 8 Education

- Points of attention:
- Number of hours teaching
- In all levels/ classes of particular type of school → continuity?
- Of particular importance: attention for regional/minority language in preschool
- Idem: technical and vocational training → vocabulary craftsmen

Art. 9 Judicial authorities

- Use of RML in:
 - Criminal procedures
 - Civil procedures
 - Administrative procedures

. Varia: availability most important statutes in regional or minority languages.

Art. 9 Judicial authorities

- For three types of procedures distinction:
 - Procedure in RM language
 - Use of RM language allowed
 - Evidence in RM accepted
- If necessary with translation in official language
- Q: who pays the translation?

Relevant for communication with and in local and regional authorities: art. 10

- Par. 1 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:
- Threshold should not be too high
- If threshold exists: flexible application necessary
- Should not depend on majority decision regional or local government

Communication with administrative authorities of the State: art. 10 par. 1

- a 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;
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Communication with administrative authorities of the State: art. 10 par. 1

- b to make available widely used administrative texts and forms for the population in the regional or minority languages or in bilingual versions;
- c to allow the administrative authorities to draft documents in a regional or minority language.

Communication with and in local and regional authorities: art. 10 par. 2

- 2 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:
 -
 - a the use of regional or minority languages within the framework of the regional or local authority;
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Communication with and in local and regional authorities: art. 10 par. 2

- ^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;
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Communication with and in local and regional authorities: art. 10 par. 2

- 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; 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; 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.

Communication with regard to public services: art. 10 par. 3

- 3 With regard to public services provided by the administrative authorities or other persons acting on their behalf, the Parties undertake, 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.

Various provisions: art. 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;
 - 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.
- 5 The Parties undertake to allow the use or adoption of family names in the regional or minority languages, at the request of those concerned.

Art. 11 Media

- Distinction:
- Newspapers
- Radio → private/ public
- Television → private/ public
- Challenges: changes in media landscape
- Differences between generations in respect of using means of communication
- Budget cuts should not frustrate implementation of undertakings

Art. 11 Media

- Obligations inter alia:
- ***Broadcasters have to offer programmes in RML (Art. 11(1)(a)iii); (b)ii)***
- ***Encourage production of audio and audiovisual works in RML(d)***
- ***At least one newspaper in RML(e i)***
- ***Apply existing measures for financial assistance also to audiovisual productions in RML (f ii)***
- ***Guarantee freedom of reception of radio/ television from other countries (2) → problem of geoblocking***

Art. 12 Cultural activities and facilities

- Links between language and culture
- Foster access to works produced in RML (a) (d)
- Staff with full command RML (e)
- Direct participation of speakers (f)
- Financing translation and terminological research (h)
- Also activities outside traditional territories (2)
- Attention for policy abroad (3)

Art. 13 Economic and social life

- Special attention necessary for facilitation of use RM languages in
- Health services
- Care for old people

Art. 14 Transfrontier exchanges

- Special attention for use of existing international treaties, e.g. providing for exchange programs (a)
- Promote co-operation across borders (b), e.g. jumelages/ city partnerships

Format report COMEX

- Until 2017 rather long reports with a lot of repetition of text already included in earlier reports
- Sometimes difficult to find the remarks relevant for a particular RML
- Since 2017 more concise reports with tables for each RML with an evaluation of the relevant *undertakings*
- For part III languages evaluation of all 35+ *undertakings* chosen from the menu card
- For part II and part III languages evaluation *undertakings* Art. 7

Format report COMEX

- In the tables is for each *undertaking* indicated
- **Fullfilled/ partly fullfilled/ formally fullfilled/ not fullfilled/no information**
- Furthermore a symbol indicated whether the evaluation of the situation of an undertaking in respect of a RML is improved/ unchanged or worse
- Arrow up/ = (equal)/ arrow down
- The COMEX hopes that the new format increases the accessibility of the evaluation for the general public, in particular the speakers of the RML

Added value of ratification ECRML

- **Irreversible protection** of RML
- Protection does not depend anymore completely on political priorities
- Evaluation by Council of Europe via COMEX → COMEX does not only criticise but also tries to indicate often how the objectives of the Charter can be realised

Main challenges of the monitoring system of the ECRML

- No sanctions available: only naming and shaming
- Reporting cycle of three years is rather short
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- Streamlining with reporting cycle of Framework Convention desirable? Perhaps also cycle of five years with additional mid-term reporting on implementation of core recommendations

Additional challenges of the monitoring system of the ECRML

- Actualisation of obligations under the Charter: in particular necessary in the field of Media. Via general guidance by the COMEX? Perhaps by General Comments?
- Downgrading obligations not allowed. What to do with undertakings ratified by States on a non-realistic way, e.g. promising translation of all statutes in small minority language? Solution: mentioning non-fulfillment without formulating core recommendations on this issue?
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- What to do, if a State Party starts to distinguish within a Part III languages different languages? E.g. within Sami language in Norway. All protected by Part III, or is interpretive declaration ratification instrument possible?

Long term challenges for the ECRML

- Are sign languages covered by ECRML? No, but application by analogy desirable?
- What with new minority languages spoken by migrants?