

PARLIAMENTARY ASSEMBLY OF THE COUNCIL OF EUROPE

Communication from the Secretary General
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Application of the European Charter for Regional or Minority Languages

Introduction

Under the terms of Article 16.5 of the European Charter for Regional or Minority Languages, the Secretary General is required to make a biennial report to the Parliamentary Assembly on the application of the charter. The present document constitutes the first such report.

The charter came into force on 1st March 1998. Its provisions do not specify when the Secretary General should present the first report to the Assembly. On the one hand, it has seemed wise to wait until sufficient experience has been gained from the monitoring of its implementation to be able to supply substantive information. On the other hand, since the Assembly has the right to be kept informed of developments regarding this important charter, it did not appear justifiable to delay the first report beyond the end of the year 2000.

As a result, considering the present state of the formal process of examining the application of the charter in the first wave of contracting states (see below), this report is bound to be of an interim nature.

The state of signatures and ratifications

As of 10 September 2000, the European Charter for Regional or Minority Languages had been signed by twenty-three states,¹ of which ten had ratified it.²

Considering that the charter was opened for signature in November 1992, I find the rate of ratification disappointingly slow.

I recognise, however, that the process of ratification of this instrument may involve difficult political negotiations and complex decisions. The charter does not confine itself to providing a framework for national legislation and policy but in its Part III lays down a large number of specific undertakings from which the parties are required to choose "according to the situation of each language". In fact the parties not only have to determine which of their regional or minority languages qualify for protection under Part III but for each such language must choose a minimum of thirty-five out of

sixty-eight paragraphs which will apply to it. Indeed, since the measures chosen have to be adapted to the situation of each language, it may be necessary to adopt different provisions for the same language in different regions, because the numbers and the degree of concentration of the speakers of the language differ.

While acknowledging this complexity, I wish to encourage the member states to press on with ratification as soon as possible.

For some of the newer member states, the Parliamentary Assembly text recommending their admission to the Council of Europe contains the explicit requirement that they should ratify the charter. But the older member states too have much to gain from a clear commitment to these European standards, as a means of conferring credibility and authority on national policy and practice. I encourage also other countries to follow the good example of those states which have ratified the charter from motives of European solidarity on a matter which so clearly reflects the basic values of the Council of Europe.

The nature of the undertakings of the parties to the charter

The declarations made by the parties to the charter at the time of ratification are to be found in Appendix II.

It will be noted that the declarations vary greatly in length and complexity. This is partly because of considerable differences in the number of regional or minority languages in the various states concerned. Liechtenstein declares that there are no regional or minority languages in the sense of the charter on its territory at the time of ratification; Norway cites only one such language; whereas other states have several such languages.

However, the disparate length of the declarations is also due to very different approaches to the undertakings with respect to each language. Thus, while Part II of the charter applies to all the regional or minority languages spoken within its territory, some states (in particular Germany and the Netherlands) have preferred to specify which languages they consider to be covered by the provisions of Part II.

As far as Part III is concerned, each contracting state is required to specify which languages are covered and, for each language, which paragraphs or subparagraphs of Part III will apply to it (provided a minimum of thirty-five provisions is chosen). However, in their declarations some states (Croatia and Hungary) have undertaken to apply exactly the same provisions of Part III of the charter to all the regional or minority languages concerned. Others (Finland and Switzerland) have specified a different list for each language. Another (Germany) has not only specified different provisions of Part III for each language but has varied the protection afforded to one and the same language in different regions according not only to the federal system but also to the situation of the language in the region concerned.

I do not wish to pronounce on the legitimacy of the different approaches adopted, which is a matter for the committee of experts. However, I consider that the adaptation of the undertakings to the different circumstances of each language in each region corresponds to

1. Austria, Croatia, Cyprus, Denmark, Finland, France, Germany, Hungary, Iceland, Italy, Liechtenstein, Luxembourg, Malta, Netherlands, Norway, Romania, Slovenia, Spain, Sweden, Switzerland, "the former Yugoslav Republic of Macedonia", Ukraine and the United Kingdom.

2. Croatia, Denmark, Finland, Germany, Hungary, Liechtenstein, Netherlands, Norway, Sweden and Switzerland.

the wording and the spirit of the different articles of Part III of the charter, many of which offer a number of options from which the parties may choose "according to the situation of each language".

Application of the charter in the states parties

Sources of information

Article 15 of the charter requires the parties to present periodical reports to the Secretary General on their policy pursued in accordance with Part II of the charter and on the measures taken in application of the provisions of Part III which they have accepted. These reports clearly constitute the primary source of information on the implementation of the charter. The first periodical report is to be submitted within the year following the entry into force of the charter for the party concerned. It is of particular importance because it has to provide a description of the overall situation of regional or minority languages in the state in question with reference to the requirements of the charter.

Article 15 of the charter further specifies that the periodical reports are to be presented by the parties "in a form to be prescribed by the Committee of Ministers". To this end, the Committee of Ministers adopted at the end of 1998 a uniform outline for the periodical reports.

The initial periodical report has been received from all the states for which the charter came into force in 1998. In accordance with Article 15.2 of the charter, these reports have been made public by the governments concerned. In some instances, however, questions have been raised as to the means employed to this end. In my view, the report should not simply be published as a printed document, but special care should be taken to inform all interested parties of its availability. It would also be helpful to make it available on the Internet, as some of the parties have in fact done.

Each party to the charter is required thereafter to submit further periodical reports at three-yearly intervals. Provided that the first report has provided a clear and comprehensive picture of the situation of regional or minority languages and the legislation and policy pertaining to them, the subsequent reports should be easier to prepare, because they will need only to give an account of developments since the previous report.

Article 16 of the charter provides that bodies or associations legally established in a party may draw the attention of the committee of experts to matters relating to the undertakings entered into by that party under Part III of the charter. Such submissions provide a valuable additional input of information from sources independent of governments. Since the charter came into force various associations in several contracting parties have made use of this possibility by drawing the attention of the committee of experts to matters which cause them concern. The issues raised include, for example, the use of languages not covered under the charter or the lack of funding to promote the various languages, as well as detailed information – complementing that in the periodical report – on the status of a regional or minority language in education, culture or the media.

Independent evaluation

In order to monitor its application, the charter establishes in Articles 16 and 17 a committee of experts composed of one member from each state party.

In the literature already published on the charter, criticism is sometimes expressed of the fact that the designation of the members of the committee of experts is entirely in the hands of the governments, since the Committee of Ministers appoints each one from a list of candidates nominated by the party concerned. These critics therefore do not necessarily expect the committee of experts to act independently and impartially.

Experience has shown this criticism to be quite misplaced. Not only have the parties nominated "individuals of the highest integrity and recognised competence in the matters dealt with in the charter" as required by Article 17; they have also taken to heart the specification in the explanatory report on the charter whereby the experts appointed to the committee should be free to act independently and not be subject to instructions from the governments concerned. All the existing members of the committee of experts clearly fulfil the conditions of competence and independence. Some have indeed been nominated by governments after consultation with the non-governmental sector. The committee has also established its own working methods without the influence of outside bodies or governments, by adopting its Rules of Procedure.

The mandate of the committee of experts is to examine the periodical reports submitted to the Secretary General by the parties to the charter. It also considers the matters brought to its attention by bodies or associations as outlined above and consults the party concerned while doing so. It then prepares its own report for the Committee of Ministers.

It rapidly became clear that when examining the national reports the committee of experts needed to enter into a dialogue with the national authorities concerned in order to clarify some aspects of the report and obtain additional information. This dialogue is carried on in the first place in the form of written questions and answers. However, the committee has normally found it necessary to follow up this written correspondence by sending a delegation, consisting of three members of the committee, on an "on-the-spot mission" to the country concerned. These visits provide an opportunity for a more intensive exchange of information with the governmental authorities, other public bodies (such as ombudsmen), parliamentarians and representatives of the speakers of the various regional or minority languages. I note with satisfaction that the national authorities concerned have normally provided all the necessary practical assistance to enable these on-the-spot visits to be carried out under satisfactory conditions.

It is only after the completion of this dialogue that the committee of experts prepares its own report for the Committee of Ministers. I understand that the committee has also wished to wait until it had several reports to submit, so as to ensure from the start that there is comparability of treatment of the states examined. That is why no reports have yet been forwarded to the Committee of Ministers, although the first reports are expected by early 2001.

Clearly, substantive conclusions on the real application of the charter in the states parties will have to await the submission of these reports.

Political control and support

The key political role in securing the application of the charter in the states parties belongs to the Committee of Ministers. The charter explicitly empowers the Committee of Ministers to make the reports of the committee of experts public. I trust that the Committee of Ministers will make regular use of this possibility, which is in the interests both of transparency and of securing maximum impact for the charter in the states concerned.

The charter also specifies that the committee of experts shall make proposals to the Committee of Ministers with regard to the preparation of recommendations to be made to the individual parties. This is a crucial aspect since it raises the continuing dialogue with the contracting states to the political level and lays the foundation for the next phase of the monitoring procedure. I expect that the Committee of Ministers will wish to follow closely the proposals of the committee of experts when adopting its recommendations.

As for the Parliamentary Assembly, the role assigned to it by the charter is exceptional for a Council of Europe convention. Few conventions provide for reports to be submitted to the Assembly and no other convention requires the Secretary General to present his own report on its application. The significance of this role of the Assembly should not be underestimated. The debate on the biennial report gives a regular opportunity to Europe's parliamentarians to review the state of implementation of the charter and exert political pressure to improve it.

In any case, I have noted with appreciation the constant support which the Assembly has given to the charter. In particular, it has rarely missed an opportunity to insist on the need for signature and ratification, especially as a condition for new member states at the time of their admission to the Organisation. I am confident that the Assembly will continue to promote new accessions to the charter, focusing its efforts on new and old member states alike. I also believe that the reports of the committee of experts and the recommendations of the Committee of Ministers will furnish a good basis for action by the Assembly to promote the situation of regional or minority languages in individual member states.