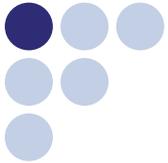


# READY FOR RATIFICATION



 EUROPEAN CENTRE  
FOR  
MINORITY ISSUES

**Vol. 1**

## Early compliance of non-States Parties with the European Charter for Regional or Minority Languages

A Handbook with twenty proposed  
instruments of ratification

VAISON  
LA ROMAINE

VEISOUN

Ewa Chylinski  
Mahulena Hofmannová (eds.)

### Volume 1:

Regional or  
Minority Languages  
in non-States Parties

Compliance of National  
Legislation with the ECRML

Proposals for Instruments  
of Ratification



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## Preface

For a number of years, the European Centre for Minority Issues (ECMI) and the Council of Europe co-operated on the publication of a handbook series on various minority issues. The topical areas were legal provisions for the protection and promotion of minority rights under the Framework Convention for the Protection of National Minorities (FCNM), power sharing arrangements and examples of good practice in minority governance.

The present Handbook concerns the other Council of Europe convention dealing with minorities: the European Charter for Regional or Minority Languages (ECRML). The ECRML represents the European legal frame of reference for the protection and promotion of languages used by persons belonging to traditional minorities.

Regrettably, the importance of the ECRML is not reflected by the number of ratifications. While the FCNM has 39 States Parties, the ECRML has so far been ratified by 25 member States of the Council of Europe and signed by a further eight member States. As the Secretary General of the Council of Europe stated in his Biennial report to the Parliamentary Assembly on the Application of the ECRML in 2010, "it remains disappointing that a considerable number of member states of the Council of Europe have not yet become parties to the Charter. This regret has been expressed in all previous Biennial Reports."

The ECRML lays down more detailed and technical obligations than the FCNM and employs a "menu" approach. It appears, however, that this strength – tailored action for each regional or minority language used in the country, according to different sociolinguistic situation of each language – contributes to the slow pace of ratification as the national authorities need to prepare specific ratification instruments. At the same time, many non-States Parties to the ECRML have already a long tradition in protecting and promoting their regional or minority languages on the basis of national legislation and the FCNM, and therefore may be ready for ratification of the ECRML.

During the past few years, the ECMI has been developing capacity to address issues related to the ECRML. Through its programme on "Language and Cultural Diversity" and recently through the research cluster "Culture & Diversity", the ECMI is now in a position to present a handbook on the ECRML which it has drafted in co-operation with independent experts from different parts of Europe. This publication takes the legal and linguistic situation in non-States Parties into account, draws on the synergies between the ECRML and the FCNM, and responds to specific concerns that exist in some countries. As a final result, it demonstrates how a ratification instrument for some non-States Parties could look like, what in turn may assist national authorities in the future.

We hope that the handbook will be received as a useful tool and help adding new momentum to the ECRML ratification process.



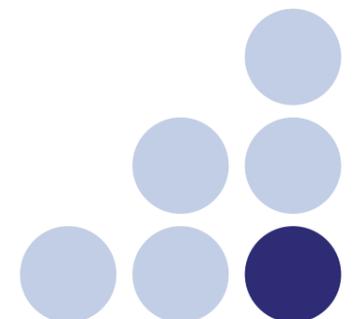
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**Volume 1:**  
Regional or Minority Languages in non-States Parties  
Compliance of National Legislation with the ECRML  
Proposals for Instruments of Ratification

## Acknowledgments

The editors would like to thank the many people who participated in the preparation and production of this book.

The idea for the book was conceived while, on many different occasions, discussing multilingualism issues in Europe. One of the key aspects of this is the protection and promotion of cultural and linguistic diversity, especially in countries which have not yet ratified the European Charter for Regional or Minority Languages. However, in many of those countries there is a lot of practice which, in many cases, fulfils the provisions of the Charter. The findings presented in the context of the special conference series **International Conference on Minority Languages (ICML)**, established in 1980 and convened at bi-annual intervals, were, to a great extent, also an inspiration. The many papers and exchanges with researchers, practitioners and minority-language bearers during the last ICML XIII in the German-Danish border region demonstrated the wide variety of on-going developments. We would like to thank them all.

We would also like to thank the minority organisations who have shared their opinions and needs in relation to their languages. These organisations could easily play a part in the process of enabling their respective States to adopt the European Charter for Regional or Minority Languages as a living document for future progress on these issues.

Above all, we would like to thank our contributors for their co-operation and efficiency in producing the volumes and for meeting often tight deadlines.

The Editors

Flensburg/Luxemburg, Autumn 2011



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## Introduction

*Ewa Chylinski/Mahulena Hofmannová*

### The European Charter for Regional or Minority Languages

The European Charter for Regional or Minority Languages (ECRML) was adopted as a Convention on 25 June 1992 by the Committee of Ministers of the Council of Europe, and was opened for signature in Strasbourg on 5 November 1992. It entered into force on 1 March 1998.

At present, the ECRML has been ratified by twenty-five States (Armenia, Austria, Bosnia and Herzegovina, Croatia, Cyprus, Czech Republic, Denmark, Finland, Germany, Hungary, Liechtenstein, Luxemburg, Montenegro, Netherlands, Norway, Poland, Romania, Serbia, Slovakia, Slovenia, Spain, Sweden, Switzerland, Ukraine and United Kingdom).

On the other hand, there is a rather heterogeneous group of States which have not yet ratified the ECRML. One can distinguish:

- a) States that committed themselves to ratifying the ECRML when acceding to the Council of Europe but have not yet signed it: Albania, Georgia;
- b) States that committed themselves to ratifying the ECRML when acceding to the Council of Europe and have only signed it: Azerbaijan, Moldova, Russian Federation, “the former Yugoslav Republic of Macedonia”;
- c) signatory States (no commitment to the Council of Europe): France, Iceland, Italy, Malta; These eight States (groups b and c) have signed the ECRML and, by virtue of their signature, have agreed to respect its objectives and principles. Pursuant to Article 18 of the Vienna Convention on the Law of Treaties, a “State is obliged to refrain from acts which would defeat the object and purpose of a treaty when a. it has signed the treaty (...)”.
- d) States that have not committed to ratification and have neither ratified, nor signed the ECRML: Andorra, Belgium, Bulgaria, Estonia, Greece, Ireland, Latvia, Lithuania, Monaco, Portugal, San Marino, Turkey.

Almost all of the non-States Parties host regional or minority languages which are in a delicate situation. The failure of the States concerned to ratify the treaty thus cannot be explained by the fact that they do not need it; quite the contrary. The ECRML is a Convention designed to enable speakers of a regional or minority language to use it in private and 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.

The ECRML 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.

The ECRML is divided into two main parts, a general one containing the principles and objectives applicable to all the Parties and all regional or minority languages (Part II), and a second part which lays down specific practical commitments which may vary according to the State and the language (Part III).

The eight fundamental principles and objectives of Part II 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; 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; and the promotion by States of mutual understanding between all of a country’s linguistic groups.

As regards Part III, States undertake to apply only those provisions of Part III to which they have subscribed. This ‘menu’ approach makes it possible for States to adapt the scope of the protection afforded to suit the particular legal status of each language, and also to take account of the costs of application. States have to select at least thirty-five undertakings in respect of each language. A large number of provisions consist of several options, of varying degrees of stringency. 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.

The ECRML provides for a monitoring mechanism to evaluate how the ECRML is applied in a State Party with a view to, where necessary, making recommendations for improvements in its legislation, policy and practice. The central element of the monitoring mechanism is the independent Committee of Experts which is composed of one member for each State Party.

At the beginning of a monitoring cycle, the State Party submits a periodical report to the Secretary General of the Council of Europe (once every three years), explaining their policies and the action they have taken to fulfil the commitments they have undertaken. The Committee of Experts then examines the State’s periodical report and organises an on-the-spot visit to the State to meet authorities and non-governmental organisations in order to evaluate the application of the ECRML. Afterwards, the Committee of Experts prepares its own evaluation report with recommendations on the basis of the information obtained, and addresses it to the Committee of Ministers, including proposals for additional recommendations to be made to States by the Committee of Ministers. Once it has considered the Committee of Experts’ report, the Committee of Ministers may decide to make it public. It may also decide to make recommendations to States.

After the publication of an evaluation report, the Council of Europe may organise an ECRML Implementation Roundtable in the State Party concerned. This follow-up meeting is chaired by a member of the Committee of Experts and offers an opportunity for representatives of the authorities and the minority associations to discuss concrete steps towards the implementation of the monitoring recommendations.



## Methodology of this Handbook

In 2010, the Parliamentary Assembly of the Council of Europe adopted the report “The European Charter for Regional or Minority Languages”<sup>1</sup> which looked, *inter alia*, into the prospects for further ratifications of the ECRML. The report has been drawn up on the basis of the replies by delegations to a questionnaire submitted to them by the Committee on Legal Affairs and Human Rights. In light of this feedback, the report observed that, owing to national legislation, most non-States Parties to the ECRML already comply with the Convention. This observation confirmed the Council of Europe’s traditional position that “[a]t present, many of the signatory States are in a position to ratify the treaty.”<sup>2</sup>

The aforementioned replies also spelled out the reasons why some States, despite their “early compliance”, have not yet acceded to the treaty. A few States consider the ECRML not relevant to them, given the absence of regional or minority languages on their territories. This Handbook holds the view that such States could nonetheless ratify the ECRML as an act of solidarity. Other States, albeit hosting regional or minority languages and being legally “ready to ratify”, are reluctant to do so because of country-specific concerns. It is the central aim of this handbook to demonstrate how the latter States can neutralise perceived risks of ratification by fully exploiting the ECRML’s flexibility.

The Handbook covers European States that have not yet ratified the ECRML, including States without regional or minority languages, non-members of the Council of Europe and States that are currently not ready to ratify.

**Volume 1** is structured into country chapters which can be read separately from other parts of the Handbook. Each country chapter is, where applicable, divided into three parts.

The *first part* briefly presents the languages that comply with the treaty’s definition of “regional or minority languages” by outlining their degree of autochthony as well as the official and/or estimated number(s), and main settlement areas, of the persons belonging to the respective traditional minorities. The regional or minority languages in each country have been identified mainly on the basis of census results, State reports or Council of Europe opinions on the application of the Framework Convention for the Protection of National Minorities (FCNM), and the European Commission’s “Euromosaic” study. Whereas all the languages included in this Handbook clearly comply with the ECRML’s definition of “regional or minority languages” and thus qualify for automatic ECRML coverage in the case of ratification, owing to a lack of exhaustive information it is possible that languages not mentioned here also constitute regional or minority languages. It will be at the discretion of each State to add, where justified, such languages to the instrument of ratification.

The *second part* of each chapter presents the compliance of the respective country’s legislation with the ECRML. It does so by summarising the congruence of provisions of Part III of the ECRML with provisions of national legislation as it appears from the comparative tables contained in **Volume 2**. For the purposes of this Handbook, “(early) compliance” means that provisions of national legislation match fully or partly such a number of ECRML provisions that is sufficient for an immediate ratification without significant legislative adjustments. This pragmatic approach takes into account that none of the existing ECRML States Parties have fully complied with its commitments under the treaty at the time of ratification. Rather, States approach full compliance in the medium term during the process of application/implementation and monitoring.

<sup>1</sup> See Document (Doc.) 12422 of the Parliamentary Assembly of the Council of Europe, 21 October 2010, <http://assembly.coe.int/Main.asp?link=/Documents/WorkingDocs/Doc10/EDOC12422.htm>

<sup>2</sup> See Biennial reports by the Secretary General of the Council of Europe to the Parliamentary Assembly on the Application of the European Charter for Regional or Minority Languages, Doc. 9540 of 11 September 2002 and Doc. 10659 of 3 September 2005

On the basis of the linguistic and legal situation described in the preceding parts, the *third part* makes a proposal for an instrument of ratification of the respective country. The handbook contains proposals for 20 States and also considers publicly known draft instruments of ratification put forward by authorities or members of parliament of some countries. The main features of the proposed instrument of ratification, namely the status that each language is granted under the ECRML and the reasons for that choice, are highlighted in an **explanatory note**, which is followed by the actual *declaration* (proposed instrument of ratification). The declaration specifies all ECRML provisions that are recommended for ratification, the languages to which they should apply and, where appropriate, additional declaratory statements.

The explanatory note outlines for each State a specific approach as to how its authorities can minimise or neutralise perceived risks of ratification. Each approach makes use of the flexibility inherent in the ECRML itself, notably the ‘menu’ system and the definitions of the concepts of “regional or minority languages” and “territory in which the regional or minority language is used”.

A strategy applicable to all States is the **mirror approach**: it recommends States to merely mirror the already existing level of protection for their regional or minority languages by ratifying only such ECRML provisions that are covered by national legislation and, if applicable, by the FCNM. Although it is desirable that States use ratification of the ECRML to grant *more* rights to their regional or minority languages, the mirror approach – namely the reflection of the legal status quo and confirmation of the *same* rights – is not illegitimate, because the treaty prohibits only a level of protection under the ECRML that confers *fewer* rights than the national legislation.

Since most States covered by this Handbook are States Parties to the FCNM, this treaty forms an important – and often the main – element of the domestic legal *acquis* in the field of regional or minority language protection. The FCNM comprehensively addresses the rights of persons belonging to national minorities and hence also lays down linguistic rights which match a considerable number of provisions contained in Part III of the ECRML. A further result of this congruence is, according to the aforementioned report by the Parliamentary Assembly, that most States consider applying Part III to all their (codified) regional or minority languages. **Volume 2** of this Handbook contains the first thorough provision-by-provision analysis of the congruence of Part III of the ECRML with the FCNM.

A State that adopts the mirror approach is likely to produce a realistic instrument of ratification and, as a result, to limit problems during monitoring. The Committee of Experts, which monitors the application of the ECRML, actually examines both whether the instrument of ratification as a whole guarantees at least the domestic level of protection and whether the State Party complies with each undertaking.

Concerning the (periodic) evaluation of each undertaking, the Committee of Experts applies a “grading” with four “marks”: the undertaking concerned may be considered “fulfilled”, “formally fulfilled”, “partially fulfilled” or “not fulfilled”. “Fulfilment” refers to a situation where certain undertakings are covered by national legislation or the FCNM and are implemented in practice. In case of “formal fulfilment”, a legal basis exists, but the undertaking is not necessarily fully implemented in practice. “Partial fulfilment” and “non-fulfilment” exist where the legal and practical implementation is either deficient or non-existent.<sup>3</sup> A country that uses the mirror approach therefore increases its chances of receiving evaluation reports which state that it has achieved at least the formal fulfilment, and possibly full fulfilment, of its obligations. Whereas the chance to obtain the two “bad marks” will have been reduced.<sup>4</sup>

It should be underlined that following the mirror approach at the time of ratification does not mean that the instrument of ratification cannot evolve in the future. The application of the

<sup>3</sup> See Nadia Knežević: *Europska povelja o regionalnim ili manjinskim jezicima. Izazovi efektivnog sprovođenja*, Novi Sad 2005, p. 58.

<sup>4</sup> See *Ibidem*, p. 59.



ECRML is a process during which States may, if they so wish, add to their commitments any time after ratification, as their legal situation develops or as their financial circumstances allow.

If a State is able to neutralise perceived risks of ratification and to merely mirror what it already does for its regional or minority languages, it will be in a position to add lustre internationally to its minority language policy that at present takes place relatively unnoticed at national level, and thus gain reputation at a reasonable price. All Council of Europe member States “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.”<sup>5</sup>

## I. States Ready to Ratify

### 1. Albania

When acceding to the Council of Europe, Albania committed itself to signing and ratifying the European Charter for Regional or Minority Languages (ECRML),<sup>6</sup> but has so far not signed it. Albania ratified the Framework Convention for the Protection of National Minorities (FCNM) in 1999.

#### 1.1 Presentation of the regional or minority language situation

According to the definition in Article 1.a of the ECRML, the concept “‘regional or minority languages’ means languages that are i. 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 ii. different from the official language(s) of that State. It does not include either dialects of the official language(s) of the State or the languages of migrants”.

In Albania, four traditionally used languages comply with that definition:<sup>7</sup>

- **Aromanian/Vlach**<sup>8</sup> has an old traditional presence in central and southern Albania. Estimates of the minority’s size vary greatly and range from 5 000 to 50 000 people. They live mainly in parts of the districts of Elbasan, Korçë and Gjirokastër.
- **Greek** has an old traditional presence which dates back to the Greek colonisation of coastal areas and the southern part of today’s Albania in the fifth century BC. As the most recent census in 2001 did not contain a question on ethnic affiliation, no reliable data exist on the national minorities.<sup>9</sup> According to the contentious data of the 1989 census, 58 758 people were affiliated with the Greek minority at that time.<sup>10</sup> Current estimates of the population range from 50 000 to 400 000. They are mostly concentrated in the south of the country, the northern part of the historical region of Epirus, with the highest concentration in the districts of Sarandë, Gjirokastër (particularly in the Dropull area), Delvinë and Vlorë with the coastal area of Himarë being predominantly populated by the Greek minority.
- **Macedonian** has an old traditional presence alongside today’s border between Albania and “the former Yugoslav Republic of Macedonia”. While the census of 1989 recognised the existence of only 4 697 Macedonians, current estimates put their number at between 5 000 and 60 000. Most Macedonians live in the Mala Prespa and Golo Brdo area close to Lake Ohrid and Lake Prespa. There, the administrative unit “Commune of Prespa”, comprising nine villages, is overwhelmingly inhabited by the Macedonian minority with the town of Pustec forming the centre.
- **Montenegrin/Serbian**<sup>11</sup> has a traditional presence in north-western Albania. The minority’s size is estimated at roughly 2 000 people. They are concentrated in the districts of Shkodër and Malësi e Madhe, especially in the village of Vrakë.

<sup>6</sup> See Opinion of the Parliamentary Assembly of the Council of Europe No. 189(1995).

<sup>7</sup> See Report submitted by Albania pursuant to Article 25, paragraph 1 of the Framework Convention for the Protection of National Minorities (ACFC/SR(2001)005), pp. 11-17.

<sup>8</sup> In their reports on the FCNM, the Albanian authorities have used “Aromanian”, but at times also “Vlach”.

<sup>9</sup> See Advisory Committee on the Framework Convention for the Protection of National Minorities, Second Opinion on Albania (ACFC/OP/II(2008)003), pp. 9-11.

<sup>10</sup> See Karl Cordell and Stefan Wolff: The Ethnopolitical Encyclopedia of Europe, Basingstoke 2004, p. 356.

<sup>11</sup> In their reports on the FCNM, the Albanian authorities have referred to this language both as “Serbian” (2008) and “Montenegrin” (2011).

<sup>5</sup> See Biennial report by the Secretary General of the Council of Europe to the Parliamentary Assembly on the Application of the European Charter for Regional or Minority Languages, Doc. 8879, 18 October 2000.



In addition to the aforementioned regional or minority languages, *Romani* has been traditionally present in Albania; it constitutes a non-territorial language in the sense of the ECRML. As official figures are lacking, it is reckoned that the Roma population comprises 80 000 to 150 000 people.<sup>12</sup> They do not inhabit a specific area of Albania.

## 1.2 Compliance of legislation with the ECRML

It should be noted that the Albanian authorities consider the Greeks, Macedonians and Serbo-Montenegrins as “national minorities” while the Aromanians/Vlachs and the Roma are considered “ethno-linguistic” minorities. The Advisory Committee of the FCNM has found that this differentiation has negative consequences for the “ethno-linguistic” minorities with respect to certain rights, especially in the field of education.<sup>13</sup> Albanian national legislation strictly refers to “national minorities”. Nonetheless, the Albanian authorities state that the FCNM as well as the “constitutional and legal framework” have “equal effect” on all persons belonging to minorities.<sup>14</sup>

The national legislation of Albania generally reflects the provisions of the ECRML.<sup>15</sup> However, according to the Albanian constitutional provisions, ratified international treaties – therefore the FCNM as well – are part of the national legislation, directly applicable, and prevail over national laws that are incompatible with them.<sup>16</sup> There is a need to further develop the legal framework in several fields<sup>17</sup> and a law related to the protection of the national minorities is under preparation.<sup>18</sup>

Article 20 of the Constitution of the Republic of Albania of 21 October 1998 provides that persons belonging to national minorities “have the right freely to express, without prohibition or compulsion, their ethnic, cultural, religious and linguistic belonging”, “to preserve and develop them, to study and to be taught in their mother tongue, and to join organisations and associations working for the protection of their interests and identity”. Article 10 of the Law on Pre-University Education System No. 7952 of 21 June 1995 states that “[p]eople belonging to national minorities shall be provided opportunities to study and be taught in their native language and to learn their history and culture within the framework of the teaching plans and curricula [...]”.

Article 31 of the Constitution provides that “[i]n a criminal proceeding, everyone has the right: [...] to have the assistance of a translator without charge, when he does not speak or understand Albanian”.<sup>19</sup> Article 8 of the Criminal Procedure Code<sup>20</sup> (Law No. 7905 of 21 March 1995) provides that “[p]ersons who do not speak Albanian shall use their own language and through an interpreter, have the right to speak and to be informed of the evidence, documents (acts) and also on the process of proceeding”. According to Article 98 of the same Code, “[t]he person who does not speak Albanian is questioned in his native tongue and records are kept also in this language” and “[p]rocedural documents provided on his application are translated into the same language.” Article 27 of the Code of Civil Procedure (Law No. 8113 of 29 March

<sup>12</sup> See Minority Rights Group, World Directory of Minorities, <http://www.minorityrights.org/1398/albania/roma.html>

<sup>13</sup> See Advisory Committee on the Framework Convention for the Protection of National Minorities, Second Opinion on Albania (ACFC/OP/II(2008)003), p. 5.

<sup>14</sup> See Third Report submitted by Albania pursuant to Article 25, paragraph 2 of the Framework Convention for the Protection of National Minorities (ACFC/SR/III(2011)001), p. 7.

<sup>15</sup> See the comparative analysis of national legislation and the provisions of the ECRML in Volume 2 of this handbook.

<sup>16</sup> See Report submitted by Albania pursuant to Article 25, paragraph 1 of the Framework Convention for the Protection of National Minorities (ACFC/SR(2001)005), p. 75.

<sup>17</sup> See Resolutions ResCMN(2005)2 and CM/ResCMN(2009)5 on the implementation of the Framework Convention for the Protection of National Minorities by Albania.

<sup>18</sup> See Third Report submitted by Albania pursuant to Article 25, paragraph 2 of the Framework Convention for the Protection of National Minorities (ACFC/SR/III(2011)001), p. 25.

<sup>19</sup> It must be noted that the obligations created by Article 9 of the ECRML apply irrespective of whether or not the person concerned speaks the official language of the country.

<sup>20</sup> See <http://www.hidaa.gov.al/english/laws/penal%20procedure%20code.pdf>

1996) provides as well that “[p]ersons who do not speak Albanian use their own language” and “[t]hey are informed of the evidence and of all juridical procedure through an interpreter”.

## 1.3 Proposal for an instrument of ratification

Several activities preparing ratification of the ECRML have been carried out. A seminar on the ECRML was organised in Tirana in December 2007 by the Council of Europe and the Albanian authorities. The latter have subsequently established a working group on the ECRML.<sup>21</sup> Currently, the State Committee for Minorities is responsible for the preparatory work concerning signing and ratifying the ECRML.<sup>22</sup>

As regards the possible reasons for not having signed and ratified so far, the Albanian authorities have stated that the implementation of the ECRML would create “administrative and financial burdens”.<sup>23</sup> The declaration (instrument of ratification) proposed below takes these concerns into account.

## Explanatory note on the main features of the proposed instrument of ratification

### 1. The proposal includes five languages.

According to the definition in Article 1.a of the ECRML, the concept “regional or minority languages” means languages that are i. 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 ii. different from the official language(s) of that State. It does not include either dialects of the official language(s) of the State or the languages of migrants”.

In Albania, Aromanian/Vlach, Greek, Macedonian and Montenegrin/Serbian comply with the definition in Article 1.a and, pursuant to Article 2.1, would be covered by the ECRML. Furthermore, Romani has been traditionally present in Albania; it constitutes, as stated in the Explanatory Report on the ECRML,<sup>24</sup> a non-territorial language which would be covered by Part II of the ECRML.

In this context it must be noted that the ECRML does not provide for the possibility to exclude one of the regional or minority languages mentioned above from its scope of application. In fact, the Committee of Experts has not accepted the initial intention of some States Parties not to apply the ECRML to certain languages, and, with the support of the Committee of Ministers of the Council of Europe, monitors the application of the treaty to those languages.<sup>25</sup>

### 2. The proposal mirrors the existing legal situation.

Article 4.2 of the ECRML, and also the treaty’s spirit and purpose, requires that each regional or minority language receives at least the level of protection under the ECRML that it already enjoys at the time of ratification.<sup>26</sup> Therefore, the provisions to be included in the instrument of ratification in respect of these languages need to at least mirror the already existing level of protection provided in accordance with national legislation as well as bilateral or multilateral

<sup>21</sup> See Comments of the Government of Albania on the Second Opinion of the Advisory Committee on the Implementation of the Framework Convention for the Protection of National Minorities by Albania (GVT/COM/II(2008)005), p. 21.

<sup>22</sup> See Third Report submitted by Albania pursuant to Article 25, paragraph 2 of the Framework Convention for the Protection of National Minorities (ACFC/SR/III(2011)001), p. 25.

<sup>23</sup> See Fourth Report by the European Commission against Racism and Discrimination on Albania (CRI(2010)1), p. 47.

<sup>24</sup> See paragraph 36.

<sup>25</sup> For example, with regard to Arabic and Portuguese in Spain, Cypriot Maronite Arabic in Cyprus, and Croatian, German and Serbian in Slovenia.

<sup>26</sup> The Committee of Experts and the Committee of Ministers have confirmed that, pursuant to Article 4.2, a State Party cannot validly opt for a level of protection under the ECRML which confers fewer rights. See in this regard Jean-Marie Woehrling: The European Charter for Regional or Minority Languages – A critical commentary, Council of Europe Publishing, Strasbourg 2005, p. 99.



international agreements such as the FCNM.

The instrument of ratification proposed below does not go beyond this minimum requirement and includes only ECRML provisions with which Albania de facto already complies when applying similar provisions of national legislation and the FCNM.

This “mirror approach” would have political and financial advantages. Firstly, the ratification instrument would not change the existing status of the minority languages, thereby contributing to a politically smooth ratification process. In addition, the synchronised application of related provisions of ECRML, FCNM and national legislation would contribute to a coherent minority policy. As far as financial advantages are concerned, the ratification instrument would make it possible that the application of the ECRML remains by and large cost-neutral.<sup>27</sup> It would also enable considerable synergies in periodic reporting to the Council of Europe as the language-related parts of the State report on the application of the FCNM would represent the basis of the State report on the ECRML.

### 3. The proposal contains graduated ‘menus’ of ECRML provisions.

As regards the provisions that can be “mirrored” in the ratification instrument, it first of all needs to be underlined that the FCNM contains language-related provisions that are fully or partially congruent with 38 ECRML provisions. Given that a State which prepares ratification of Part III (Articles 8-14) of the ECRML needs to select at least 35<sup>28</sup> of the 68 options contained therein, Albania already complies with more than that minimum number through the application of the FCNM. It follows from this that, currently, Albanian legislation already protects Aromanian/Vlach, Greek, Macedonian and Montenegrin/Serbian at the level of Part III of the ECRML.

In respect of Albania, different (graduated) ‘menus’ of provisions from the ECRML could be applied. The provisions contained in these menus differ not only in *number* from each other, but also regarding the *level of commitment*. The latter is the case for undertakings that have been selected from ECRML provisions containing alternative (stronger and weaker) options. Hence, the menu of provisions applied to Greek and Macedonian contains more and – as regards alternative (“or”) options – stronger provisions than the menus for Montenegrin/Serbian and Aromanian/Vlach.

Furthermore, the menus are interrelated with the FCNM provisions that are congruent with 38 ECRML provisions. These 38 provisions, with which Albania de facto already complies when applying the FCNM, are contained in, and form the basis of, all menus. Given that Albania complies with more ECRML provisions than the aforementioned 38, the menus also contain provisions additionally based on national legislation.

On the basis of the existing legal situation in Albania and taking account of Article 4.2 of the ECRML (see under 2. above), the proposed instrument of ratification includes 42 ECRML provisions for Greek, 41 for Macedonian, 38 for Montenegrin/Serbian and for Aromanian/Vlach, with slightly stronger provisions for the former.

Concerning education (Article 8 of the ECRML), the menu for Greek and Macedonian provides mostly for making available “a substantial part” of education in these languages, whereas the provisions to be applied to Montenegrin/Serbian foresee also that provision is made “for the teaching of the relevant regional or minority languages as an integral part of the curriculum”. For Aromanian/Vlach, the provisions foresee that provision is made for teaching in or of the language “at least to those pupils who, or where appropriate whose families, so wish, in a number considered sufficient”.

With regard to judicial authorities (Article 9 of the ECRML), the menu is stronger for Greek and Macedonian. This also applies in the field of administrative authorities and public services (Article 10), where stronger provisions would apply to Greek and Macedonian than to Montenegrin/Serbian and Aromanian/Vlach.

<sup>27</sup> See Snežana Trifunovska: The case of the Baltic states, in: Council of Europe (ed.): *Minority language protection in Europe: into a new decade*, Strasbourg 2010, pp. 67-84 (p. 75).

<sup>28</sup> Pursuant to Article 2.2 of the ECRML.

Concerning the media (Article 11), cultural activities and facilities (Article 12), economic and social life (Article 13), and transfrontier exchanges (Article 14), the provisions would be the same for all four languages, mirroring the provisions of the FCNM.

### Proposed Declaration (instrument of ratification)

1. Albania declares that, in accordance with Article 2, paragraph 1, of the European Charter for Regional or Minority Languages, the provisions of Part II of the Charter shall apply to Aromanian/Vlach, Greek, Macedonian, Montenegrin/Serbian and Romani.

2. In accordance with Article 2, paragraph 2, and Article 3, paragraph 1, of the Charter, Albania declares that the following provisions shall apply to the languages concerned:

#### a) Greek and Macedonian

##### Article 8 – Education

Paragraph 1.a.i; b.ii; c.ii; d.ii; e.ii (for Greek); f.ii; g; h.  
Paragraph 2.

##### Article 9 – Judicial authorities

Paragraph 1.a.ii; a.iv; b.ii; c.ii.

##### Article 10 – Administrative authorities and public services

Paragraph 1.a.iii; b; c.  
Paragraph 2.a; b; c; d; g.  
Paragraph 3.b.  
Paragraph 4.c.  
Paragraph 5.

##### Article 11 – Media

Paragraph 1.a.iii; b.ii; c.ii; d; e.i; f.ii; g.  
Paragraph 2.  
Paragraph 3.

##### Article 12 – Cultural activities and facilities

Paragraph 1.a; b; c; d; e; f.

##### Article 13 – Economic and social life

Paragraph 1.a.

##### Article 14 – Transfrontier exchanges

Paragraph a.  
Paragraph b.



**b) Montenegrin/Serbian**

**Article 8 – Education**

Paragraph 1.a.ii; b.ii; c.iii; d.iii; f.ii; g; h.  
Paragraph 2.

**Article 9 – Judicial authorities**

Paragraph 1.a.ii.

**Article 10 – Administrative authorities and public services**

Paragraph 1.a.iv; b; c.  
Paragraph 2.a; b; c; d; g.  
Paragraph 3.c.  
Paragraph 4.c.  
Paragraph 5.

**Article 11 – Media**

Paragraph 1.a.iii; b.ii; c.ii; d; e.i; f.ii; g.  
Paragraph 2.  
Paragraph 3.

**Article 12 – Cultural activities and facilities**

Paragraph 1.a; b; c; d; e; f.

**Article 13 – Economic and social life**

Paragraph 1.a.

**Article 14 – Transfrontier exchanges**

Paragraph a.  
Paragraph b.

**c) Aromanian/Vlach**

**Article 8 – Education**

Paragraph 1.a.iii; b.iv; c.iv; d.iv; f.ii; g; h.  
Paragraph 2.

**Article 9 – Judicial authorities**

Paragraph 1.a.ii.

**Article 10 – Administrative authorities and public services**

Paragraph 1.a.iv; b; c.  
Paragraph 2.a; b; c; d; g.  
Paragraph 3.c.  
Paragraph 4.c.  
Paragraph 5.

**Article 11 – Media**

Paragraph 1.a.iii; b.ii; c.ii; d; e.i; f.ii; g.  
Paragraph 2.  
Paragraph 3.

**Article 12 – Cultural activities and facilities**

Paragraph 1.a; b; c; d; e; f.

**Article 13 – Economic and social life**

Paragraph 1.a.

**Article 14 – Transfrontier exchanges**

Paragraph a.  
Paragraph b.



## 2. Andorra

Andorra has not signed the European Charter for Regional or Minority Languages (ECRML). Furthermore, it has neither ratified, nor signed the Framework Convention for the Protection of National Minorities.

According to the definition in Article 1.a of the ECRML, the concept “regional or minority languages’ means languages that are i. 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 ii. different from the official language(s) of that State. It does not include either dialects of the official language(s) of the State or the languages of migrants”.

Article 2.1 of the Constitution of the Principality of Andorra stipulates that the official language of the State is Catalan. This article was developed by the Regulatory Law on the Usage of the Official Language of 16 December 1999, which states that the Catalan language is the proper language of the Andorran people and that, consequently, it is one of the principal elements that defines their identity.

According to official data, published by the Government of Andorra in 2006, Andorran citizens only make up roughly one third of the resident population. Nearly all 29 535 Andorran citizens are primarily Catalan speaking. The larger group of foreigners is composed – in descending order of size – of Spanish (27 638), Portuguese (12 789) and French nationals (5 104). Most of these people have arrived since the 1950s as labour migrants or to a lesser degree as tax exiles. Owing to rules for naturalisation (20 years of residence, no double citizenship) only a small minority of these immigrants acquired citizenship.<sup>29</sup> Their languages come from recent migration and by consequence, they cannot be considered regional or minority languages.

As a result, there are no regional or minority languages in the sense of the ECRML in Andorra. This is also the position of the Government of the Principality of Andorra.<sup>30</sup> Nevertheless, in the same way as Liechtenstein and Luxemburg, Andorra could ratify the ECRML as an act of solidarity.

### Proposed Declaration (instrument of ratification)<sup>31</sup>

The Principality of Andorra declares in accordance with Article 2, paragraph 2, and in accordance with Article 3, paragraph 1, of the European Charter for Regional or Minority Languages of 5 November 1992, that there are no regional or minority languages in the sense of the Charter in the territory of the Principality of Andorra at the time of ratification. The Principality of Andorra considers its ratification of the Charter as an act of solidarity in the view of the objectives of the Convention.

<sup>29</sup> See Michael Emerson: *Andorra and the European Union*, Centre for European Policy Studies, Brussels 2007, pp. 31-34.

<sup>30</sup> See Report “The European Charter for Regional or Minority Languages” by the Committee on Legal Affairs and Human Rights of the Parliamentary Assembly of the Council of Europe, 21 October 2010 (Doc. 12422), paragraph 31.

<sup>31</sup> Based on the declarations contained in the instruments of ratification by Liechtenstein regarding the ECRML and the FCNM deposited both on 18 November 1997.

## 3. Azerbaijan

When acceding to the Council of Europe, Azerbaijan committed itself to signing and ratifying the European Charter for Regional or Minority Languages (ECRML) by 25 January 2002.<sup>32</sup> Azerbaijan signed the ECRML on 21 December 2001 and, by virtue of its signature alone, agreed to comply with the ECRML’s provisions.<sup>33</sup> Furthermore, Azerbaijan ratified the Framework Convention for the Protection of National Minorities (FCNM) in 2000.

### 3.1 Presentation of the regional or minority language situation

According to the definition in Article 1.a of the ECRML, the concept “regional or minority languages’ means languages that are i. 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 ii. different from the official language(s) of that State. It does not include either dialects of the official language(s) of the State or the languages of migrants”.

In Azerbaijan, 18 traditionally used languages comply with that definition:<sup>34</sup>

- **Armenian** has an old traditional presence in Azerbaijan. While in 1989 the number of Armenians was still around 400 000, it significantly decreased as a result of the Nagorno-Karabakh War. According to the 1999 census, 120 700 Armenians compactly inhabit the territory of Nagorno-Karabakh.<sup>35</sup> Furthermore, 30 000 to 50 000 Armenians live reportedly outside that region, for example, in Baku. As these are mostly people in mixed Armenian-Azerbaijani or Armenian-Russian marriages, an area of compact settlement cannot be identified.

- **Avar** has an old traditional presence in north-western Azerbaijan. The 1999 census recorded a number of 50 900 Avar people. Most of them live in the Balakən and Zaqatala *rayons*.

- **Budukh** is spoken primarily in the villages of Buduq (Budukh), Dəli Gaya and Güney Buduq in the Quba *rayon* and in Yergüç in the Xaçmaz *rayon*. Estimates place the number of members of the Budukh minority in Azerbaijan at about 1 000.

- **Georgian** has an old traditional presence in north-eastern Azerbaijan. The census of 1999 recorded 14 900 persons belonging to this minority. They have mainly settled in the Qax *rayon* close to the Georgian border. Georgian (Judeo-Georgian) is also used by a part of the Jewish national minority.

- **German** has been traditionally present in Azerbaijan since 1818 when Germans founded the present *rayon* capital Göygöl/Helenendorf and, later, some further colonies. In 1941, a part of the minority was exempted from the deportation of Germans to Kazakhstan and Siberia. The Germans now live mainly in Baku where they have a congregation, a cultural centre and a daily minority radio programme in German.

- **Juhuri**, the language of the Mountain Jews (or Juhuro), has an old traditional presence in Azerbaijan. According to the 1999 census, 8 900 persons belong to the Jewish minority, most of whom are Mountain Jews. They mainly reside in the cities of Baku, Sumqayıt, Quba and Oğuz. In the village of Qırmızı Qəsəbə (Quba *rayon*), Mountain Jews constitute a majority.

<sup>32</sup> See Opinion of the Parliamentary Assembly of the Council of Europe No. 222(2000).

<sup>33</sup> See Jean-Marie Woehrling: *The European Charter for Regional or Minority Languages – A critical commentary*, Council of Europe Publishing, Strasbourg 2005, p. 44.

<sup>34</sup> See Report submitted by Azerbaijan pursuant to Article 25, paragraph 1 of the Framework Convention for the Protection of National Minorities (ACFC/SR(2002)001), pp. 20-21, 25, 34; Second Report submitted by Azerbaijan pursuant to Article 25, paragraph 2 of the Framework Convention for the Protection of National Minorities (ACFC/SR(2007)001), pp. 6-8; Raymond Gordon (ed.): *Ethnologue – Languages of the World*, fifteenth edition, Dallas 2005; [http://www.azembassy.ch/browse.php?sec\\_id=6&lang=de](http://www.azembassy.ch/browse.php?sec_id=6&lang=de) <http://www.azembassy.de/index.php/deutsche-in-aserbajdschan>; <http://www.stuttgart-aserbajdschan.de>

<sup>35</sup> See Minority Rights Group, *World Directory of Minorities*, <http://www.minorityrights.org/1922/azerbaijan/azerbaijan-overview.html>



- **Khynalyg** speakers live mainly in the village of Xınalıq (Khynalyg) in Quba *rayon*. The current Khynalyg population is estimated at 1 500 people.
- **Kryz** speakers primarily reside in the villages of Əlik, Cek, Hapit and Qrıız (Kryz) in the Quba *rayon*. Their population is estimated at 6 000 people.
- **Kurdish** speakers are believed to have started settling in Azerbaijan as early as the seventh century. Large waves of Kurdish migration took place in the late sixteenth century. According to the 1999 census, 13 100 people belong to the Kurdish national minority in Azerbaijan. As a result of the armed conflict with Armenia, Kurds in Azerbaijan are now scattered throughout the country; however, before the resulting displacement, Kurds inhabited the Laçın, Kəlbəcər, Qubadlı and Zəngilan *rayons*.
- **Lezgian** has an old traditional presence in north-eastern Azerbaijan. According to the census of 1999, this biggest national minority numbers 178 000 people.<sup>36</sup> Most of them live in the Qusar *rayon*, where they form a majority, and in the Xaçmaz *rayon*.
- **Russian** has a traditional presence in Azerbaijan which dates back to the inclusion of the area in the Russian Empire. While there was relatively little influx of Russian people in the beginning, immigration increased with oil extraction starting in the 1870s. According to the census of 1999, 141 700 people belong to the Russian minority. The use of Russian, however, is not limited to this minority because Russian also plays a significant role in education, the media and communication among all ethnic groups. The Russian minority inhabits the cities, in particular Baku and Sumqayıt, and also rural areas in the İsmayıllı and Gədəbəy *rayons*.
- **Rutul** is a traditionally used language of north-western Azerbaijan. While there are approximately 885 ethnic Rutuls, the language is used by only about 110 people.
- **Talysh** has an old traditional presence in southern Azerbaijan. According to the census of 1999, there are 76 800 Talysh people. The language is mainly spoken in eight towns close to the Iranian border where Talysh form a significant minority in Lerik, Lənkəran and Masallı and even a clear majority in Astara.
- **Tat** has had an old traditional presence in Azerbaijan. The 1999 census counted 10 900 persons belonging to the Tat minority. They mainly settle in the north-eastern part of the country in the Balakən, Quba, Şabran, Xızı, Siyəzən and Suraxanı *rayons* as well as in Malham village in Şamaxı *rayon*.
- **Tatar** is used in the cities of Azerbaijan. About 30 000 people belong to the Tatar national minority.
- **Tsakhur** is used in the Zaqatala *rayon*. Approximately 15 900 people belong to the Tsakhur national minority in Azerbaijan.
- **Udi** is used in Nij village in Qəbələ *rayon* and in the centre of Oğuz *rayon*. Furthermore, Udi is partially used in the Tovuz *rayon* in north-western Azerbaijan. Approximately 4 100 people belong to the Udi minority.
- **Ukrainian** speakers mainly reside in Baku. According to the 1999 census, about 29 000 people belong to the Ukrainian national minority.

In addition to the aforementioned regional or minority languages, **Yiddish** is traditionally present in Azerbaijan; it constitutes a non-territorial language in the sense of the ECRML. Yiddish is used by the Ashkenazi or European Jews who form part of the 8 900 Jews in Azerbaijan (see under Juhuri). In particular, Yiddish speakers migrated to Azerbaijan at the end of the nineteenth century. The German speaking writer Essad Bey (or Lew Abramowitsch Nussimbaum) was a prominent representative of this group.

<sup>36</sup> See State Statistical Committee of the Republic of Azerbaijan, <http://www.azstat.org/statinfo/demographic/en/007.shtml> In spite of a more recent census in 2009, the newest official data on the country's ethnic composition accessible on the website is from 1999.

### 3.2 Compliance of legislation with the ECRML

The Constitution of the Republic of Azerbaijan of 24 August 2002<sup>37</sup> (Article 21.2, Official Language) states that the “Azerbaijan Republic ensures free use and development of other languages spoken by the people” as well as Article 45 (Right to use the mother tongue) that “[e]veryone has the right to use his or her mother tongue” and “[n]obody may be deprived of their right to use his or her mother tongue.”<sup>38</sup>

There is an unclear understanding of the term Azerbaijani, the Azerbaijani people, the Azerbaijani language, which refers both to the persons of Azeri ethnicity and to all citizens of Azerbaijan. In other pieces of legislation, such as the Law of the Republic of Azerbaijan on the State Language (22 December 1992), the term Turkic language is used.<sup>39</sup>

A law on minorities is still outstanding with on-going debates on its usefulness. There exist a number of decrees, ordinances and other by-laws pertaining to minorities.<sup>40</sup> Bringing them together in one legislative act would facilitate co-operation between various ministries and would pre-empt potential inconsistencies.

The Russian language has a specific position in Azerbaijan. Much of public administration is *de facto* conducted in Russian, which is also the largest non-Azeri language in education. With the transition to the Latin script and its implications for minority languages, Russian is the language of attraction to smaller minorities. It is unclear to what extent the minority languages that used the Cyrillic alphabet will transfer to the Latin script as well, with the exception of Russian and Georgian (Decree of the National Board of the Supreme Council of the Republic of Azerbaijan).

A Decree of the President of the Republic of Azerbaijan was issued “On defence of the rights and liberties of national minorities, small-numbered peoples and ethnic groups living in the Republic of Azerbaijan and on rendering State assistance to the development of their languages and cultures”.<sup>41</sup> This decree substantially addresses the issues of culture, language and economic and social life of minorities, and contributes towards better inclusion.

The Constitution (Article 45.1) states further that “everyone has the right to be educated, carry out creative activity in any language as desired”. As education is the strongest carrier of minority language development, the educational system bears a great deal of responsibility for actively providing such opportunities. The critical issue is the provision of qualified teachers and textbooks.

<sup>37</sup> See <http://en.president.az/azerbaijan/constitution>

<sup>38</sup> *Ibidem*.

<sup>39</sup> See [http://files.preslib.az/projects/remz/pdf\\_en/atr\\_dil.pdf](http://files.preslib.az/projects/remz/pdf_en/atr_dil.pdf)

<sup>40</sup> See the comparative analysis of national legislation and the provisions of the ECRML in Volume 2 of this handbook.

<sup>41</sup> See [http://files.preslib.az/projects/remz/pdf\\_en/atr\\_dil.pdf](http://files.preslib.az/projects/remz/pdf_en/atr_dil.pdf) p. 20.



There is a possibility of using the minority language in court proceedings and in notary offices, although only at a rather basic level. Expanding such important areas in which application of the minority languages can take place, will allow for swifter proceedings and build greater confidence. There is no formal possibility for using minority languages with local authorities.

All media, public and private, must use the official State language. Regional radio and television should be more flexible so as to provide frequencies for minority programmes. The State supports activities based on competitive projects. Certainly, smaller minorities may not have the same opportunities to preserve their cultural heritage. Legislation granting permanent support to those groups could promote their cultures in a more systematic and consistent way.

There already seem to be ongoing activities in cross-border co-operation. The exchange of press and publications at a local level would stimulate the support and development of minority contacts and the exchange of language.

With the current state of legislation, Azerbaijan could ratify the ECRML as an incentive to the further development of minority languages, particularly the smaller ones; not only those already shared with neighbouring States, but also those which are unique for the cultural heritage of the Republic of Azerbaijan.

### 3.3 Proposal for an instrument of ratification

In 2010, Azerbaijan stated that it was not ready to ratify the ECRML owing to lack of funds.<sup>42</sup> The declaration (instrument of ratification) proposed below takes this concern into account.

#### Explanatory note on the main features of the proposed instrument of ratification

##### 1. The proposal includes 19 minority languages.

According to the definition in Article 1.a of the ECRML, the concept “regional or minority languages” means languages that are i. 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 ii. different from the official language(s) of that State. It does not include either dialects of the official language(s) of the State or the languages of migrants”.

In Azerbaijan, the following languages consequently comply with the definition in Article 1.a and would, pursuant to Article 2.1, be covered by the ECRML: Armenian, Avar, Budukh, Georgian, German, Juhuri, Khynalyg, Kryz, Kurdish, Lezgian, Russian, Rutul, Talysh, Tat, Tatar, Tsakhur, Udi and Ukrainian. Furthermore, Yiddish has been traditionally present in Azerbaijan; it constitutes a non-territorial language in the sense of the ECRML.

In this context it must be noted that the ECRML does not provide for the possibility to exclude one of the regional or minority languages mentioned above from its scope of application. In fact, the Committee of Experts, which is the authoritative body in charge of interpreting the ECRML and monitoring its application,<sup>43</sup> has not accepted the initial intention of some States Parties not to apply the ECRML to certain languages and monitors, with the support of the Committee of Ministers of the Council of Europe, the application of the treaty to those languages.<sup>44</sup>

<sup>42</sup> See Report: The European Charter for Regional or Minority Languages, by the Committee on Legal Affairs and Human Rights of the Parliamentary Assembly of the Council of Europe, 21 October 2010 (Doc. 12422), paragraph 35.

<sup>43</sup> See, for example, First Report on the Application of the European Charter for Regional or Minority Languages in Slovakia (ECRML(2007)1), paragraph 37.

<sup>44</sup> For example, with regard to Arabic and Portuguese in Spain, Cypriot Maronite Arabic in Cyprus, and Croatian, German and Serbian in Slovenia.

##### 2. The proposal mirrors the existing legislation.

During the debate around the ECRML in Azerbaijan, it has become clear that the authorities would apply Part III of the treaty to the Armenian, Georgian, Lezgian and Russian languages, whereas the other languages would be covered by Part II, which grants a minimum level of protection and promotion.

As regards the provisions that could be included in the instrument of ratification for the four Part III languages, it needs to be borne in mind that the FCNM contains language-related provisions that are fully or partially congruent with 38 ECRML provisions. In addition to these provisions already covered in Azerbaijan through the application of the FCNM (and related national legislation), Azerbaijan’s legislation matches a further nine ECRML provisions, all relating to the field of judicial authorities.<sup>45</sup> On the basis of the existing legal situation in Azerbaijan, the proposed instrument of ratification includes 47 ECRML provisions in respect of Armenian, Georgian, Lezgian and Russian (38 provisions based on the FCNM plus 9 provisions additionally ensuing from national legislation).

##### 3. The proposal is cost-neutral.

As described above (see under 2.), the ‘menu’ of undertakings in respect of Armenian, Georgian, Lezgian and Russian would merely mirror the congruent linguistic provisions of the FCNM and of national legislation. This “mirror approach” would have political and financial advantages.

Firstly, the ratification instrument would not change the existing status of the minority languages, thereby contributing to a politically smooth ratification process. In addition, the synchronised application of related provisions of ECRML, FCNM and national legislation would contribute to a coherent minority policy.

As far as financial advantages are concerned, the instrument of ratification would make it possible that the application of the ECRML remains by and large cost-neutral.<sup>46</sup> It would also enable considerable synergies in periodic reporting to the Council of Europe as the language-related parts of the State report on the application of the FCNM would represent the basis of the State report on the ECRML. This aspect is, for example, reflected in the explanatory note on Germany’s ratification law which states under “Cost for the State budget”: “The federal State will not incur additional cost. The additional cost incurred by the *Länder* and municipalities as part of the implementation of the Convention will be insignificant as the obligations resulting from the Convention are already mainly fulfilled.”<sup>47</sup>

Most provisions of Part II (Article 7 of the ECRML) involve little expenditure (7.1.a, b, e, g, i, 7.2, 7.3 and 7.4).

With regard to education (Article 8), the average cost of school instruction does not depend on the language in which it is given. It is no more expensive to train and pay teachers using a regional or minority language than to train teachers using the official language. The extra cost has to do with reorganising the training system, which may have to be more complex. Such additional expenditure will make itself felt at the reorganisation stage but will fall afterwards.

Concerning judicial authorities, Article 9.1 will require interpreting and translation services in the cases where defendants and litigants and court personnel are not bilingual. While such services can be costly, Azerbaijan’s very detailed legislation on the use of minority languages before courts confirms that this is already an established practice. Article 9.2.c, which deals with the validity of legal documents in a regional or minority language, will generate negligible costs.

<sup>45</sup> See Articles 9.1.a.i; a.iii; a.iv; b.i; b.ii; b.iii; c.i; c.ii; 9.2 of the ECRML.

<sup>46</sup> See Snežana Trifunovska: The case of the Baltic states, in: Council of Europe (ed.): Minority language protection in Europe: into a new decade, Strasbourg 2010, pp. 67-84 (p. 75).

<sup>47</sup> See Doc. No. 13/10268 on Ratification of the ECRML, Deutscher Bundestag (German Parliament).



As far as administrative authorities are concerned, Article 10 can be implemented quite substantially by focusing on recruiting and training bilingual staff. It will not be particularly expensive to ensure the additional linguistic ability once the training and recruitment system has been reorganised for the purpose. This should be enough to allow speakers of a regional or minority language who have dealings with those services to make a request and obtain a reply in that language.

If staff are bilingual and translation does not require using specialist outside services, the cost of publishing official forms or administrative documents in a regional or minority language (Articles 10.1.b, 10.2.c and d) may be quite small. In fact, this is an organisational requirement rather than a large cost in itself. Finally, the cost of using bilingual place names as required by Article 10.2.g is quite small.

Making it possible for public servants who have some knowledge of a regional or minority language to be appointed to the area where that language is spoken (Article 10.4.c) does not involve any particular cost. The same applies to not objecting to the use of family names in a regional or minority language (Article 10.5), just as the cost of one hour of radio time (Article 11) or of a stage play (Article 12) does not vary significantly when they are produced in a regional or minority language rather than in the official language.<sup>48</sup>

### Proposed Declaration (instrument of ratification)

1. Azerbaijan declares that, in accordance with Article 2, paragraph 1, of the European Charter for Regional or Minority Languages, the provisions of Part II of the Charter shall apply to the Armenian, Avar, Budukh, Georgian, German, Juhuri, Khynalyg, Kryz, Kurdish, Lezgian, Russian, Rutul, Talysh, Tat, Tatar, Tsakhur, Udi, Ukrainian and Yiddish languages.

2. In accordance with Article 2, paragraph 2, and Article 3, paragraph 1, of the Charter, Azerbaijan declares that the following provisions shall apply to the Armenian, Georgian, Lezgian and Russian languages:

#### Article 8 – Education

Paragraph 1.a.iii; b.iv; c.iv; d.iv; f.iii; g; h.  
Paragraph 2.

#### Article 9 – Judicial authorities

Paragraph 1.a.i; a.ii; a.iii; a.iv; b.i; b.ii; b.iii; c.i; c.ii.  
Paragraph 2.c.

#### Article 10 – Administrative authorities and public services

Paragraph 1.a.v; b; c.  
Paragraph 2.a; b; c; d; g.  
Paragraph 3.c.  
Paragraph 4.c.  
Paragraph 5.

#### Article 11 – Media

Paragraph 1.a.iii; b.ii; c.ii; d; e.i; f.ii; g.  
Paragraph 2.  
Paragraph 3.

<sup>48</sup> See Jean-Marie Woehrling, op. cit., pp. 37-39.

#### Article 12 – Cultural activities and facilities

Paragraph 1.a; b; c; d; e; f.

#### Article 13 – Economic and social life

Paragraph 1.a.

#### Article 14 – Transfrontier exchanges

Paragraph a.  
Paragraph b.

3. The Republic of Azerbaijan declares that it is unable to guarantee the application of the provisions of the Charter in the territories occupied by the Republic of Armenia until these territories are liberated from that occupation.<sup>49</sup>

<sup>49</sup> Paragraph 3 represents the authentic declaration contained in a Note verbale handed by the Permanent Representative of Azerbaijan to the Deputy Secretary General of the Council of Europe at the time of signature of the instrument on 21 December 2001, <http://conventions.coe.int/treaty/Commun/ListeDeclarations.asp?NT=148&CM=1&DF=&CL=ENG&VL=1>



## 4. Belgium

Belgium has not signed the European Charter for Regional or Minority Languages (ECRML). However, it signed the Framework Convention for the Protection of National Minorities in 2001, but has not yet ratified it.

### 4.1 Presentation of the regional or minority language situation

According to the definition in Article 1.a of the ECRML, the concept “regional or minority languages’ means languages that are i. 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 ii. different from the official language(s) of that State. It does not include either dialects of the official language(s) of the State or the languages of migrants”.

In Belgium, **German** has been traditionally present in the territories of the present German-speaking Community,<sup>50</sup> of which it is the official language, and the French Community. In the territory of the French Community, where French is the official language, German (namely Franconian varieties of German and standard German<sup>51</sup>) is used in the Provinces of Liège and Luxemburg. In the Province of Liège, special regulations (“facilities”) for German exist pursuant to federal legislation in the municipalities of Malmedy and Waimès/Weismes as well as in Baelen, Plombières/Bleyberg and Welkenraedt/Welkenrath.<sup>52</sup> In the Province of Luxemburg, German has traditionally been used in the Arlon/Arel, Bastogne<sup>53</sup> and Virton<sup>54</sup> *arrondissements*. The total number of German-speaking Belgians is about 100 000.

Furthermore, the French Community considers Champenois, Lorrain, Picard and Walloon as regional or minority languages:<sup>55</sup>

- **Champenois** is spoken in Sugny (Vresse-sur-Semois).
- **Lorrain** is spoken in the Virton *arrondissement*.
- **Picard** is spoken in the *Arrondissements* of Ath, Mons, Mouscron/Moeskroen, Soignies (apart from Ecaussinnes), Thuin (apart from Anderlues, Froidchapelle, Gozée, Lobbes, Ham-sur-Heure/Nalinnes, Thuin), Tournai and Rebecq.

<sup>50</sup> Comprising the municipalities of Eupen, Kelmis, Lontzen, Raeren, Bütgenbach, Büllingen, Amel, Sankt Vith and Burg Reuland.

<sup>51</sup> Meuse-Rhenish Franconian (used in Aubel-La Clouse/Klause, Baelen, Plombières/Bleyberg, Welkenraedt/Welkenrath), Riparian Franconian (around Waimès/Weismes) and Moselle Franconian (around Beho/Bochholz and in the Arelerland, Province of Luxemburg). In the nineteenth century, laws and decrees by the king were published in standard German for the population of these municipalities. See European Commission: The Euromosaic study, [http://ec.europa.eu/education/languages/euromosaic/doc4681\\_en.htm](http://ec.europa.eu/education/languages/euromosaic/doc4681_en.htm); Mercator Education: The German language in education in Belgium, Ljouwert/Leeuwarden 2004, pp. 5-11, [http://www1.fk.knaw.nl/mercator/regionale\\_dossiers/PDFs/german\\_in\\_belgium.pdf](http://www1.fk.knaw.nl/mercator/regionale_dossiers/PDFs/german_in_belgium.pdf); Peter Hans Nelde: Volkssprache und Kultursprache. Die gegenwärtige Lage des sprachlichen Übergangsbereiches im deutsch-belgisch-luxemburgischen Grenzraum, Wiesbaden 1979, p. 2; Bernhard Bergmans: Die rechtliche Stellung der deutschen Sprache in Belgien, Neulöwen 1988, pp. 124-125.

<sup>52</sup> They do not cover Aubel-La Clouse/Klause. However, special regulations in the field of the *judiciary* exist for German speakers in Aubel, Bilstain, Clermont, Goé, Julémont, Limbourg and Neufchâteau, see Bernhard Bergmans: Deutsch in der öffentlichen Verwaltung in Belgien, in: Rudolf Kern (ed.): Deutsch als Umgang- und Muttersprache in der Europäischen Gemeinschaft, Brüssel 1989, pp. 239-244 (242-243).

<sup>53</sup> In parts of the municipalities of Gouvy (Beho/Bochholz, Deiffelt/Deifeld, Ourthe/Urt, Wathermal/Watermal) and Fauvillers (Bodange/Bödingen, Hameau d’Œil/Oell, Romeldange/Romeldingen, Tintange/Tintingen, Warnach, Wisembach/Wiesenbach).

<sup>54</sup> In Hachy/Herzig (Habay municipality).

<sup>55</sup> See Ministère de la Communauté française: Le coq chante... - il va vous réveiller, Vade-mecum, Brussels 2010, p. 49.

- **Walloon** is spoken in the Provinces of Walloon Brabant (apart from Rebecq), Namur (apart from Sugny), Liège (apart from the German-speaking municipalities), Luxemburg (apart from the Arlon and Virton *arrondissements*) and in the *Arrondissements* of Charleroi and Anderlues, Ecaussinnes, Froidchapelle, Gozée, Lobbes, Ham-sur-Heure/Nalinnes and Thuin.

It is, however, not clear whether some of the aforementioned forms of expression constitute dialects of French and hence no “regional or minority languages” conform with Article 1.a of the ECRML.

### 4.2 Compliance of legislation with the ECRML

Since the 1970s, Belgium has been moving towards building a federal State, consisting of territorial regions and linguistic communities – the Flemish, the French and the German-speaking Communities, and that of the federal State. Each of them has established independent institutions and policies in education, culture, administration and international co-operation agreements. The communities are, *inter alia*, responsible for culture, education, language usage and inter-community cooperation. The Constitution of Belgium provides for the possibility to transfer regional competences from the Walloon Region to the German-speaking Community.<sup>56</sup>

The language legislation<sup>57</sup> in the sphere of education of the German-speaking Community comprises a set of laws: Regulatory Order on the Language Regulations for Primary Schools of 29 March 1982; Decree to Encourage Nurture of the Standard German Language in Schools of 21 December 1987; Decree on the Introduction of the New German Spelling Rules of 26 October 1998; Decree on the Intermediation and Use of Languages in Teaching of 19 April 2004.<sup>58</sup>

Based on the Act of 1935, in judicial proceedings the principle of monolingual areas applies, meaning Dutch-, French- or German-speaking areas, or the language of the commencement of proceedings. Partial linguistic freedom applies to defendants,<sup>59</sup> who may request language change during the proceedings.

With regard to administrative authorities, the principle of territoriality of the language<sup>60</sup> is the main guideline, but there are also municipalities with linguistic facilities who serve inhabitants in languages other than the official language of the linguistic region.<sup>61</sup>

Until recently, the more traditional media were based on language affiliation. Yet, joint media ownership between Flemish and Walloon businesses is now quite common.<sup>62</sup> The broadcasting services in German are regulated by the Belgian Radio and Television Centre of the German-speaking Community Act, 18 July 1979. There are currently two radio stations and one television channel. Other legal entities that broadcast radio or television programmes are obliged to provide 75% of their broadcasts in German.<sup>63</sup> According to the Media Decree of 26 April 1999, all television providers must ensure the visibility of the German-speaking Community in their programmes.<sup>64</sup>

<sup>56</sup> See [http://www.culturalpolicies.net/down/belgium\\_092008.pdf](http://www.culturalpolicies.net/down/belgium_092008.pdf), BE-12.

<sup>57</sup> See Katrin Stangherlin (ed.): La Communauté germanophone de Belgique – Die Deutschsprachige Gemeinschaft Belgiens, Brussels 2005.

<sup>58</sup> *Ibidem* BE-39.

<sup>59</sup> See [http://www.twobirds.com/Swedish/News/Articles/Sidor/Language\\_Regs\\_Proceedings\\_Belgium.aspx](http://www.twobirds.com/Swedish/News/Articles/Sidor/Language_Regs_Proceedings_Belgium.aspx)

<sup>60</sup> See <http://www.docu.vlaamserand.be/ned/webpage.asp?Webpagelid=544>

<sup>61</sup> See <http://www.actionnariatwallon.be/Wallonie/en/glossaire.html>

<sup>62</sup> See [http://www.ejc.net/media\\_landscape/article/belgium/](http://www.ejc.net/media_landscape/article/belgium/)

<sup>63</sup> *Ibidem* BE-26.

<sup>64</sup> *Ibidem* BE- 28.



Each of the communities organises its own cultural life according to local policies. The federal State supports mostly bi-cultural institutions.<sup>65</sup> For the German-speaking Community, the identity of the region is vested in the Decree on Naming of Public Roads of 10 May 1999.<sup>66</sup>

Economic and social life is organised at community level with the provisions according to local regulations in the public sphere.

The communities have developed their own external relations with the Netherlands or with French-speaking States. The German-speaking Community is mostly engaged with other German-speaking regions, for example, trans-border co-operation with neighbouring *Länder* of Germany and Luxembourg. It has concluded bilateral agreements with Germany, France, Luxembourg, The Netherlands, Austria, Hungary and South Tyrol.<sup>67</sup>

With the application of extensive language regulation, the Belgian State can ratify the ECRML for the German language as a less widely used official language. The mobility of the population may in the future also require adjustments in other territorial units.

#### 4.3 Proposal for an instrument of ratification

The ECRML has so far not been ratified by Belgium because Flanders is concerned that its application could strengthen the legal position of French in Flanders, in particular in municipalities with facilities. The declaration (instrument of ratification) proposed below takes this concern into account.

#### Explanatory note on the main features of the proposed instrument of ratification

##### 1. The proposal does not include the Dutch and French languages.

Article 3.1 of the ECRML provides for the possibility to apply Part III of the treaty to an “official language which is less widely used on the whole or part of its territory”. The application of Part II to such languages is not mentioned in this provision.

Unlike in the case of the obligatory application of Part II to all *unofficial* regional or minority languages in the country (see Article 2.1), the ECRML does not oblige the State to make use of the possibility set out in Article 3.1 and apply Part III to official languages. As such, a decision is entirely at the discretion of the State, and it is unlikely that Belgium would achieve consensus on applying the ECRML to Dutch and French in parts of the country where these languages are in a minoritarian position, especially municipalities with facilities. Such a consensus may nonetheless be achieved with regard to the “neutral” German language (see under 2. below).

There exists a precedent for this scenario. Switzerland has four national languages (German, French, Italian and Romansh) and three federal official languages (German, French and Italian). Despite differences, one may compare the legal and demographic situation of German and French in Switzerland to that of Dutch and French in Belgium. Similarly, Italian and Romansh in Switzerland may be compared to German in Belgium. When ratifying the ECRML, Switzerland decided to apply Part III to the Italian and Romansh languages, as official languages which are less widely used. However, it did not do the same with German and French regarding cantons where both languages could also have been declared official languages which are less widely used.

In light of the above considerations, the present proposal does not include Dutch and French.

<sup>65</sup> See [http://www.culturalpolicies.net/down/belgium\\_092008.pdf](http://www.culturalpolicies.net/down/belgium_092008.pdf) BE-49.

<sup>66</sup> *Ibidem* BE-39.

<sup>67</sup> *Ibidem* BE-16.

##### 2. The proposal includes German as an “official language which is less widely used”.

The German language is one of the three federal official languages of Belgium, but is used by only about 1% of the Belgian population. As indicated above (see under 1.), German could be covered by the ECRML as an “official language which is less widely used” pursuant to Article 3.1 of the ECRML.

In contrast to the case of Dutch and French, there are no indications that the application of the ECRML to German would be controversial. Firstly, the German speakers are not directly involved in debates relating to the equilibrium between the two main languages of Belgium. Secondly, the application of the ECRML to German would not affect that linguistic equilibrium owing to the tiny share of German speakers in Belgium. Thirdly, owing to its demographic situation, German corresponds most to the concept of an “official language which is less widely used”.

As a result of its high legal status as an official language of the Federation and the official language of one of its federated States, the 68 options contained in Part III are applicable to German in the German-speaking Community at their highest level. Given that German (varieties of German and standard German) has a lower legal status in the French Community, a weaker menu containing 37 undertakings could be applied to German there, drawing on a proposal made by the French Community in 2001 (see under 3. below).

##### 3. The proposal incorporates the instrument of ratification suggested by the French Community for its territory in 2001.

In 2001, the French Community adopted a proposal for an instrument of ratification concerning its territory.<sup>68</sup> This proposal is included in the declaration below with two technical corrections:

Firstly, the proposal by the French Community contains both the undertakings a.iii and a.iv of Article 8.1 of the ECRML. However, these undertakings represent graduated alternative options, which makes option iv redundant. Article 8.1.a.iv has therefore not been included in the present proposal which now contains 37 undertakings.

Secondly, the French Community did, for reasons of legal competence, not yet include both forms of German (varieties of German *and* standard German), but only the (oral) Franconian varieties (see under 4.1 above). Given that standard German has a traditional presence in the territory of the French Community and also benefits, pursuant to federal legislation, from facilities in certain municipalities, it qualifies as (part of) a “regional or minority language” in conformity with the definition contained in Article 1.a of the ECRML. Pursuant to Article 2.1, the ECRML would automatically apply to standard German in the territory of the French Community as well.

#### Proposed Declaration (instrument of ratification)

1. Belgium declares that, in accordance with Article 2, paragraph 1, of the European Charter for Regional or Minority Languages, the provisions of Part II of the Charter shall apply to the Champenois, German (Meuse-Rhenish Franconian, Ripuarian Franconian and Moselle Franconian varieties of German and standard German), Lorrain, Picard and Walloon languages in the territories specified in paragraphs 2 and 3 below.

2. In accordance with Article 2, paragraph 2, and Article 3, paragraph 1, of the Charter, Belgium declares that the following provisions shall apply to the German language in the German-speaking Community:

<sup>68</sup> See Ministère de la Communauté française de Belgique, op. cit., pp. 24-29; Forum relative à la Charte européenne des Langues régionales ou minoritaires, Brussels, DG Culture, Literature and Books Division, Department of Endogenous Regional Languages.



**Article 8 – Education**

Paragraph 1.a.i; b.i; c.i; d.i; e.i; f.i; g; h; i.

Paragraph 2.

**Article 9 – Judicial authorities**

Paragraph 1.a.i; a.ii; a.iii; a.iv; b.i; b.ii; b.iii; c.i; c.ii; c.iii; d.

Paragraph 2.a.

Paragraph 3.

**Article 10 – Administrative authorities and public services**

Paragraph 1.a.i; b; c.

Paragraph 2.a; b; c; d; e; f; g.

Paragraph 3.a.

Paragraph 4.a; b; c.

Paragraph 5.

**Article 11 – Media**

Paragraph 1.a.i; b.i; c.i; d; e.i; f.i; g.

Paragraph 2.

Paragraph 3.

**Article 12 – Cultural activities and facilities**

Paragraph 1.a; b; c; d; e; f; g; h.

Paragraph 2.

Paragraph 3.

**Article 13 – Economic and social life**

Paragraph 1.a; b; c; d.

Paragraph 2.a; b; c; d; e.

**Article 14 – Transfrontier exchanges**

Paragraph a.

Paragraph b.

3. In accordance with Article 2, paragraph 2, and Article 3, paragraph 1, of the Charter, Belgium declares that the following provisions shall apply to the Champenois, German (Meuse-Rhenish Franconian, Ripuarian Franconian and Moselle Franconian varieties of German and standard German), Lorrain, Picard and Walloon languages in the French Community:<sup>69</sup>

**Article 8 – Education**

Paragraph 1.a.iii; b.iv; c.iv; d.iv; e.ii; f.ii; g; h; i.

**Article 9 – Judicial authorities**

Paragraph 1.a.ii; b.ii.

**Article 10 – Administrative authorities and public services**

Paragraph 1.a.iv.

Paragraph 2.b; e; f.

Paragraph 3.c.

Paragraph 4.c.

**Article 11 – Media**

Paragraph 1.a.iii; b.i; c.ii; d; e.ii; f.ii; g.

Paragraph 2.

Paragraph 3.

**Article 12 – Cultural activities and facilities**

Paragraph 1.a; b; c; d; f; g; h.

**Article 13 – Economic and social life**

Paragraph 2.b; c.

**Article 14 – Transfrontier exchanges**

Paragraph a.

Paragraph b.

The preceding provisions shall apply to the respective languages in the following territories:

- a) Champenois: Sugny (municipality of Vresse-sur-Semois)
- b) German:
  - i. Province of Liège (Ripuarian Franconian, Meuse-Rhenish Franconian and standard German):
    - 1. Municipalities of Malmedy and Waimes
    - 2. Municipalities of Baelen, Plombières and Welkenraedt as well as La Clouse (municipality of Aubel)
  - ii. Province of Luxembourg (Moselle Franconian and standard German):
    - 1. Arrondissement of Arlon
    - 2. Arrondissement of Bastogne: Beho, Deiffelt, Ourthe, Wathermal (municipality of Gouvy) and Bodange, Hameau d'Œil, Romeldange, Tintange, Warnach, Wisembach (municipality of Fauvillers)
    - 3. Arrondissement of Virton: Hachy (municipality of Habay)
- c) Lorrain: Arrondissement of Virton
- d) Picard: Arrondissements of Ath, Mons, Mouscron/Moeskroen, Soignies (apart from the municipality of Ecaussinnes), Thuin (apart from the municipalities of Anderlues, Froidchapelle, Gozée, Lobbes, Ham-sur-Heure-Nalinnes, Thuin), Tournai and Rebecq
- e) Walloon: Provinces of Walloon Brabant (apart from the municipality of Rebecq), Namur (apart from Sugny/municipality of Vresse-sur-Semois), Liège (apart from the German-speaking municipalities), Luxembourg (apart from the Arrondissements of Arlon and Virton) and in the Arrondissements of Charleroi, Anderlues, Ecaussinnes, Froidchapelle, Gozée, Lobbes, Ham-sur-Heure-Nalinnes and Thuin

<sup>69</sup> Based on the proposal contained in: Ministère de la Communauté française, op. cit., pp. 42-48.



## 5. Bulgaria

Bulgaria has not signed the European Charter for Regional or Minority Languages (ECRML). However, it ratified the Framework Convention for the Protection of National Minorities (FCNM) in 1999.

### 5.1 Presentation of the regional or minority language situation

According to the definition in Article 1.a of the ECRML, the concept “regional or minority languages’ means languages that are i. 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 ii. different from the official language(s) of that State. It does not include either dialects of the official language(s) of the State or the languages of migrants”.

In Bulgaria, ten traditionally used languages comply with that definition:<sup>70</sup>

- **Albanian** has had a traditional presence on the territory of present-day Bulgaria since 1636 when Albanians founded the village of Mandritsa<sup>71</sup> (Ivaylovgrad municipality, Haskovo province) in southern Bulgaria. Most Albanians arrived in Mandritsa during the eighteenth and nineteenth centuries. At present, some of the 75 inhabitants of Mandritsa speak Albanian.
- **Armenian** has had a traditional presence in the current territory of Bulgaria since the sixth century. The census of 2001 counted 10 832 persons belonging to the Armenian minority. Similar to the Russians, they are concentrated in the main urban areas such as Sofia, Plovdiv, Varna and Burgas.
- **Aromanian** has an old traditional presence in Bulgaria. According to the 2001 census, there are 10 566 Aromanians, a number that comprises speakers of both Romanian and Aromanian. Most members of the Aromanian minority live in the mountainous areas of Bulgaria’s south and particularly around the town of Peshtera.
- **German** has been traditionally present in Bulgaria since 1893 when Banat, Bessarabia and Dobruja Germans began to settle in villages of northern Bulgaria and southern Dobruja. The resettlement of the German minority to Germany in 1943 did not affect all Germans and, according to the 2001 census, today, there remain 436 Germans in Bulgaria.<sup>72</sup>
- **Greek** has an old traditional presence in Bulgaria. The census of 2001 recorded 3 408 persons belonging to the Greek minority. As in the case of Russians and Armenians, the Greeks live primarily in the aforementioned urban centres.
- **Macedonian** has an old traditional presence in the area of today’s south-western Bulgaria. The 2001 census figure of 5 071 Macedonians, which represented a sharp decline of more than 50% compared to 1992, is controversial. Most Macedonians inhabit the Blagoevgrad province at the border to “the former Yugoslav Republic of Macedonia”.
- **Romanian** has an old traditional presence in Bulgaria. Although only 1 088 identified themselves as Romanians in the 2001 census, it has to be taken into account that the 10 566

<sup>70</sup> See Report submitted by Bulgaria pursuant to Article 25, paragraph 1 of the Framework Convention for the Protection of National Minorities (ACFC/SR(2003)001), pp. 8, 14-16, 65-66, 75; European Commission: The Euromosaic study, [http://ec.europa.eu/education/languages/euromosaic/doc4681\\_en.htm](http://ec.europa.eu/education/languages/euromosaic/doc4681_en.htm)

<sup>71</sup> See Herbert Küpper: Minderheitenschutz im östlichen Europa – Bulgarien, research project co-ordinated by Angelika Nußberger, Köln 2003, p. 26.

<sup>72</sup> See [http://www.nccedi.government.bg/save\\_pdf.php?id=247](http://www.nccedi.government.bg/save_pdf.php?id=247); Herbert Küpper, op. cit., p. 26.

Aromanians are partly Romanian speakers. They are concentrated in the northwestern Vidin, Vratsa and Pleven provinces.

- **Russian** has a traditional presence mainly in present north-eastern Bulgaria. As early as the seventeenth century, religious dissidents settled in the Ottoman-ruled territory. Another major influx followed after the October Revolution. About 15 595 persons belong to the Russian minority according to the census of 2001. Most of them live in urban centres such as Sofia, Plovdiv, Varna and Burgas.

- **Tatar** has had a presence in Bulgaria since the thirteenth century. Further immigration of Crimean Tatars occurred during the Russian-Turkish War (1806-1812) and during the Crimean War (1853-1856). According to the 2001 census, 4 515 persons belong to the Tatar minority and live mainly in the areas of Kavarna and Balchik. As most Tatars in Bulgaria have become linguistically assimilated by Turkish, Tatar is used among elderly people only.

- **Turkish** has had a presence in Bulgaria since the fifteenth century. According to the 2001 census, 746 664 persons belong to the Turkish minority. Most of them live compactly in the south of the country, mainly in the Arda basin as well as in Dobruja. Apart from that, Turkish villages are scattered along the central and eastern Stara Planina.<sup>73</sup>

In addition to the aforementioned regional or minority languages, Ladino and Romani have traditionally been present in Bulgaria; they constitute non-territorial languages in the sense of the ECRML:

- **Ladino** has traditionally been present in Bulgaria since 1492. The Sephardic Jews, persecuted in Spain, settled in the territory of today’s Bulgaria during the time of Ottoman rule. According to the census of 2001, there are 1 363 persons belong to the Jewish minority, they are not concentrated in specific parts of the country.

- **Romani** has had a presence in Bulgaria since the fifteenth century. According to the 2001 census, 370 908 persons belong to the Roma minority<sup>74</sup> whereas estimates range up to 700 000. This gap is mainly attributed to a tendency of Roma identifying themselves as Bulgarians or Turks.<sup>75</sup> The Roma do not inhabit specific areas.

### 5.2 Compliance of legislation with the ECRML

The Bulgarian Constitution of 1991 does not contain the concept of regional or minority language, but acknowledges the right of citizens, for whom the official language (Bulgarian) is not the mother tongue, to use and study their native language along with Bulgarian (Article 36.2). Also, Article 6.2 of the Constitution states that “equality before the law, with no limitations of the rights or the privileges based on race, nationality or ethnic identity, is accepted.” Another article of the Constitution (Article 54.1) states the right of each citizen to “make use of the national and universal cultural values as well as to develop his or her culture in accordance with his or her ethnic identity, which is recognised and guaranteed by the law.”

Nevertheless, languages other than Bulgarian are hardly visible in Bulgarian legislation and in the public sphere.<sup>76</sup> Many debates reveal reservations to the use of the term national minority or minority language despite the ratification of the FCNM in 1999 and even though a number of new institutions related to the enhancement and integration of minorities have been established such as inter-ministerial National Council for Co-operation on Ethnic and Demographic Issues

<sup>73</sup> See Minority Rights Group, World Directory of Minorities, <http://www.minorityrights.org/2430/bulgaria/turks.html>

<sup>74</sup> See National Statistical Institute, [http://www.nsi.bg/Census\\_e/Census\\_e.htm](http://www.nsi.bg/Census_e/Census_e.htm)

<sup>75</sup> See Minority Rights Group, World Directory of Minorities, <http://www.minorityrights.org/2433/bulgaria/roma.html>

<sup>76</sup> See the comparative analysis of national legislation and the provisions of the ECRML in Volume 2 of this Handbook. See also Mahulena Hošková (now Hofmann): Die rechtliche Stellung der Minderheiten in Bulgarien. In: Jochen Abraham Frowein/Rainer Hofmann/Stefan Oeter (eds.): Das Minderheitenrecht europäischer Staaten, Teil 2, Berlin 1994, pp. 1-26.



(NCCEDI) at the Council of Ministers in 2004.<sup>77</sup> At the Ministry of Education, a Centre for Educational Integration of Children and Students of Ethnic Minority Origin (COIDEUM) was established in 2005, implementing a number of State-supported projects.<sup>78</sup> Bulgaria has made a large number of revisions and amendments to the existing laws, which is the main trend in the legislation.

Educational legislation operates within the concept of the mother tongue, which is defined in the Regulation on the Application of the Law on National Education (Article 8.4) as “the language in which the child communicates with his or her family before he or she starts school”. Minority languages, such as Turkish, Romani and Armenian, have only recently entered the school curriculum as obligatory elective subjects (grades 1-8). The marks achieved in the subject are included in the general performance assessment mark.<sup>79</sup> At the same time, there is a certain inconsistency, for example, in relation to the Bulgarian Jewish community, which speaks Ladino, while offering education in Hebrew.<sup>80</sup>

With regard to judicial authorities, in general, all proceedings have to be conducted in Bulgarian, the official State language, with the provision for oral communication in another language or using interpreter services covered by the court. All formal communication with the administrative authorities and public services is conducted in Bulgarian, yet, at an informal level, other languages may also be used.<sup>81</sup>

The Radio and Television Act of 1998 stipulates the use of another language when the programmes are intended for Bulgarian nationals whose mother tongue is not Bulgarian. Through NCCEDI, local level councils have been established in the regions to work together with local communities, also financially supporting their cultural activities (Roma, Turkish, Armenian and Jewish). Recently, Bulgaria adopted a number of new laws referring to the protection of the cultural heritage. These include the Cultural Heritage Act of 26 February 2009. In Article 2, it refers to the “right of access to cultural heritage without discriminative restrictions of any ethnic-cultural or religious kind”. In 2009, the Public Libraries Act was adopted to facilitate citizens’ access to the cultural heritage.

In economic life, special focus is directed towards the Roma in the framework of the Decade of Roma Inclusion as well the EU National Strategies for Roma Inclusion. No specific measures are taken for other ethnic groups. Transfrontier co-operation seems to exist with the neighbouring countries: Greece, Romania, Macedonia and Serbia.

In general, there is a basis for Bulgaria to ratify the ECRML as an incentive to the further development of legislation relating to minority languages, and expanding the scope of their use within the educational sector, as well as other public sectors. There is also a need to address the issue of Macedonian as well as less widely spoken languages that are present in Bulgaria.<sup>82</sup>

### 5.3 Proposal for an instrument of ratification

The Bulgarian authorities have not made known the reasons for not having ratified the ECRML so far. However, there is good ground for supposing that the lack of a tradition of promoting minority languages, as well as the debate around a distinct identity of persons identifying

<sup>77</sup> See <http://www.ncedi.government.bg>; and Compendium of Cultural policies and Trends in Europe, twelfth edition 2011, <http://culturalpolicies.net/download/bulgaria>

<sup>78</sup> See Anna Lazarova and Vasilii Rainov, *op. cit.*

<sup>79</sup> *Ibidem.*

<sup>80</sup> *Ibidem*, p. 106.

<sup>81</sup> *Ibidem*, p. 104.

<sup>82</sup> *Ibidem*, p. 106.

themselves as Macedonians, have played a role.<sup>83</sup>

## Explanatory note on the main features of the proposed instrument of ratification

### 1. The proposal includes twelve languages.

According to the definition in Article 1.a of the ECRML, the concept “‘regional or minority languages’ means languages that are i. 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 ii. different from the official language(s) of that State. It does not include either dialects of the official language(s) of the State or the languages of migrants”.

In Bulgaria, Albanian, Armenian, Aromanian, German, Greek, Macedonian, Romanian, Russian, Tatar and Turkish comply with the definition in Article 1.a and, pursuant to Article 2.1, would be covered by the ECRML. Furthermore, Romani and Ladino have traditionally been present in Bulgaria; they constitute non-territorial languages.

In this context it must be noted that the ECRML does not provide for the possibility to exclude one of the regional or minority languages mentioned above from its scope of application. In fact, the Committee of Experts has not accepted the initial intention of some States Parties not to apply the ECRML to certain languages and, with the support of the Committee of Ministers of the Council of Europe, monitors the application of the treaty to those languages.<sup>84</sup>

Some States Parties, namely Germany, the Netherlands and Poland, apply the ECRML to forms of expression that have a close relation and a high degree of mutual intelligibility with the respective State language. In their instruments of ratification, these States have emphasised this special relation by declaring the respective forms of expression “regional languages”. By contrast, those languages that are clearly distinct have been considered “minority languages”. While “regional language” does not, under the ECRML, formally constitute a notion in its own right that could be separated from the notion of “regional or minority language”, Bulgaria may nevertheless consider following such examples, and specify in the instrument of ratification, that Macedonian is considered a “regional language”.<sup>85</sup> The instrument of ratification that is proposed below contains such a reference, adapting a formulation of Germany’s instrument of ratification.

### 2. The proposal mirrors the linguistic provisions of the FCNM.

In several fields covered by Part III of the ECRML, Bulgarian legislation is characterised by the absence of specific provisions to regulate the use of minority languages. Furthermore, in a number of instances only the Turkish minority is in practice able to take advantage of the limited possibilities offered by national legislation.<sup>86</sup> In light of national policies, legislation and practice, it appears advisable to apply Part III initially only to the Turkish language. Given that the application of the ECRML is a process, Bulgaria may, if its authorities so wish, extend Part III coverage to other languages any time after ratification, as the legal and practical situation develops.

As regards the provisions that could be included in the instrument of ratification for Turkish, it needs to be borne in mind that the FCNM contains language-related provisions that are fully

<sup>83</sup> See Advisory Committee on the Framework Convention for the Protection of National Minorities, Opinion on Bulgaria (ACFC/OP/I(2006)001), pp. 10, 23.

<sup>84</sup> For example, with regard to Arabic and Portuguese in Spain, Cypriot Maronite Arabic in Cyprus, and Croatian, German and Serbian in Slovenia.

<sup>85</sup> See Jonathan Wheatley: Georgia and the European Charter for Regional or Minority Languages, European Centre for Minority Issues, Working Paper No. 42, June 2009, p. 15.

<sup>86</sup> See Advisory Committee on the Framework Convention for the Protection of National Minorities, Opinion on Bulgaria (ACFC/OP/I(2006)001).



or partially congruent with 38 ECRML provisions. Of these, 37<sup>87</sup> are contained in the proposed 'menu' for Turkish. As Bulgarian legislation does in substance not go beyond these provisions, the menu for Turkish would merely mirror the congruent linguistic provisions of the FCNM and therefore contain a total of 37 ECRML provisions.

This menu not only contains a very low number of undertakings, but also limits itself to the weaker options of those undertakings that contain alternative (stronger and weaker) options. As far as education (Article 8 of the ECRML) is concerned, the menu foresees only teaching of Turkish "at least to those pupils who, or where appropriate whose families, so wish in a number considered sufficient", thereby mirroring the congruence between FCNM and ECRML as well as the situation in practice.

This "mirror approach" would have political and financial advantages. Firstly, the ratification instrument would not change the existing status of the minority languages, thereby contributing to a politically smooth ratification process. In addition, the synchronised application of related provisions of ECRML, FCNM and national legislation would contribute to a coherent minority policy. As far as financial advantages are concerned, the ratification instrument would make it possible that the application of the ECRML remains by and large cost-neutral.<sup>88</sup> It would also enable considerable synergies in periodic reporting to the Council of Europe as the language-related parts of the State report on the application of the FCNM would represent the basis of the State report on the ECRML.

### Proposed Declaration (instrument of ratification)

1. Bulgaria declares that, in accordance with Article 2, paragraph 1, of the European Charter for Regional or Minority Languages, the provisions of Part II of the Charter shall apply to the Albanian, Armenian, Aromanian, German, Greek, Ladino, Macedonian, Romani, Romanian, Russian, Tatar and Turkish languages.

2. Minority languages within the meaning of the Charter in Bulgaria shall be the Albanian, Armenian, Aromanian, German, Greek, Ladino, Romani, Romanian, Russian, Tatar and Turkish languages; a regional language within the meaning of the Charter in Bulgaria shall be the Macedonian language.

3. In accordance with Article 2, paragraph 2, and Article 3, paragraph 1, of the Charter, Bulgaria declares that the following provisions shall apply to the Turkish language:

#### Article 8 – Education

Paragraph 1.a.iii; b.iv; c.iv; d.iv; f.iii; g; h.  
Paragraph 2.

#### Article 9 – Judicial authorities

Paragraph 1.a.ii.

#### Article 10 – Administrative authorities and public services

Paragraph 1.a.v; b; c.  
Paragraph 2.a; b; d; g.  
Paragraph 3.c.  
Paragraph 4.c.  
Paragraph 5.

<sup>87</sup> One of the 38 congruent ECRML provisions (Article 10.2.c) concerns regional authorities that do not exist in Bulgaria.

<sup>88</sup> See Snežana Trifunovska: The case of the Baltic states, in: Council of Europe (ed.): *Minority language protection in Europe: into a new decade*, Strasbourg 2010, pp. 67-84 (p. 75).

#### Article 11 – Media

Paragraph 1.a.iii; b.ii; c.ii; d; e.ii; f.ii; g.  
Paragraph 2.  
Paragraph 3.

#### Article 12 – Cultural activities and facilities

Paragraph 1.a; b; c; d; e; f.

#### Article 13 – Economic and social life

Paragraph 1.a.

#### Article 14 – Transfrontier exchanges

Paragraph a.  
Paragraph b.



## 6. Estonia

Estonia has not signed the European Charter for Regional or Minority Languages (ECRML). However, it ratified the Framework Convention for the Protection of National Minorities (FCNM) in 1997.

### 6.1 Presentation of the regional or minority language situation

According to the definition in Article 1.a of the ECRML, the concept “regional or minority languages” means languages that are i. 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 ii. different from the official language(s) of that State. It does not include either dialects of the official language(s) of the State or the languages of migrants”.

In Estonia, five traditionally used languages comply with that definition:<sup>89</sup>

- **Finnish** has been increasingly used in Estonia in the course of the twentieth century. In 1922, 401 Finns lived in the country, but there were 1 608 in 1934 and more than 16 000 after World War II. Statistics from Estonia for 2010<sup>90</sup> indicate that 10 639 people belong to the Ingrian Finnish national minority and reside mainly in the counties of Harju, Ida-Viru, Tartu and Lääne-Viru. As far as the “traditional use” in conformity with Article 1.a of the ECRML is concerned, Finnish, as the language of a “newly-emerged national minority”<sup>91</sup>, still represents a borderline case.

- **German** has had a traditional presence in Estonia since the thirteenth century. In 1922, 18 319 Germans lived in Estonia, some of whom stayed after the minority’s resettlement (1939-1941). There are currently (2010) 1 912 Germans who, pursuant to the National Minorities Cultural Autonomy Act, have the explicit right to cultural self-government. Tallinn has a bilingual German school and Heimtali (Viljandi county) officially bears its German name with an Estonian ending.

- **Latvian** has a traditional presence in the current territory of Estonia, namely in the counties of Valga and Võru (for example, in Tsiistre/Rõuge). At present (2010), 2 196 people belong to the Latvian minority.

- **Russian** has had a traditional presence since the sixteenth century when religious dissidents, the Old Believers, started continuous settlement in the territory of today’s Estonia. The Old Believers settled on the western shore of Lake Peipus, while, sometime later, administrative staff of the Russian Empire and labour immigrants moved mainly to Tallinn and Narva. There are currently 342 379 Russians (2010) of whom the autochthonous Russians form only a small part. In 1989, their number was estimated at 37 500,<sup>92</sup> including about 15 000 Old Believers.<sup>93</sup> The areas where there are compact Russian settlements are the main industrial towns in the north-east of the country bordering the Russian Federation: the Districts of Tartu and Jõgeva on the western shore of Lake Peipus, the Districts of Harju (especially Tallinn) and Ida-Viru (Narva in particular) with the latter even having a Russian majority.<sup>94</sup>

- **Swedish** has a traditional presence which dates back to the thirteenth century, when Swedish fishermen settled on the islands of Vormsi, Osmussaar, Pakri, Naissaar and Ruhnu

<sup>89</sup> See Report submitted by Estonia pursuant to Article 25, paragraph 1 of the Framework Convention for the Protection of National Minorities (ACFC/SR(1999)016), pp. 12-16, 65-66, 75.

<sup>90</sup> See <http://pub.stat.ee/px-web.2001/Dialog/statfile1.asp>

<sup>91</sup> See Report submitted by Estonia pursuant to Article 25, paragraph 1 of the Framework Convention for the Protection of National Minorities (ACFC/SR(1999)016), p. 14.

<sup>92</sup> See *Ibidem*, p. 13.

<sup>93</sup> See Press and Information Department of the Estonian Ministry of Foreign Affairs, Fact Sheet Estonia Today “Russian Old Believers in Estonia”, 2004.

<sup>94</sup> See Karl Cordell and Stefan Wolff: The Ethnopolitical Encyclopedia of Europe, Basingstoke 2004, p. 572.

and on the Noarootsi Peninsula. In 1939, Estonian Swedes were forced to leave the islands of Osmussaar, Naissaar and Pakri as Soviet military bases were established there. From 1941 to 1944, approximately 7 000 Estonian Swedes left for Sweden. According to the 2000 census,<sup>95</sup> there were 300 Swedes left in Estonia of whom 107 declared Swedish to be their mother tongue. The municipality of Vormsi has re-adopted its Swedish place name Ormsö and the municipality of Noarootsi has introduced Nuckö as a co-official name.

In addition to the aforementioned regional or minority languages, Romani and Yiddish have traditionally been present in Estonia; they constitute non-territorial languages in the sense of the ECRML:<sup>96</sup>

- **Romani** (Latvian and North Russian dialects) has had a traditional presence in Estonia since 1533. In 1841, the Roma were forced to settle in Laiuse parish (Raaduvere village). The 2000 census<sup>97</sup> counted 542 Roma in Estonia, 426 speaking Romani as their mother tongue.

- **Yiddish** has been present in Estonia since the nineteenth century when Jews emigrated from the Latvian part of Courland.<sup>98</sup> The census of 2000 recorded 124 people who spoke Yiddish as their mother tongue. At present (2010), there are 1 801 Jews who nearly all live in Estonia’s urban areas. Like the German, Russian and Swedish minorities, the Jewish minority has the explicit right to cultural self-government pursuant to the National Minorities Cultural Autonomy Act.

### 6.2 Compliance of legislation with the ECRML

Since its independence, Estonia has pursued policies of integration of minorities under the aegis of the doctrine of “identity rebuilding”, meaning the recognition of minorities who traditionally resided on the territory of Estonia prior to becoming a republic under the Soviet Union. In the Declaration contained in the instrument of ratification of the Framework Convention for the Protection of National Minorities of 1997, the “national minorities are considered as those citizens of Estonia who reside on the territory of Estonia; maintain longstanding, firm and lasting ties with Estonia; are distinct from Estonians on the basis of their ethnic, cultural, religious or linguistic characteristics; are motivated by a concern to preserve together their cultural traditions, their religion or their language, which constitute the basis of their common identity”.<sup>99</sup>

Another aspect of the integration is identity politics,<sup>100</sup> based on the rebuilding of an independent State. According to this trend, the integration of minorities into Estonian society is based on the Estonian identity in the public sphere, while national-cultural identity of minorities is transferred to the non-governmental sector. The integration policies are included in Estonia’s two consecutive integration strategies “Integration in Estonian Society 2000–2007” and “Estonian Integration Programme 2008-2013”.<sup>101</sup>

That has turned many post-Soviet groups who migrated to Estonia during the Soviet period into the status of immigrants, with a large Russian-speaking population, who are not necessarily ethnic Russians. Many of those have still not been naturalised and do not have Estonian citizenship. Such situation has an implication on the possibilities of applying for National Cultural Autonomy Status with the right to conduct educational programmes in minority languages.

<sup>95</sup> No more recent data available.

<sup>96</sup> See Explanatory Report on the ECRML, paragraph 36.

<sup>97</sup> No more recent data available.

<sup>98</sup> See Estonian Bureau for Lesser-Used Languages, <http://www.estblul.ee/ENG/Languages/yiddish.html>

<sup>99</sup> See <http://conventions.coe.int/Treaty/Commun/ListeDeclarations.asp?NT=157&CM=8&DF=17/08/2011&CL=ENG&VL>

<sup>100</sup> See [http://www.culturalpolicies.net/down/estonia\\_032011.pdf](http://www.culturalpolicies.net/down/estonia_032011.pdf), p. EE-4.

<sup>101</sup> See [http://www.kul.ee/webeditor/files/integratsioon/Loimumiskava\\_2008\\_2013\\_ENG.pdf](http://www.kul.ee/webeditor/files/integratsioon/Loimumiskava_2008_2013_ENG.pdf)



In addition to the issue of minorities and their cultural-linguistic identities, two other issues are hotly debated in Estonia - the revival of Võru<sup>102</sup> in south-eastern Estonia, which is seeking recognition as a regional language and is regarded by the authorities as a dialect of Estonian,<sup>103</sup> and the revival of Seto and its culture on the border with Russia.

The issues related to the minorities are under the supervision of the Ministry of Culture. The Development Plan 2011-2014 of the Ministry of Culture includes among its priorities the Estonian cultural space, which is enriched and supported by cultural diversity.<sup>104</sup>

The Law on Basic and Secondary Schools (Gymnasiums) of 2003 and the Language Act of 1995<sup>105</sup> regulate the teaching in and of the languages of minorities. Russian is still the main medium of instruction in non-Estonian schools. There are two possibilities for the teaching of the language and culture by national cultural societies: to apply for their teaching in general education schools as an elective subject, or to teach these in Sunday schools formed by the respective society.

In the first case, the activity is based on the Act "The terms and procedure of creating possibilities for students acquiring basic education whose native language is not the language of instruction of the school for the learning of their native language and national culture". This extends to students who, when communicating with a parent at home, speak a language which is the native language of at least one parent. The school has an obligation to enable the students to acquire basic education in language and culture to the extent of at least two lessons a week as an elective subject, if at least ten of the students' parents speaking the same native language have filed a corresponding application to the director of the school. It should be mentioned that until now the Act has not had a substantial response.<sup>106</sup>

Sunday schools operate on the basis of the Private Hobby Schools Act. If the national-cultural society wishes to organise language and culture courses and the statutes of the national minority cultural society has a reference to training, courses for adults may be organised and hobby groups for children may be opened. The latter can be done on the assumption that the duration of provision of education does not exceed six months or 120 hours per year.<sup>107</sup> Sunday schools enable the fulfilment of two important functions: to introduce national culture to future generations and make them familiar with it, and, secondly, to alleviate the number of people without definite linguistic and cultural identity.

As an alternative to the use of Estonian in secondary education, Russian language secondary education is also available, as, partly, is vocational education. According to official policy, effective as of 2011, Russian-language gymnasiums should adopt Estonian as the language of instruction for at least 60% of the lessons. The Law on Basic Schools and Gymnasiums provides a possibility for schools to apply for the use of another language of tuition, but the Government Decree on Educational Standards of 2006, in force from January 2011, fails to mention this.<sup>108</sup>

Intercultural education is part of the civic education course and is obligatory from the fourth grade. The above-mentioned decree is aimed, partially, at furthering and supporting the

<sup>102</sup> See <http://www.wi.ee/index.php/welcome?lang=en-GB>

<sup>103</sup> See [http://www.culturalpolicies.net/down/estonia\\_032011.pdf](http://www.culturalpolicies.net/down/estonia_032011.pdf), p. EE-20.

<sup>104</sup> See [http://www.culturalpolicies.net/down/estonia\\_032011.pdf](http://www.culturalpolicies.net/down/estonia_032011.pdf), p. EE-14.

<sup>105</sup> See the comparative analysis of national legislation and the provisions of the ECRML in Volume 2 of this handbook.

<sup>106</sup> See Vadyba / Management. 2006 m. No. 2(11) 94, Evelin Müüripeal: Organisation of Native Language Education in Estonia.

<sup>107</sup> See Vadyba / Management. 2006 m. No. 2(11) 94, Evelin Müüripeal: Organisation of Native Language Education in Estonia Regulation of the Government of the Republic // The terms and procedure of creating possibilities for students acquiring basic education whose native language is not the language of instruction of the school for the learning of their native language and national culture 20.05. 2003, RTI, 2003, 44, 302.

<sup>108</sup> See [http://www.culturalpolicies.net/down/estonia\\_032011.pdf](http://www.culturalpolicies.net/down/estonia_032011.pdf) p. EE-21.

participation in education of pupils with different mother tongues and cultural backgrounds, and urges schools to create possibilities for the study of their mother tongue.<sup>109</sup>

In general, the Constitution of the Republic of Estonia 1992/2003 (Article 52.3) as well as the Code of Criminal Procedure (Article 10) clearly states the option of using the mother tongue both in oral and written forms. Also, in the Code of Civil Procedure of 2003 (Article 7.2) such an option is available, including provisions for the use of interpreters.

The Law on Local Self-Governance gives 33 towns and 194 municipalities the responsibility for the educational and cultural needs of their inhabitants. In addition, there are 15 counties which represent the State in different regions, which are controlling the work of local self-governments. The official policy is the use of Estonian. In certain municipalities where a majority of inhabitants are ethnic Russians (at least half of the inhabitants), the local administration is legally obliged to offer services in both languages.<sup>110</sup> The articles of the Estonian Constitution (51.2) and the Language Act (10.1) give the right to use the minority language when submitting documents, and to receive answers from State agencies and from the local governments in the language of a national minority as well as in Estonian. Where the national minorities constitute the majority of inhabitants, the Language Act (Article 11) allows for its use as an internal working language.

One of the main functions of The Broadcasting Act of 1994 is to satisfy the information needs of all nationalities, including minorities<sup>111</sup> and, as a public broadcaster, Estonian Television produces programmes in Estonian and in Russian, a pendant to ETV, ETV2, includes 2½ hours of Russian-language programmes a day.<sup>112</sup> One of the public broadcasting company radio channels is broadcasting in Russian. In practice, a number of services are performed in Russian as well.<sup>113</sup>

After the gaining of re-independence in 1991, the interest of ethnic minorities in their culture and language also increased considerably. In relation to this re-creation, the Law on Cultural Autonomy of National Minorities found its way on to the agenda. This was achieved in 1993. Similarly to the law of 1925, the main objective of the Cultural Autonomy Law was to establish on behalf of national minority cultural societies, corresponding to the Act, a partner at local government and State level for the teaching of native languages and promoting of national culture.<sup>114</sup>

Several ethnic cultural organisations exist in many regions of Estonia, both as individual organisations and as umbrella organisations of specific associations<sup>115</sup> counting 220 of those being members of the House of Nationalities. Two Councils have been established so far: the Finnish in 2004 and the Swedish in 2007. The Russian organisations applied for the establishment of the Russian Cultural Autonomy but, so far, it has not been registered (2009).<sup>116</sup>

According to the Language Act of 1992 (with several amendments, latest in February 2011), all public display related to economic activity must be in Estonian. All reporting of the enterprises – private and non-private – shall be done in Estonian. The Language Inspectorate is responsible for the oversight of the implementation of these requirements. The Law on Cultural Autonomy (Article 24) allows for the establishment of ethnic social care institutions which receive allocations from the State budget and from the local government budget.

<sup>109</sup> See [http://www.culturalpolicies.net/down/estonia\\_032011.pdf](http://www.culturalpolicies.net/down/estonia_032011.pdf), p. EE-43.

<sup>110</sup> See [http://www.culturalpolicies.net/down/estonia\\_032011.pdf](http://www.culturalpolicies.net/down/estonia_032011.pdf), p. EE-19.

<sup>111</sup> See [http://www.culturalpolicies.net/down/estonia\\_032011.pdf](http://www.culturalpolicies.net/down/estonia_032011.pdf), p. EE-34.

<sup>112</sup> See [http://www.culturalpolicies.net/down/estonia\\_032011.pdf](http://www.culturalpolicies.net/down/estonia_032011.pdf), p. EE-20.

<sup>113</sup> See [http://www.culturalpolicies.net/down/estonia\\_032011.pdf](http://www.culturalpolicies.net/down/estonia_032011.pdf), p. EE-20.

<sup>114</sup> See Vadyba / Management. 2006 m. No. 2(11) 91, Evelin Müüripeal: Organisation of Native Language Education in Estonia.

<sup>115</sup> See <http://www.etnoweb.ee>

<sup>116</sup> See [http://www.culturalpolicies.net/down/estonia\\_032011.pdf](http://www.culturalpolicies.net/down/estonia_032011.pdf), p. EE-19.



Estonia has a number of bilateral co-operation agreements with neighbouring countries and kin-states (for example, Latvia, Russian Federation, Germany) which also include cultural co-operation.<sup>117</sup>

Estonia has a number of regulations and many practices relating to minority languages. In particular, the Russian, German, Swedish and Jewish minorities are well established. This could also be extended to other minorities. Estonia could adopt the ECRML with the perspective of including minority languages in the public spheres related to the indicated areas of language use.

### 6.3 Proposal for an instrument of ratification

There is no official information available which would specify the reasons why Estonia has not yet ratified the ECRML. However, in Estonia (as in Latvia), the position of the Russian language is of major concern for the country's integrity and appears to be the main reason for non-ratification so far. At present (2010), 25.7% of the Estonian population are Russians. The presence of a large Russian-speaking population is mainly the result of immigration during the Soviet period and, after Estonia's independence, created a fear that Estonians could find themselves in a minority in their own country. This led to an exclusive citizenship policy for citizens of pre-1940 Estonia and their successors, whereas for all others, the process for naturalisation included a strict requirement that they possessed knowledge of Estonian.<sup>118</sup>

The declaration (instrument of ratification) proposed below takes these concerns into account.

#### Explanatory note on the main features of the proposed instrument of ratification

##### 1. The proposal includes seven minority languages, among them Russian.

According to the definition in Article 1.a of the ECRML, the concept “regional or minority languages” means languages that are i. 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 ii. different from the official language(s) of that State. It does not include either dialects of the official language(s) of the State or the languages of migrants”.

In Estonia, the following languages consequently comply with the definition in Article 1.a and, pursuant to Article 2.1, would be covered by the ECRML: Finnish, German, Latvian, Russian and Swedish. Furthermore, Romani and Yiddish have traditionally been present in Estonia; as stated in the Explanatory Report on the ECRML,<sup>119</sup> they constitute, non-territorial languages which would be covered by Part II of the ECRML.

In this context it must be noted that the ECRML does not provide for the possibility to exclude one of the regional or minority languages mentioned above from its scope of application. In fact, the Committee of Experts, which is the authoritative body in charge of interpreting the ECRML and monitoring its application,<sup>120</sup> has not accepted the initial intention of some States Parties not to apply the ECRML to certain languages and, with the support of the Committee of Ministers of the Council of Europe, monitors the application of the treaty to those languages.<sup>121</sup>

<sup>117</sup> See <http://www.vm.ee/?q=en/taxonomy/term/53>

<sup>118</sup> See Snežana Trifunovska: The case of the Baltic states, in: Council of Europe (ed.): *Minority language protection in Europe: into a new decade*, Strasbourg 2010, pp. 67-84 (pp. 70-73).

<sup>119</sup> See paragraph 36.

<sup>120</sup> See, for example, First Report on the Application of the European Charter for Regional or Minority Languages in Slovakia (ECRML(2007)1), paragraph 37.

<sup>121</sup> For example, with regard to Arabic and Portuguese in Spain, Cypriot Maronite Arabic in Cyprus, and Croatian, German and Serbian in Slovenia.

##### 2. The proposal reiterates that the ECRML confines the protection of regional or minority languages to the geographical area where they are traditionally spoken.

While the Russian language has been spoken in Estonia over a long period and does hence qualify as a “regional or minority language” eligible for ECRML coverage, the Convention itself would limit its geographical scope of application to those territories of Estonia where Russian (and each other regional or minority language) has its “historical base”.<sup>122</sup> Consequently, the ECRML would not apply to minority languages within territories where speakers of this language have not been present over the centuries.

The application of the ECRML to “languages that are traditionally used within a given territory of a State by nationals of that State”<sup>123</sup> is a “general rule”<sup>124</sup> of the treaty. This is emphasised, *inter alia*, in the following paragraphs of the ECRML's Explanatory Report:

33. The languages covered by the Charter are primarily territorial languages, that is to say languages which are traditionally used in a particular geographical area. (...)

(...)

89. The Charter normally confines the protection of regional or minority languages to the geographical area where they are traditionally spoken. (...)

According to the Explanatory Report,<sup>125</sup> it is up to each State to define more precisely the territory where the regional or minority languages have their historical base. In Estonia, the settlements of the Old Believers constitute an important part of the Russian language's historical base.

Against this background, the Committee of Experts' case law is of interest. When in the past it had to deal with situations in which Russian was being used by both traditional groups such as Old Believers and by twentieth century migrants, the Committee of Experts monitored the application of the ECRML to Russian in its traditional language area, namely the Old Believers' settlements. In respect of these historical settlements, however, the Committee of Experts did not make a distinction between “Old Russians” and “New Russians”. In line with this pragmatic interpretation, non-citizens who speak a regional or minority language and live in the historical territory of that language alongside speakers of the same language who are citizens benefit equally from the application of the ECRML in this territory.<sup>126</sup>

The declaration (instrument of ratification) proposed below contains a statement reiterating that the ECRML shall apply to the Finnish, German, Latvian, Russian and Swedish languages in the territories within which these languages have traditionally been used by nationals of Estonia and where they have their historical base.

Notwithstanding the ECRML's focus on traditional language areas, the Estonian authorities would be free to apply the substance of the treaty provisions in non-traditional language areas as well. However, such measures would be a matter of domestic policy rather than of applying the ECRML, and consequently not be subject to monitoring by the Committee of Experts.

<sup>122</sup> See Explanatory Report on the ECRML, paragraph 34.

<sup>123</sup> See Article 1.a.i of the ECRML.

<sup>124</sup> See Explanatory Report on the ECRML, paragraph 90.

<sup>125</sup> See Explanatory Report on the ECRML, paragraph 34. As an exception, two of the 68 options contained in Part III of the ECRML – Articles 8.2 and 12.2 – deal with regional or minority languages in territories where these languages have not been traditionally present with a view to covering, for example, minority language speakers who have migrated to major cities. Both provisions are not included in the declaration (instrument of ratification) set out below.

<sup>126</sup> No distinction between traditional and non-traditional language areas is made if the minority population has in whole or in part been resettled to another area, for example, owing to lignite mining.



### 3. The proposal mirrors the existing legislation and is cost-neutral.

Article 4.2 of the ECRML, and also the treaty's spirit and purpose, requires that each regional or minority language receives at least the level of protection under the ECRML that it already enjoys at the time of ratification.<sup>127</sup> Therefore, the provisions to be included in the instrument of ratification in respect of these languages need to at least mirror the already existing level of protection provided in accordance with national legislation as well as bilateral or multilateral international agreements such as the FCNM.

The proposed instrument of ratification does not go beyond this minimum requirement, and includes only ECRML provisions with which Estonia de facto already complies when applying similar provisions of national legislation or the FCNM.

This "mirror approach" would have political and financial advantages. Firstly, the instrument of ratification would not change the existing status of the minority languages, thereby supporting civic integration in Estonia and contributing to a politically smooth ratification process. In addition, the synchronised application of related provisions of ECRML, FCNM and national legislation would contribute to a coherent minority policy. As far as financial advantages are concerned, the instrument of ratification would make it possible that the application of the ECRML remains by and large cost-neutral.<sup>128</sup> It would also enable considerable synergies in periodic reporting to the Council of Europe because the language-related parts of the State report on the application of the FCNM would represent the basis of the State report on the ECRML.

### 4. The proposal does not grant a special status to any minority language.

As regards the provisions that can be "mirrored" in the instrument of ratification, it first of all needs to be underlined that the FCNM contains language-related provisions that are fully or partially congruent with 38 ECRML provisions. Given that a State which prepares ratification of Part III (Articles 8-14) of the ECRML needs to select at least 35<sup>129</sup> of the 68 options contained therein, Estonia already complies with more than that minimum number through the application of the FCNM. It follows from this that, currently, Estonian legislation already protects the Finnish, German, Latvian, Russian and Swedish languages at the level of Part III of the ECRML.

In addition to the ECRML provisions already covered in Estonia through the application of the FCNM (and related national legislation), Estonian national legislation matches further ECRML provisions. The national provisions concerned apply generally and do not grant a special status to a specific minority language in the country, even if the language is widely-used. The most important exception is the Law on Cultural Autonomy for National Minorities of 26 October 1993 which stipulates that "[n]ational minority cultural autonomy may be established by persons belonging to the German, Russian, Swedish or Jewish minorities and persons belonging to national minorities with a membership of more than 3 000".<sup>130</sup>

On the basis of the existing legal situation in Estonia, and taking account of Article 4.2 of the ECRML (see under 3. above), the proposed instrument of ratification includes 42 ECRML provisions in respect of Russian (36<sup>131</sup> provisions based on the FCNM plus 6<sup>132</sup> provisions additionally ensuing from national legislation) and 41 ECRML provisions in respect of Finnish, German, Latvian

<sup>127</sup> The Committee of Experts and the Committee of Ministers have confirmed that, pursuant to Article 4.2, a State Party cannot validly opt for a level of protection under the ECRML which confers fewer rights. See in this regard Jean-Marie Woehrling: *The European Charter for Regional or Minority Languages – A critical commentary*, Council of Europe Publishing, Strasbourg 2005, p. 99.

<sup>128</sup> See Snežana Trifunovska, op. cit., p. 75.

<sup>129</sup> Pursuant to Article 2.2 of the ECRML.

<sup>130</sup> *Ibidem*.

<sup>131</sup> As stated above, the FCNM covers 38 ECRML provisions. Two of them have not been considered here: Article 8.2, which concerns territories in which the regional or minority languages have not been traditionally used, and Article 10.2.c, which concerns regional authorities that do not exist in Estonia.

<sup>132</sup> See Articles 8.1.e.ii, 9.1.a.iv, 9.1.b.ii, 12.1.g and 13.2.c of the ECRML.

and Swedish (36 plus 5). With the exception of one provision<sup>133</sup> additionally applied to Russian, the 'menus' for Finnish, German, Latvian, Russian and Swedish are identical.

Grouping the five minority languages would imply that no language is singled out in the instrument of ratification and granted a de facto special status going beyond the present legal status of the minority languages. Most notably, no language would be granted the status of a second official language at local or national levels. Furthermore, grouping would comply with the requirement of Article 4.2 that the instrument of ratification needs to at least mirror the already existing level of protection provided in accordance with national legislation as well as international agreements.

On the other hand, grouping languages with different numbers of speakers would not mean that the practical situation of languages used by a higher number of people cannot be further taken into account at a later stage. In accordance with the procedure foreseen in Article 3.2, the Estonian authorities may, if they so wish, accept additional ECRML provisions in respect of some or all minority languages at any time after ratification.

### 5. The proposal contributes to an integrated Estonian society, including the command of the official State language.

The proposed instrument of ratification does not include ECRML provisions that provide for education with the minority language as the only or main medium of instruction.<sup>134</sup> All provisions proposed for ratification guarantee the use of the official State language as a medium of instruction.

#### Proposed Declaration (instrument of ratification)

1. Estonia declares that, in accordance with Article 2, paragraph 1, of the European Charter for Regional or Minority Languages, the provisions of Part II of the Charter shall apply to the Finnish, German, Latvian, Romani, Russian, Swedish and Yiddish languages.

2. In accordance with Article 2, paragraph 2, and Article 3, paragraph 1, of the Charter, Estonia declares that the following provisions shall apply to the Finnish, German, Latvian, Russian and Swedish languages:

#### Article 8 – Education

Paragraph 1.a.ii; b.ii; c.ii; d.iii; e.ii; f.ii; g; h.

#### Article 9 – Judicial authorities

Paragraph 1.a.ii; a.iv; b.ii.  
Paragraph 3 (for Russian).

#### Article 10 – Administrative authorities and public services

Paragraph 1.a.v; b; c.  
Paragraph 2.a; b; d; g.  
Paragraph 3.c.  
Paragraph 4.c.  
Paragraph 5.

#### Article 11 – Media

Paragraph 1.a.iii; b.ii; c.ii; d; e.i; f.i; g.  
Paragraph 2.  
Paragraph 3.

<sup>133</sup> See Article 9.3 of the ECRML; this undertaking concerns the translation of the most important national statutory texts into the regional or minority language which already happens with respect to Russian.

<sup>134</sup> See Articles 8.1.a.i, b.i, c.i, d.i and e.i of the ECRML.



**Article 12 – Cultural activities and facilities**

Paragraph 1.a; b; c; d; e; f; g.

**Article 13 – Economic and social life**

Paragraph 1.a.

Paragraph 2.c.

**Article 14 – Transfrontier exchanges**

Paragraph a.

Paragraph b.

3. Estonia declares that, in accordance with Article 1, paragraphs a and b of the Charter, the provisions of the Charter shall apply to the Finnish, German, Latvian, Russian and Swedish languages in the territories within which these languages have traditionally been used by nationals of Estonia and where they have their historical base.

**7. Georgia**

When acceding to the Council of Europe, Georgia committed itself to signing and ratifying the European Charter for Regional or Minority Languages (ECRML) by 27 April 2000,<sup>135</sup> but, so far, has not signed it. Ratification of the ECRML is also explicitly included in Georgia's Individual Partnership Action Plan (IPAP) with NATO (2004) as part of Georgia's commitments. Georgia ratified the Framework Convention for the Protection of National Minorities (FCNM) in 2005.

**7.1 Presentation of the regional or minority language situation**

According to the definition in Article 1.a of the ECRML, the concept “regional or minority languages” means languages that are i. 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 ii. different from the official language(s) of that State. It does not include either dialects of the official language(s) of the State or the languages of migrants”.

In Georgia, 15 traditionally used languages comply with that definition:<sup>136</sup>

- **Abkhazian** is an official language of Abkhazia and is also present in Tbilisi, Ajara, and Rustavi. According to the 2003 Abkhaz census, it has a population of 216 000, of which about half speak Abkhazian. In Georgia proper, there are about 3 500 Abkhazians. The Abkhazian language has an old traditional presence.

- **Neo-Aramaic** is used by the Assyrians in Georgia. They are descendants of migrants who arrived from Turkey and Iran, possibly as early as the 1770s, and certainly after the Persian-Russian war from 1826 to 1828, and then throughout the nineteenth century. The Assyrians speak two dialects of Neo-Aramaic. *Assyrian* Neo-Aramaic is used in Dzveli Kanda, western Georgia and partly in Tbilisi. *Bohtan* Neo-Aramaic is spoken in Gardabani and, partly, in Tbilisi, but arrived in Georgia only during World War I and is therefore to a lesser degree autochthonous in the country than Assyrian Neo-Aramaic. According to the 2002 Georgia census, 3 299 people belong to the Assyrian national minority, although, according to Assyrian estimates, the population is said to be about 5 000.

- **Armenian** has a long traditional presence in areas that are today part of Georgia. Russo-Persian and Russo-Turkish wars in the nineteenth century led to additional immigration of Armenians to Georgia. Today, the most sizeable presence of those belonging to the Armenian national minority is in Tbilisi Samtskhe-Javakheti, and Abkhazia. Compact settlements can also be found in Kvemo Kartli, Ajara, Kakheti, Shida Kartli, and in other urban areas. According to the 2002 Georgia census, there are 248 929 persons belonging to the Armenian national minority in Georgia proper, with an additional 67 000 in Abkhazia.

- **Avar** has been present in Georgia since the second half of the nineteenth century when Avars established more permanent settlements near Kvareli. According to the 2002 census, 1 996 people belong to the Avar national minority. In Georgia today, Avars live in the villages of Saruso, Tivi, and Chantliskure in Kvareli district, in Lagodekhi town in Kalinoka district, and in Ibtsochi village in Akhmeta district.

<sup>135</sup> See Opinion of the Parliamentary Assembly of the Council of Europe No. 209/1999.

<sup>136</sup> The following presentation is largely based on: Tom Trier and George Tarkhan-Mouravi, *Georgia – An Ethnopolitical Handbook*, London, forthcoming 2012 (Bennett & Bloom). See also Raymond Gordon (ed.): *Ethnologue – Languages of the World*, fifteenth edition, Dallas 2005; Glanville Price (ed.): *Encyclopedia of the Languages of Europe*, Oxford 2001; Christofer Moseley/R.E. Asher: *Atlas of the World's Languages*, New York 1994; Detlev Wahl: *Lexikon der Völker Europas und des Kaukasus*, Rostock 1999; Report submitted by Georgia pursuant to Article 25, paragraph 1 of the Framework Convention for the Protection of National Minorities (ACFC/SR(2007)001), pp. 7, 10.



- **Azeri** has traditionally been present in Georgia since the time of the Seljuk Turk invasions of Georgia in the eleventh century, although they were not classified as “Azerbaijanis” until the late 1920s, after the Soviet takeover of Georgia. The biggest settlements of the Azeri national minority are in the regions of Kvemo Kartli and Kakheti, while a significant number also live in Tbilisi and Rustavi. A few Azeri villages can also be found in Shida Kartli and Mtskheta-Mtianeti. According to the 2002 census, there are 284 761 Azeris living in Georgia.

- **Chechen** (Kist) has had a presence in Georgia which began primarily in the late eighteenth century as a result of Russian military activities in the North Caucasus. According to the 2002 census, there are 7 110 Kists and 1 271 Chechens, with an additional 200 Chechens in Sokhumi. Kists are compactly settled in Pankisi Gorge (Akhmeta district) while Chechens live in Pankisi and Tbilisi. Most Kists identify themselves as Chechen and speak Kist, a dialect of Chechen.

- **Estonian** has had a presence in Georgia since the middle of the nineteenth century. According to the 2002 Georgian census, 59 people belong to the Estonian national minority and according to the 2003 Abkhaz census, there are an additional 446. Of those in Abkhazia, people of the Estonian minority reside in a compact settlement in Salme village in Gagra district and are scattered in the villages of Sulevo, Estonka, and Sokhumi. A small population of Estonians can also be found in Tbilisi and in other urban areas.

- **German** has had a traditional presence in Georgia since 1817 when Germans founded Sartichala/Mariensfeld and later Neu Tiflis (now part of Tbilisi-Kukia), Alexandersdorf (Tbilisi-Didube), Bolnisi/Katharinenfeld and other colonies. The deportation of the German minority to Kazakhstan and Siberia in 1941 did not affect all Germans, and a number of deportees have returned to Georgia since 1956. There are now about 2 000 Germans living, *inter alia*, in Bolnisi and Tbilisi where they have a German school, a congregation, a newspaper and a cultural centre.

- **Greek** has had a presence in Georgia since the mid-eighteenth century, with vast numbers of Greeks settling in Georgia throughout the nineteenth and the beginning of the twentieth centuries. There are 16 652 persons belonging to the Greek national minority according to the 2002 Georgian census and 2003 Abkhaz de facto census, although these do not make a distinction between Turkish-speaking Anatolian Greeks and Greek-speaking Pontic Greeks. Pontic Greeks are largely settled in the territories of Abkhazia and Ajara, as well as in the Districts of Borjomi and Akhaltsikhe and a few villages in Kvemo Kartli.

- **Kurmanji**, a dialect of Kurdish spoken by members of the Yezidi-Kurdish national minority, has had a presence in Georgia since the first immigration wave of Yezidi-Kurds to Georgia in the second half of the eighteenth century. In addition to the Yezidi-Kurds, Muslim Kurds settled in Georgia mostly in the second part of the nineteenth century but were largely deported in 1944. Kurmanji speakers have settled in the urban areas of Tbilisi, Telavi, Rustavi, Batumi, and Tianeti, as well as in the rural settlements in Gardabani and Mtskheta districts. According to the 2002 census, there are 20 843 Kurds and Yezidis (listed separately), although, according to a 2009 estimate, this number has dropped to 6 000.

- **Ossetian** has been present in Georgia for many centuries, with steady increases in the number of its speakers in the eighteenth and nineteenth centuries. According to 2009 estimates, there are 30 000 to 60 000 persons belonging to the Ossetian national minority in South Ossetia; according to the 2002 Georgia census, there are 38 028, although, based on 2009 estimates, this number has dropped to 26 000. While the highest concentration of Ossetians is in South Ossetia, Ossetians also live in central and eastern Georgia, particularly in rural settlements in the regions of Shida Kartli, Kakheti and Mtskheta-Mtianeti, as well as in the cities of Tskhinvali, Tbilisi, Rustavi, and Gori.

- **Polish** has been present in Georgia since the time of two major waves of Polish immigration following insurgencies into Poland in 1830 and 1863. The 2007 Polish embassy registration, including Abkhazia, accounts for 1 250 persons belonging to the Polish national minority,

although the 2002 Georgian census puts this number at 870, with an additional 200-350 in Abkhazia. Most persons belonging to the Polish minority live in Tbilisi and Sokhumi, while smaller groups live scattered in other parts of the country, mostly in Samtskhe and Kakheti.

- **Russian** has been present in Georgia since the late eighteenth century. According to the 2002 Georgia census and the 2003 de facto Abkhazia census, 67 671 people belong to the Russian national minority in Georgia proper and 23 420 in Abkhazia. Over half of those live in Tbilisi, with others living in large cities such as Batumi, Rustavi, Kutaisi, and Poti. The rest of the Russian population, roughly 32% overall, lives in the rural regions.

- **Turkish**-speaking Anatolian Greeks have had a presence in Georgia since the mid-eighteenth century, with vast numbers of both Pontic and Anatolian Greeks settling in Georgia throughout the nineteenth and the beginning of the twentieth centuries. There are 16 652 persons belonging to the Greek national minority according to the 2002 Georgian census and 2003 Abkhaz de facto census, without making a distinction between Anatolian Greeks and Pontic Greeks. Anatolian Greeks, who use the Urum dialect of Turkish, mainly settled in southern Georgia and are today found in Kvemo Kartli, particularly in Tsalka district, Samtskhe-Javakheti, Ajara, and Tbilisi.

- **Ukrainian** has had a presence in Georgia since the late eighteenth century. The Ukrainian minority grew significantly during the early part of the Soviet period. Ukrainians live in Tbilisi, Rustavi, Kutaisi, Poti, and Batumi in Georgia proper, with those in Abkhazia mostly living in Sokhumi and Gagra. According to the 2002 Georgia census, there are 7 039 persons belonging to the Ukrainian national minority in Georgia proper; according to the 2003 de facto Abkhazia census, there are 1 797 people in Abkhazia.

## 7.2 Compliance of legislation with the ECRML

Since 2005, Georgia is party to the Framework Convention for the Protection of National Minorities and is therefore under an indirect obligation to comply with a considerable number of related provisions of the ECRML. As far as national legislation is concerned,<sup>137</sup> several Georgian laws correspond to the provisions of Article 8 of the ECRML (education). Article 4.3 of the Law on General Education (2005) states that “[t]he citizens of Georgia whose native language is not Georgian have the right to receive full general education in their vernacular language”, while learning Georgian, as well as Abkhazian in the Abkhazian Autonomous Republic. It follows from this provision that there exists a right not just to teaching of a minority language, but even to teaching (various subjects) in such a language at all levels of general education. Under Article 4 of the Law on Higher Education (2004), Georgian, along with Abkhazian in Abkhazia, is the language of instruction in higher education. Article 4.4 of the Provision on the Certification of Externally Acquired Education (2007) adds that classes of general education may also be taught in Russian, Armenian or Azerbaijani. Entrants to academic higher education programmes may choose to take their compulsory subjects in German or Russian, according to the Provision on Holding the Unified National Examinations (2005). This Provision also states that the faculty of a professional higher educational programme may choose an exam in German or Russian.

Article 9.1.a of the ECRML (criminal proceedings) is covered by the Criminal Code of Practice of Georgia (1998). According to Article 17.1, proceedings which take place in Abkhazia may also be conducted in Abkhazian. Article 17.2 stipulates that “[a] participant in a proceeding who does not speak or does not duly speak the language of the criminal proceeding<sup>138</sup> may make a statement, give evidence and explanation, raise motions and challenges, lodge an appeal,

<sup>137</sup> See the comparative analysis of national legislation and the provisions of the ECRML in Volume 2 of this Handbook.

<sup>138</sup> It must be noted that the obligations created by Article 9 of the ECRML apply irrespective of whether or not the person concerned speaks the official language of the country. Considering that only 31% of the persons belonging to national minorities in Georgia are able to speak Georgian fluently, the national provisions in question maintain, however, their relevance in most cases.



give a talk in court in the native or the other language in which he is proficient". Additionally, investigation and court documents "must be translated into [the participant's] native language". The Constitution of Georgia and the Criminal Code both state that a participant in legal proceedings who does not have a command of the official State language has the right to the services of an interpreter, because all criminal, civil and administrative proceedings are conducted in the official State language. Article 10 of the Law on the Common Courts (1997) adds that the expenses of an interpreter at such proceedings shall be "paid from the State budget."

Article 9.1.b of the ECRML (civil proceedings) is mirrored by the Civil Code of Practice of Georgia (1997), which assigns an interpreter to a participant who does not speak the official State language. Article 9.1.c (administrative proceedings) is only reflected minimally in the General Administrative Code of Georgia (1999), which states that the "official language of administrative proceedings" is Georgian and additionally Abkhazian in Abkhazia.

With regards to Article 10 of the ECRML (administrative authorities and public services), the Constitution of Georgia declares that the State language is Georgian and, in Abkhazia, also Abkhazian; therefore Abkhazian can be used in all administrative fields because they are covered in Articles 10.1 to 10.5 of the ECRML. The Law on the Public Service (1997) echoes the Constitution, stating that the two aforementioned official languages are the languages of public service. The Election Code of Georgia (2001) stipulates that ballot papers shall be printed in Georgian, and, in Abkhazian, in Abkhazia, and "if necessary in any other language which can be understood by the local population", thus covering all minority languages.

The Law on Broadcasting (2004) reflects Article 11.1.a.iii of the ECRML. It states that the Georgian Public Broadcaster shall broadcast "programmes on minorities and prepared by minority groups in their language". Additionally, this law allocates at least 25% of the public radio and television programme budget "to the airing of programmes connected with Abkhazia and the Tskhinvali region, and in programmes in minority languages".

Provisions of Article 12 of the ECRML (cultural activities and facilities) are reflected in the Law on Culture (1997) and the National Security Concept of Georgia. Article 10 of the former stipulates that "[e]very person has the right to protection of his or her traditional culture." Paragraph 5.12 of the National Security Concept asserts that "Georgia is creating favourable conditions and guarantees for the preservation of the cultural heritage of national minorities residing in its territory."

### 7.3 Proposal for an instrument of ratification

Only 31% of the persons belonging to national minorities in Georgia are able to speak Georgian fluently. Against this background, the Georgian authorities have so far been reluctant to ratify the ECRML because they fear that it may hamper civic integration, in particular by enhancing the linguistic rights of compactly settled minorities.<sup>139</sup> Furthermore, there are concerns that ratification may imply recognition of groups which consider themselves as ethnically Georgian and speak, according to the authorities, dialects of Georgian.

The declaration (instrument of ratification) proposed below takes these concerns into account.

<sup>139</sup> See Jonathan Wheatley: Georgia and the European Charter for Regional or Minority Languages, European Centre for Minority Issues, Working Paper No. 42, June 2009, p. 5.

## Explanatory note on the main features of the proposed instrument of ratification

### 1. The proposal includes 15 minority languages, but no dialects of Georgian.

According to the definition in Article 1.a of the ECRML, the concept "regional or minority languages" means languages that are i. 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 ii. different from the official language(s) of that State. It does not include either dialects of the official language(s) of the State or the languages of migrants".

The Committee of Experts of the ECRML, which is the authoritative body in charge of interpreting the ECRML and monitoring its application,<sup>140</sup> considers a language "traditionally used" if it has been present in the State concerned for a period of approximately 100 years.<sup>141</sup> In Georgia, the following languages consequently comply with the definition in Article 1.a and, pursuant to Article 2.1, would be covered by the ECRML: Abkhazian, Neo-Aramaic, Armenian, Avar, Azeri, Chechen, Estonian, German, Greek, Kurmanji, Ossetian, Polish, Russian, Turkish and Ukrainian.

In contrast, Article 1.a excludes dialects of the official language from the ECRML's scope of application. The Explanatory Report on the ECRML underlines in this respect that "it will be left to the authorities concerned within each State (...) to determine at what point a form of expression constitutes a separate language".<sup>142</sup> Hence, the proposed instrument of ratification does not include forms of expression that are considered by the Georgian authorities to be dialects of Georgian.

When monitoring the application of the ECRML, the Committee of Experts has never questioned a State Party's decision to consider a certain form of expression to be a dialect and not to apply the ECRML to it.<sup>143</sup> However, with regard to traditionally used "foreign" languages that undoubtedly differ from the official language, the Committee of Experts has not accepted the initial intention of some States Parties to exclude such languages from the ECRML's scope of application and, with the support of the Committee of Ministers of the Council of Europe, monitors the application of the ECRML to those languages.<sup>144</sup>

### 2. The proposal mirrors the existing status of the minority languages and is cost-neutral.

Article 4.2 of the ECRML, and also the treaty's spirit and purpose, requires that each regional or minority language receives at least the level of protection under the ECRML that it already enjoys at the time of ratification.<sup>145</sup> Therefore, the provisions to be included in the instrument of ratification in respect of these languages need to at least mirror the already existing level of protection provided in accordance with national legislation as well as bilateral or multilateral international agreements such as the FCNM.

The proposed instrument of ratification does not go beyond this minimum requirement and includes only ECRML provisions with which Georgia de facto already complies when applying similar provisions of national legislation and the FCNM.

<sup>140</sup> See, for example, First Report on the Application of the European Charter for Regional or Minority Languages in Slovakia (ECRML(2007)1), paragraph 37.

<sup>141</sup> The 100-years rule is, *inter alia*, based on Article 1.2 of Hungary's Law No. LXXVII of 1993 relating to the rights of ethnic and national minorities.

<sup>142</sup> See, for example, First Report on the Application of the European Charter for Regional or Minority Languages in Slovakia (ECRML(2007)1), Paragraph 32.

<sup>143</sup> For example, with regard to the dialect of the island of Bornholm (Denmark) or Elfdalian (Sweden).

<sup>144</sup> For example, with regard to Arabic and Portuguese in Spain, Cypriot Maronite Arabic in Cyprus, and Croatian, German and Serbian in Slovenia.

<sup>145</sup> The Committee of Experts and the Committee of Ministers have confirmed that, pursuant to Article 4.2, a State Party cannot validly opt for a level of protection under the ECRML which confers fewer rights. See in this regard Jean-Marie Woehrling: The European Charter for Regional or Minority Languages – A critical commentary, Council of Europe Publishing, Strasbourg 2005, p. 99.



This “mirror approach” would have political and financial advantages. Firstly, the instrument of ratification would not change the existing status of the minority languages, thereby supporting civic integration in Georgia and contributing to a politically smooth ratification process. In addition, the synchronised application of related provisions of ECRML, FCNM and national legislation would contribute to a coherent minority policy. As far as financial advantages are concerned, the instrument of ratification would make it possible that the application of the ECRML remains by and large cost-neutral.<sup>146</sup> It would also enable considerable synergies in periodic reporting to the Council of Europe as the language-related parts of the State report on the application of the FCNM would represent the basis of the State report on the ECRML.

### 3. The proposal does not grant a special status to a language other than Abkhazian.

As regards the provisions that can be “mirrored” in the instrument of ratification, it first of all needs to be underlined that the FCNM contains language-related provisions that are fully or partially congruent with 38 ECRML provisions. Given that a State which prepares ratification of Part III (Articles 8-14) of the ECRML needs to select at least 35<sup>147</sup> of the 68 options contained therein, Georgia already complies with more than that minimum number through the application of the FCNM. It follows from this that, currently, Georgian legislation already protects the aforementioned 15 languages at the level of Part III of the ECRML.

In addition to the 38 ECRML provisions already covered in Georgia through the application of the FCNM (and related national legislation), Georgian national legislation matches further ECRML provisions. Most of them concern the Abkhazian language as an official language of Abkhazia while four provisions concern all minority languages (including Abkhazian).

This shows that Georgian legislation grants a special status to Abkhazian in Abkhazia that is shared by no other minority language in the country, including those that are widely-used and/or whose speakers are geographically concentrated.

On the basis of the existing legal situation in Georgia, and taking account of Article 4.2 of the ECRML (see under 2. above), the proposed instrument of ratification includes 49 ECRML provisions in respect of Abkhazian in Abkhazia (38 provisions based on the FCNM plus 11<sup>148</sup> provisions additionally ensuing from national legislation) and 42 provisions in respect of the other 14 minority languages (38 plus 4<sup>149</sup>).

The undertakings applied to Abkhazian differ not only in number from those applied to the second group of languages (49 and 42 respectively), but are also stronger when they have been selected from ECRML provisions containing alternative (stronger and weaker) options. In nearly all cases (especially in the field of education), the stronger options of such provisions are proposed for Abkhazian and the weakest options of the same provisions for the other 14 minority languages.

Grouping the said 14 minority languages would imply that no language other than Abkhazian is singled out in the instrument of ratification and granted a de facto special status going beyond the present legal status of the minority languages. Furthermore, it would comply with the requirement of Article 4.2 that the instrument of ratification needs to at least mirror the already existing level of protection provided in accordance with national legislation as well as international agreements.

<sup>146</sup> See Snežana Trifunovska: The case of the Baltic states, in: Council of Europe (ed.): *Minority language protection in Europe: into a new decade*, Strasbourg 2010, pp. 67-84 (p. 75).

<sup>147</sup> Pursuant to Article 2.2.

<sup>148</sup> See Articles 8.1.e.i, 9.1.a.i, a.iii, a.iv, b.ii, c.i, c.ii, 10.2.e, f, 10.4.a and c of the ECRML.

<sup>149</sup> See Articles 9.1.a.iii, a.iv, b.ii and c.ii of the ECRML. Given that the Georgian authorities have little competence in the field of adult education, option Article 8.1.f.iii is recommended for ratification in respect of all languages rather than options f.i or f.ii.

On the other hand, grouping languages with different numbers of speakers would not exclude that the practical situation of languages used by a higher number of people is further taken into account at a later stage. In accordance with the procedure foreseen in Article 3.2, the Georgian authorities may, if they so wish, accept additional ECRML provisions in respect of some or all minority languages at any time after ratification.

### 4. The proposal supports civic integration in Georgia.

All provisions in the field of education included in the proposed instrument of ratification guarantee the teaching of the official State language.

#### Proposed Declaration (instrument of ratification)

1. Georgia declares that, in accordance with Article 2, paragraph 1, of the European Charter for Regional or Minority Languages, the provisions of Part II of the Charter shall apply to the following languages: Abkhazian, Neo-Aramaic, Armenian, Avar, Azeri, Chechen, Estonian, German, Greek, Kurmanji, Ossetian, Polish, Russian, Turkish and Ukrainian.

2. In accordance with Article 2, paragraph 2, and Article 3, paragraph 1, of the Charter, Georgia declares that the following provisions shall apply to the Abkhazian language in Abkhazia:

#### Article 8 – Education

Paragraph 1.a.i; b.i; c.i; d.i; e.i; f.iii; g; h.  
Paragraph 2.

#### Article 9 – Judicial authorities

Paragraph 1.a.i; a.ii; a.iii; a.iv; b.ii; c.i; c.ii.

#### Article 10 – Administrative authorities and public services

Paragraph 1.a.i; b; c.  
Paragraph 2.a; b; c; d; e; f; g.  
Paragraph 3.a.  
Paragraph 4.a; b; c.  
Paragraph 5.

#### Article 11 – Media

Paragraph 1.a.iii; b.i; c.i; d; e.i; f.i; g.  
Paragraph 2.  
Paragraph 3.

#### Article 12 – Cultural activities and facilities

Paragraph 1.a; b; c; d; e; f.

#### Article 13 – Economic and social life

Paragraph 1.a.

#### Article 14 – Transfrontier exchanges

Paragraph a.  
Paragraph b.

3. In accordance with Article 2, paragraph 2, and Article 3, paragraph 1, of the Charter, Georgia declares that the following provisions shall apply to the Neo-Aramaic, Armenian, Avar, Azeri, Chechen, Estonian, German, Greek, Kurmanji, Ossetian, Polish, Russian, Turkish and Ukrainian languages:



**Article 8 – Education**

Paragraph 1.a.iii; b.iv; c.iv; d.iv; f.iii; g; h.  
Paragraph 2.

**Article 9 – Judicial authorities**

Paragraph 1.a.ii; a.iii; a.iv; b.ii; c.ii.

**Article 10 – Administrative authorities and public services**

Paragraph 1.a.v; b; c.  
Paragraph 2.a; b; c; d; g.  
Paragraph 3.c.  
Paragraph 4.c.  
Paragraph 5.

**Article 11 – Media**

Paragraph 1.a.iii; b.ii; c.ii; d; e.ii; f.ii; g.  
Paragraph 2.  
Paragraph 3.

**Article 12 – Cultural activities and facilities**

Paragraph 1.a; b; c; d; e; f.

**Article 13 – Economic and social life**

Paragraph 1.a.

**Article 14 – Transfrontier exchanges**

Paragraph a.  
Paragraph b.

4. Georgia declares that it is unable to ensure the effective implementation of the provisions of the Charter in the occupied territories until the territorial integrity of Georgia has been restored.<sup>150</sup>

<sup>150</sup> The Georgian Parliament has made a similar declaration with regard to the ratification of the FCNM (Resolution 1938-II of 13 October 2005), see Advisory Committee on the Framework Convention for the Protection of National Minorities, Opinion on Georgia (ACFC/OP/I(2009)001), p. 6.

**8. Holy See**

The Holy See has observer status with the Council of Europe. According to Article 20.1 of the European Charter for Regional or Minority Languages (ECRML), “the Committee of Ministers of the Council of Europe may invite any State not a member of the Council of Europe to accede to this Charter.” While the Holy See has ratified Council of Europe treaties such as the European Cultural Convention in accordance with the “invitation procedure”, it has not yet sought an invitation to accede to the ECRML (or the Framework Convention for the Protection of National Minorities).

The Holy See constitutes in many respects (legal relationship with the Vatican City State, size of State territory and population, citizenship, etc.) a unique subject of international law that differs from existing and possible future ECRML States Parties. Against this background, some of the concepts and provisions of the treaty would need to be applied *mutatis mutandis*.

**8.1 Presentation of the regional or minority language situation**

According to the definition in Article 1.a of the ECRML, the concept “‘regional or minority languages’ means languages that are i. 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 ii. different from the official language(s) of that State. It does not include either dialects of the official language(s) of the State or the languages of migrants”.

In the Vatican City State, at least two traditionally used languages comply with that definition:

- **Latin** is de facto considered an official language of the Holy See. Whereas it is usually not a vernacular among at least a minority of citizens of the Vatican, the use of the language is on the other hand not limited to liturgy. For example, Latin is used for official documents (Acta Apostolicae Sedis, with supplements in Italian), on the website of the Holy See, and by Radio Vatican. Also, a Latin menu appears on the screens of cash machines in the Vatican. After the Second Vatican Council, Latin has lost some of its prominence and use in the modern Catholic Church and, consequently, at the Vatican itself. However, Pope Benedict XVI advocates reviving the use of Latin in the Church. Latin is promoted by the Latinitas Foundation, which was established in 1976 by Pope Paul VI and has its seat in the Vatican City State. The foundation carries out a number of activities that are relevant under the ECRML: the organisation of Latin courses (including its oral use), the promotion of the use of Latin as a living language (publication of the cultural quarterly “Latinitas” entirely in Latin and of the “Lexicon recentis Latinitatis” containing Latin neologisms for modern words), activities regarding Latin literature (including the organisation of an international poetry and prose competition), and the organisation of events on Latin culture.<sup>151</sup>

- **German** is the official language of the Swiss Guard (and vernacular of most of the 110 guardsmen) and used by about 20% of the 572 citizens (2011) of the Vatican City State. The presence of German in the Vatican has been linked to the history of the Campo Santo Teutonico and the Swiss Guard (since 1506). German is also used by the Vatican’s official newspaper “L’Osservatore Romano”, Radio Vatican, the Vatican City State’s and the Holy See’s websites, the priests’ college Collegio Teutonico, the scientific “Görres-Gesellschaft”, the latter’s journal “Römische Quartalschrift”, and in liturgy.

**Other regional or minority languages:** It is probable that, in the territory of the Vatican City State, other languages also have had a continuous traditional presence as a vernacular of individuals having the feature of a “group” in conformity with Article 1.a.i of the ECRML. In fact, other languages are used in public life: the Vatican City State’s official website is, besides

<sup>151</sup> See [http://www.vatican.va/roman\\_curia/institutions\\_connected/latinitas/documents/index\\_en.htm](http://www.vatican.va/roman_curia/institutions_connected/latinitas/documents/index_en.htm)



Italian and German, available in English, French and Spanish, and the website of the Holy See uses all these languages, along with Latin (since 2008), Portuguese, and Chinese (since 2009). Also, Radio Vatican broadcasts programmes in 39 languages. As this offer addresses an audience outside the Vatican City State, it is relevant for purposes of the ECRML only if the aforementioned languages are also traditionally used by groups of citizens within the Vatican. However, there is no statistical information available about the native languages of the Vatican's citizens and about a continuous presence of certain languages over the centuries. This would require clarification in the case of ratification.

## 8.2 Compliance of legislation with the ECRML

Language is not mentioned in any constitution of the Vatican City State, the first being the Lateran Treaty in 1929, granting the Holy See sovereignty from Italy, which merely stipulates that the laws of the new Vatican City State be printed in Italian, as well as Latin. No subsequent constitutional declarations mention language. Therefore, the Vatican City State has formally no official State language. It uses Italian in its legislation, for official communications and street names.

As far as policy is concerned, the Holy See has traditionally displayed a very positive attitude with regard to minority protection. This manifested itself in the 1963 Encyclical "Pacem in terris" which noted that "[i]t is quite clear that any attempt to check the vitality and growth of these ethnic minorities is a flagrant violation of justice." The Encyclical added that "[i]ndeed, the best interests of justice are served by those public authorities who do all they can to improve the human conditions of the members of these minority groups, especially in what concerns their language, culture, ancient traditions (...)"<sup>152</sup>

The Second Vatican Council permitted that priests could perform religious services in minority languages. The Constitution on the Sacred Liturgy stated that "the use of the mother tongue, whether in the Mass, the administration of the sacraments, or other parts of the liturgy, frequently may be of great advantage to the people, [so that] the limits of its employment may be extended." The religious authorities concerned were invited to "consult with bishops of neighbouring regions which have the same language"<sup>153</sup> about the use of a minority language.

Subsequently, minority languages were introduced in church services, including in countries where the use of such languages was prohibited at the time. In 1965, the use of, for example, Basque, Monegasque, Romansh, Scottish-Gaelic and Sorbian was allowed as well as that of German, Hungarian and Polish in then Czechoslovakia, of French and German in the Aosta Valley, and of Slovenian in Trieste (Italy).<sup>154</sup>

## 8.3 Proposal for an instrument of ratification

### Explanatory note on the main features of the proposed instrument of ratification

Latin constitutes an atypical case in the context of the ECRML. However, there do not seem to be formal obstacles preventing the application of the Convention to this language.

Regional or minority languages in the sense of Article 1.a.i must be "traditionally used" in the State. Latin has a traditional presence in the territory of the Vatican City State and is used by nationals who form a minority. Indeed, the word "used" in the definition is broader in scope

<sup>152</sup> See Paragraphs 95-96.

<sup>153</sup> See Chapter 36.1, paragraphs 2-3.

<sup>154</sup> See Notitiae 1 (1965), pp. 15, 17 ff., 21, 25, 29, 32, 105.

than "spoken" which could have been a problem for Latin which is seldom used orally. Latin can therefore not readily be considered a "dead language" as it is used in everyday activities covering different domains extending beyond liturgy (official texts, media, culture, research, etc.). There is also a political will to revive and promote Latin, and an institution (Latinitas Foundation) has been set up to carry out promotional measures. In fact, Latin would not be the first revived language under ECRML protection, given the cases of Cornish and Maenx Gaelic in the United Kingdom.

The fact that Latin has not been used over the centuries by the same ethnic group, as the language of a "national minority", does not constitute a problem either as the ECRML's aim is "to protect and promote regional or minority languages as such."<sup>155</sup>

As regards the status that Latin could be granted under the ECRML, it would not be feasible to make use of the possibility foreseen in Article 3.1, namely to apply Part III of the treaty to Latin as an "official language which is less widely used on the whole or part of its territory". In fact, the total absence of schools in the territory of the Vatican City State would make it impossible to select at least three undertakings from Article 8 (education), as required in Article 2.2.

In this situation, the Holy See could follow the precedent of Switzerland. When ratifying the ECRML, Switzerland decided to apply Part III to the Italian and Romansh languages as "less widely used official languages", but did not do the same with German and French regarding cantons where both languages could have been declared "less widely used official languages" as well. Rather, Switzerland decided to apply the provisions of Part II only to German and French in the cantons concerned.<sup>156</sup> The Holy See may therefore apply Part II to Latin and implement the more general provision concerning education in Part II (Article 7.1.f) through the educational activities of the Latinitas Foundation.

Part II would also apply to German, the most-widely used minority language in the Vatican, and the other languages complying with the definition of "regional or minority language". As the latter languages are not yet identified at this stage, the proposed declaration (instrument of ratification) could contain a general clause confirming Part II protection also regarding "the other regional or minority languages". This formulation, which would need to be filled with content during the application of the ECRML, is contained in a similar way in the instrument of ratification of Finland.

### Proposed Declaration (instrument of ratification)

The Holy See declares that, in accordance with Article 2, paragraph 1, of the European Charter for Regional or Minority Languages, the provisions of Part II of the Charter shall apply to Latin, German and the other regional or minority languages.

<sup>155</sup> See Explanatory Report on the ECRML, paragraph 17; see also *ibidem*, paragraph 11, and Jean-Marie Woehrling: The European Charter for Regional or Minority Languages – A critical commentary, Council of Europe Publishing, Strasbourg 2005, p. 32.

<sup>156</sup> See Initial Periodical Report of Switzerland on the Application of the European Charter for Regional or Minority Languages (MIN-LANG/PR(99)7), pp. 9-10.



## 9. Iceland

Iceland signed the European Charter for Regional or Minority Languages (ECRML) on 7 May 1999. Furthermore, it signed the Framework Convention for the Protection of National Minorities in 1995, but has not yet ratified it.

According to the definition in Article 1.a of the ECRML, the concept “regional or minority languages’ means languages that are i. 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 ii. different from the official language(s) of that State. It does not include either dialects of the official language(s) of the State or the languages of migrants”.

In Iceland, languages other than Icelandic are not used by “nationals of that State who form a group numerically smaller than the rest of the State’s population”. Other commonly used languages such as English and Danish, which are compulsory school subjects, are rather spoken as second and third languages by nearly all Icelanders and not by specific segments of the population.<sup>157</sup> As a result, there are no regional or minority languages in the sense of the ECRML in Iceland.

Nevertheless, Iceland could ratify the ECRML as an act of solidarity as Liechtenstein and Luxemburg have done.

### Proposed Declaration (instrument of ratification)<sup>158</sup>

Iceland declares in accordance with Article 2, paragraph 2, and in accordance with Article 3, paragraph 1, of the European Charter for Regional or Minority Languages of 5 November 1992, that there are no regional or minority languages in the sense of the Charter in the territory of Iceland at the time of ratification. Iceland considers its ratification of the Charter as an act of solidarity in the view of the objectives of the Convention.

<sup>157</sup> See Statistics Iceland, <http://www.statice.is/?PageID=444&NewsID=2999>

<sup>158</sup> Based on the declarations contained in the instruments of ratification by Liechtenstein regarding the ECRML and the FCNM deposited both on 18 November 1997.

## 10. Ireland

Ireland has not signed the European Charter for Regional or Minority Languages (ECRML). However, it ratified the Framework Convention for the Protection of National Minorities in 1999.

According to the definition in Article 1.a of the ECRML, the concept “regional or minority languages’ means languages that are i. 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 ii. different from the official language(s) of that State. It does not include either dialects of the official language(s) of the State or the languages of migrants”.

In Ireland, there are no languages that comply with that definition. However, Article 3.1 of the ECRML provides for the possibility to apply Part III of the treaty to an “official language which is less widely used on the whole or part of its territory”. When the ECRML was drafted, this provision was inserted in the treaty against the background of the situation of *Irish* in Ireland as an official language having de facto features of a regional or minority language. While figures of the 2006 census suggest that around 1.66 million people have at least some knowledge of Irish,<sup>159</sup> it is estimated that only 72 000 people use the language in everyday life. The Irish language is predominant only in those parts of the island known as *Gaeltachtaí*. These areas are mainly located in the western counties of Donegal, Mayo, Galway, Kerry and Cork but also in the eastern counties of Waterford and Meath.

Unlike in the case of the obligatory application of Part II to all *unofficial* regional or minority languages in the country (see Article 2.1 of the ECRML), the Convention does not oblige the State to make use of the “Irish clause” contained in Article 3.1 and apply Part III to an official language. In fact, such a decision is left entirely to the discretion of the State concerned. Ireland, however, has so far not shown an interest in applying the ECRML to Irish. The proposal below does therefore not deal with the Irish language.

Nevertheless, Ireland could ratify the ECRML as an act of solidarity as Liechtenstein and Luxemburg have done.

### Proposed Declaration (instrument of ratification)<sup>160</sup>

Ireland declares in accordance with Article 2, paragraph 2, and in accordance with Article 3, paragraph 1, of the European Charter for Regional or Minority Languages of 5 November 1992, that there are no regional or minority languages in the sense of the Charter in the territory of Ireland at the time of ratification. Ireland considers its ratification of the Charter as an act of solidarity in the view of the objectives of the Convention.

<sup>159</sup> See Central Statistics Office Ireland, [http://www.cso.ie/census/census2006\\_volume9.htm](http://www.cso.ie/census/census2006_volume9.htm)

<sup>160</sup> Based on the declarations contained in the instruments of ratification by Liechtenstein regarding the ECRML and the FCNM deposited both on 18 November 1997.



## 11. Italy

Italy signed the European Charter for Regional or Minority Languages (ECRML) on 27 June 2000 and, by virtue of its signature alone, agreed to comply with the ECRML's provisions.<sup>161</sup> Furthermore, Italy ratified the Framework Convention for the Protection of National Minorities in 1997.

### 11.1 Presentation of the regional or minority language situation

According to the definition in Article 1.a of the ECRML, the concept “regional or minority languages’ means languages that are i. 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 ii. different from the official language(s) of that State. It does not include either dialects of the official language(s) of the State or the languages of migrants”.

In Italy, twelve traditionally used languages comply with that definition:<sup>162</sup>

- **Albanian (Arbëresh)** has been present on Italian soil since the fifteenth century, after the Turkish invasion of Albania (1435), and migration continued until the eighteenth century. Estimates about the number of speakers differ and range from 40 000 to 70 000 people. In the past, vast areas of southern Italy were populated by Albanian speakers. Today, Albanian is spoken only in some municipalities, although in different regions: in about 25 municipalities in Calabria, four in Molise, five in Basilicata, two in Puglia, and four in Sicily.
- **Catalan** has been spoken in Alghero (north-west coast of Sardinia) since 1353, when the town was conquered by Catalans and prospered owing to intense links with Catalonia over the centuries. According to estimates,<sup>163</sup> the total number of Catalan speakers amounts to 15 000 to 20 000 people, that is, half of the town’s population.
- **Croatian** has had a traditional presence since the fifteenth or sixteenth centuries, when Croats left the Dalmatian coast after the Turkish invasion and settled on the opposite side of the Adriatic Sea. In the course of history, most of the Croatian speaking colonies were assimilated: no more than 2 000 people still speak Croatian, in the form of an ancient dialect. Croatian speakers are concentrated in the three municipalities of San Felice, Montemitro and Acquaviva Collecroce in the Region of Molise.
- **Franco-Provençal** is a cluster of different French-Occitan languages/dialects (patois), present in areas of northern Italy since the thirteenth century. In the course of time, Franco-Provençal has been forcibly replaced by French in official use. At present, it is estimated that it is still actively spoken by about 30 000 to 40 000 people in the whole territory of the Aosta Valley (where it has no official status: this is reserved to French) and in a few valleys in Piedmont (Province of Turin).
- **French** has been traditionally spoken in parts of northern Italy since the seventeenth century. This was, however, mostly owing to a deliberate linguistic policy imposing French as the language of international prestige rather than to a grass-root usage, except in some individual valleys (Val di Susa, Valpellice). There are no estimates of the number of French speakers at present. In the Aosta Valley, French has official status and it is presumed that the majority of the Valley’s population (150 000) can use it at least passively.

<sup>161</sup> See Jean-Marie Woehrling: The European Charter for Regional or Minority Languages – A critical commentary, Council of Europe Publishing, Strasbourg 2005, p. 44.

<sup>162</sup> See Third Report submitted by Italy pursuant to Article 25, paragraph 2 of the Framework Convention for the Protection of National Minorities (ACFC/SR/III(2009)011), pp. 2, 4; European Commission: The Euromosaic study, [http://ec.europa.eu/education/languages/euromosaic/doc4681\\_en.htm](http://ec.europa.eu/education/languages/euromosaic/doc4681_en.htm)

<sup>163</sup> See F. Toso, Scheda sulle minoranze tutelate dalla legge 482/1999.

- **Friulian** is a Romansh language based on Latin, with a written tradition since the fourteenth century. It is actively spoken, with some variations/dialects, by 500 000 to 700 000 people in the Provinces of Udine, Pordenone and partly Gorizia, that is, by about one third of the residents of the Region of Friuli-Venezia Giulia.

- **German** has had a traditional presence in several parts of northern Italy since the twelfth century. At present, about 350 000 people speak German, the overwhelming majority of them in the Autonomous Province of Bolzano/Bozen-South Tyrol, but also 6 000 to 7 000 in German language islands outside South Tyrol (in the Autonomous Region of the Aosta Valley, the Autonomous Province of Trento and the Provinces of Belluno, Udine, Verbano-Cusio-Ossola, Vercelli, Verona and Vicenza).

- **Greek** has been spoken in southern Italy since the Hellenic domination, although with important additions by new settlers from Greece in the following centuries. At present, variations of Greek (called *Griko*) are spoken by about 10 000 people in two different areas: the Province of Lecce (Puglia) and a few municipalities in the mountain areas of Calabria.

- **Ladin** is a Romansh language with several varieties. It derives directly from Latin and has thus been present in Italy since the end of the Roman Empire. Ladin is spoken by 30 000 to 35 000 people, most of them (23 000) in South Tyrol, but also in Trentino and Friuli (Province of Udine).

- **Occitan** has been spoken in Italy since the thirteenth century. Like Franco-Provençal, it has been negatively affected by the strong preference accorded to French in the following centuries and was for a long time considered to be just a French dialect. It has been revived since the nineteenth century. According to estimates, the total number of Occitan speakers is around 30 000, concentrated in a few valleys in the Provinces of Turin and Cuneo (Piedmont).

- **Sardinian** is the traditional language of Sardinia. Written documents date back to the sixteenth century, although oral use is much older. It is estimated that about one million people are Sardinian speakers, that is, about half of the island’s whole population. Although in several variations and dialects, it is spoken throughout the island.

- **Slovenian** has been present in some areas of the Province of Udine since the fifteenth century. Today it is spoken by about 100 000 people. The vast majority of them are settled in the Provinces of Trieste and Gorizia, attached to Italy in 1918, while the traditional Slovenian speakers in the Province of Udine number only a few hundred.

In addition to the aforementioned regional or minority languages, **Romani** has been traditionally present in Italy; it constitutes a non-territorial language in the sense of the ECRML. Romani has been spoken since the arrival of the Roma and Sinti in Italy in the fifteenth century. Today, it is used by a minority of the Italian Roma and Sinti. Estimates of the number of speakers vary from 50 000 to 100 000. While the Sinti and Roma are mostly dispersed, Romani may locally qualify as a territorial language as its varieties have geographical denominations (Abruzzese, Piemontese, Calabrese, Molise, etc.).

### 11.2 Compliance of legislation with the ECRML

Italy uses the term “linguistic minorities” rather than ethnic or national. The twelve regional or minority languages recognised in Italy are part of the autonomous and ordinary regions of the country. The Italian state has devolved its authority to the autonomous regions of the Aosta Valley, Sicily, Trentino-South Tyrol with two autonomous provinces of South Tyrol and Trento, Friuli-Venezia Giulia, and Sardinia and fifteen ordinary regions in which there are also regional or minority languages. The three autonomous regions of Aosta Valley, Sicily and Trentino-South Tyrol exercise exclusive and direct legislative and administrative responsibility for their



own cultural and heritage assets.<sup>164</sup> The contested issue is the variety of Veneto – politically a stumbling block in the adoption of the ECRML. This variety has become a symbol of the aspiration of the northern part of Italy to create a federal state.<sup>165</sup> The multilevel approach to the minority languages affects their support and prospects for the future.

An example of such differentiation is Roma and its language Romani, as well as the Sinti. They were promoted at a regional level beginning on 16 August 1984 with the Veneto region's initiative to adopt the regional law No. 41 entitled "Interventi per la tutela della cultura dei Rom" (Interventions aimed at safeguarding the Roma culture"), renewed with the regional law, No. 54 of 1989. Finally, in the last years, two regions have re-dedicated (or tried to do so) their attention to this topic: the Tuscany Region reformed its regional law, No. 73/95 through the last legislative act aimed at the protection of Roma and Sinti: Law 2/2000; whereas the Piedmont Region made another attempt to launch a regional law addressing this minority with Bill No. 61, submitted in 2000.

Nonetheless, such legislative impulses did not succeed in changing the linguistic (or any other) situation of Roma and Sinti for the better – it has remained extremely neglected. Another fundamental oversight lies in the minimum attention paid to the endangered language of the Roma: teaching programmes, after-school activities and school support for Roma children are entirely carried out in the majority and official languages of the country. Furthermore, school support for Roma children is too sporadic, especially at the practical level. Even though language represents one of the most outstanding identity factors of the Roma/Sinti, the support that it is given in the Italian school system is unsatisfactory.<sup>166</sup>

The new educational system activated in the year 2004/2005 is based on two main principles: firstly, subsidiarity (the devolution of the competences has increased the autonomy of the school in fixing curricula and organising courses; more responsibility is also given to the local authorities); and secondly, harmonisation with the European systems.

In regions having a special form of autonomy owing to the presence of these minorities, such as, for example, Aosta Valley and Trentino-South Tyrol, pupils are either educated in two languages – the national one and the minority one – or mainly educated in Italian, but the minority language always represents an integral part of their curricula. In recent years, other minorities such as the Greeks and the Albanians have not been given specific rights linked to the protection of their languages. However, various educational activities are being promoted in order to prevent the loss of the cultural heritage represented by these historical minorities. Minority-language courses are promoted in all minority communities: minority-language courses are organised at school for pupils, and special courses for adults are arranged in co-operation with the local authorities.<sup>167</sup>

Minority-language teachers refer that those languages have represented a fundamental factor of cohesion in rural areas and that the minority languages are going to be lost despite the Law 482 of 1999. The few multilevel schools in the areas where linguistic minorities are based are the only tools for preventing the minority languages and culture to be completely lost.<sup>168</sup>

As a consequence of the differentiated levels of minority languages, German, French and others can be used in courts and court proceedings, while others are not (for example, Albanian).<sup>169</sup> It is up to local authorities to decide on the use of minority languages in the dealings with the

<sup>164</sup> See [http://www.culturalpolicies.net/download/italy\\_052011.pdf](http://www.culturalpolicies.net/download/italy_052011.pdf), I-11.

<sup>165</sup> See <http://www.theslovenian.com/articles/campani.pdf>

<sup>166</sup> See <http://erionet.org/site/Publications/Articles/Romani-Linguistic-Minority-in-Italy>

<sup>167</sup> Law No. 38, 23 February 2001 "Norme per la tutela della minoranza linguistica slovena del Friuli Venezia Giulia".

<sup>168</sup> See [www.ea.gr/.../92843704646400The\\_legal\\_framework\\_of\\_the\\_education\\_AIC](http://www.ea.gr/.../92843704646400The_legal_framework_of_the_education_AIC) - Udine, 11/12 aprile 2003.

<sup>169</sup> See [http://ec.europa.eu/education/languages/archive/languages/langmin/euromosaic/it1\\_en.html#22](http://ec.europa.eu/education/languages/archive/languages/langmin/euromosaic/it1_en.html#22)

population. There are opportunities to submit and receive answers in a minority language in some regions while it is not practised in others, depending also on the language itself.<sup>170</sup>

There are a number of laws ensuring the presence of minority languages in the public media. Also in the private media such possibility exists, through a Service Contract between the Ministry of Communication and the RAI. Yet, the provisions are mainly made regarding the Slovenian, French, German, and Ladin minorities but not other minority languages.<sup>171</sup>

In Italy, there are four levels of government sharing responsibilities in the field of culture – state, regions, provinces and municipalities. After the state, municipalities are the most prominent public actor in the sphere of culture, supporting a wide range of activities, including cultural minorities' celebrations. For example, the Slovenian Theatre in Trieste is supported by the State. Furthermore, there are many different agreements allowing transfrontier co-operation with close neighbours.

Italy could ratify the ECRML at different levels for respective languages, by confirming its commitment to the county's historic heritage of diversity.

### 11.3 Proposal for an instrument of ratification

#### Explanatory note on the main features of the proposed instrument of ratification

Since 2000, 21 draft laws on ratification have been tabled by parliamentarians with different political affiliations and from various parliamentary committees. One of them was approved by the *Camera dei Deputati* in 2006, but not by the *Senato* owing to a request to refer it back to the committee in order to include Veneto in the list of regional or minority languages. However, Veneto is not recognised by Law No. 482. Furthermore, if Veneto constitutes a dialect of Italian, the ECRML (Article 1.a) would exclude it from its scope of application. Aspirations to recognise Veneto as a regional or minority language appear to be one of the main obstacles to ratification at present.

All parliamentarians who tabled the draft laws mentioned above, regardless of their political affiliation, used the same main arguments in favour of ratification, including the de facto compliance by Italy with ECRML provisions through the application of Law No. 482 and, as a result, the consideration that the application of the ECRML would be cost-neutral.

It is noteworthy that the 21 draft laws (namely the "menus" of selected undertakings under the ECRML) are by and large identical. Furthermore, none of them considers Veneto. This shows the large consensus in Italy with regard to the level of protection for the twelve recognised minority languages. One of the recent (2008) draft laws is set out below in the format of an instrument of ratification and with corrections to minor technical errors.<sup>172</sup>

<sup>170</sup> See [http://ec.europa.eu/education/languages/archive/languages/langmin/euromosaic/it1\\_en.html#22](http://ec.europa.eu/education/languages/archive/languages/langmin/euromosaic/it1_en.html#22)

<sup>171</sup> See Aline Sierp, *Minority Language Protection in Italy: Linguistic Minorities and the Media*, in <http://www.jcer.net/ojs/index.php/jcer/article/view/120/117>

<sup>172</sup> Draft Law No. 38 contains alternative options (Article 8.1.f.ii / iii, Article 10.1.a.i / ii / iii / iv, 11.1.a.i / iii, 11.1.e.i / ii). The redundant lower-level options have been omitted here.



**Proposed Declaration (instrument of ratification)<sup>173</sup>**

1. Italy declares that, in accordance with Article 2, paragraph 1, of the European Charter for Regional or Minority Languages, the provisions of Part II of the Charter shall apply to the Albanian, Catalan, Croatian, Franco-Provençal, French, Friulian, German, Greek, Ladin, Occitan, Romani, Sardinian and Slovenian languages.

2. In accordance with Article 2, paragraph 2, and Article 3, paragraph 1, of the Charter, Italy declares that the following provisions shall apply to the languages concerned:

**a) Albanian**

**Article 8 – Education**

Paragraph 1.a.i; b.iv; c.iv; f.ii; g; h; i.

**Article 9 – Judicial authorities**

Paragraph 1.a.ii; b.ii; b.iii.

**Article 10 – Administrative authorities and public services**

Paragraph 1.a.ii; c.  
Paragraph 2.a; b; d; e; f; g.  
Paragraph 4.a; b; c.  
Paragraph 5.

**Article 11 – Media**

Paragraph 1.a.iii; b.ii; c.ii; d; e.ii.  
Paragraph 2.  
Paragraph 3.

**Article 12 – Cultural activities and facilities**

Paragraph 1.a; b; c; d; f; g; h.  
Paragraph 3.

**Article 13 – Economic and social life**

Paragraph 1.c.  
Paragraph 2.d.

**Article 14 – Transfrontier exchanges**

Paragraph b.

**b) Catalan**

**Article 8 – Education**

Paragraph 1.a.i; b.iv; c.iv; f.ii; g; h; i.

**Article 9 – Judicial authorities**

Paragraph 1.a.ii; b.ii; b.iii.

**Article 10 – Administrative authorities and public services**

Paragraph 1.a.ii; c.  
Paragraph 2.a; b; d; e; f; g.  
Paragraph 4.a; b; c.  
Paragraph 5.

**Article 11 – Media**

Paragraph 1.a.iii; b.ii; c.ii; d; e.ii.  
Paragraph 2.  
Paragraph 3.

**Article 12 – Cultural activities and facilities**

Paragraph 1.a; b; c; d; f; g; h.  
Paragraph 3.

**Article 13 – Economic and social life**

Paragraph 1.c.  
Paragraph 2.d.

**Article 14 – Transfrontier exchanges**

Paragraph b.

**c) Croatian**

**Article 8 – Education**

Paragraph 1.a.i; b.iv; c.iv; f.ii; g; h; i.

**Article 9 – Judicial authorities**

Paragraph 1.a.ii; b.ii; b.iii.

**Article 10 – Administrative authorities and public services**

Paragraph 1.a.ii; c.  
Paragraph 2.a; b; d; e; f; g.  
Paragraph 4.a; b; c.  
Paragraph 5.

**Article 11 – Media**

Paragraph 1.a.iii; b.ii; c.ii; d; e.ii.  
Paragraph 2.  
Paragraph 3.

**Article 12 – Cultural activities and facilities**

Paragraph 1.a; b; c; d; f; g; h.  
Paragraph 3.

**Article 13 – Economic and social life**

Paragraph 1.c.  
Paragraph 2.d.

**Article 14 – Transfrontier exchanges**

Paragraph a.  
Paragraph b.

**d) Franco-Provençal**

**Article 8 – Education**

Paragraph 1.a.i; b.iv; c.iv; f.ii; g; h; i.

<sup>173</sup> See Corresponds to Draft Law No. 38 on the ratification of the ECRML, presented in the *Camera dei Deputati* on 29 April 2008 by Zeller, Brugger, Nicco, Ricardo Antonio Merlo (with corrections to technical errors, see preceding footnote).



**Article 9 – Judicial authorities**

Paragraph 1.a.ii; b.ii; b.iii.

**Article 10 – Administrative authorities and public services**

Paragraph 1.a.ii; c.  
Paragraph 2.a; b; d; e; f; g.  
Paragraph 4.a; b; c.  
Paragraph 5.

**Article 11 – Media**

Paragraph 1.a.iii; b.ii; c.ii; d; e.ii.  
Paragraph 2.  
Paragraph 3.

**Article 12 – Cultural activities and facilities**

Paragraph 1.a; b; c; d; f; g; h.  
Paragraph 3.

**Article 13 – Economic and social life**

Paragraph 1.c.  
Paragraph 2.d.

**Article 14 – Transfrontier exchanges**

Paragraph b.

**e) French**

**Article 8 – Education**

Paragraph 1.a.i; b.ii; c.ii; d.ii; f.ii; g; h; i.

**Article 9 – Judicial authorities**

Paragraph 1.a.ii; b.ii; b.iii.  
Paragraph 2.c.

**Article 10 – Administrative authorities and public services**

Paragraph 1.a.ii; b; c.  
Paragraph 2.a; b; c; d; e; f; g.  
Paragraph 3.a.  
Paragraph 4.a; b; c.  
Paragraph 5.

**Article 11 – Media**

Paragraph 1.a.i; b.ii; c.ii; d; e.i.  
Paragraph 2.  
Paragraph 3.

**Article 12 – Cultural activities and facilities**

Paragraph 1.a; b; c; d; f; g; h.  
Paragraph 3.

**Article 13 – Economic and social life**

Paragraph 1.c.  
Paragraph 2.d.

**Article 14 – Transfrontier exchanges**

Paragraph b.

**f) Frulian**

**Article 8 – Education**

Paragraph 1.a.i; b.iv; c.iv; f.ii; g; h; i.

**Article 9 – Judicial authorities**

Paragraph 1.a.ii; b.ii; b.iii.

**Article 10 – Administrative authorities and public services**

Paragraph 1.a.ii; c.  
Paragraph 2.a; b; d; e; f; g.  
Paragraph 4.a; b; c.  
Paragraph 5.

**Article 11 – Media**

Paragraph 1.a.iii; b.ii; c.ii; d; e.ii.  
Paragraph 2.  
Paragraph 3.

**Article 12 – Cultural activities and facilities**

Paragraph 1.a; b; c; d; f; g; h.  
Paragraph 3.

**Article 13 – Economic and social life**

Paragraph 1.c.  
Paragraph 2.d.

**Article 14 – Transfrontier exchanges**

Paragraph b.

**g) German in the Autonomous Province of Bolzano/Bozen-South Tyrol**

**Article 8 – Education**

Paragraph 1.a.i; b.i; c.i; d.i; f.ii; g; h; i.

**Article 9 – Judicial authorities**

Paragraph 1.a.i; a.ii; a.iii; a.iv; b.i; b.ii; b.iii; c.i; c.ii; c.iii; d.  
Paragraph 2.c.

**Article 10 – Administrative authorities and public services**

Paragraph 1.a.i; b; c.  
Paragraph 2.a; b; c; d; e; f; g.  
Paragraph 3.a.  
Paragraph 4.a; b; c.  
Paragraph 5.

**Article 11 – Media**

Paragraph 1.a.i; b.ii; c.ii; d; e.i.  
Paragraph 2.  
Paragraph 3.

**Article 12 – Cultural activities and facilities**

Paragraph 1.a; b; c; d; e; f; g; h.  
Paragraph 3.

**Article 13 – Economic and social life**

Paragraph 1.c.  
Paragraph 2.a; b; c; d; e.



**Article 14 – Transfrontier exchanges**  
Paragraph b.

**h) German outside the Autonomous Province of Bolzano/Bozen-South Tyrol**

**Article 8 – Education**  
Paragraph 1.a.i; b.iv; c.iv; f.ii; g; h; i.

**Article 9 – Judicial authorities**  
Paragraph 1.a.ii; b.ii; b.iii.

**Article 10 – Administrative authorities and public services**  
Paragraph 1.a.ii; c.  
Paragraph 2.a; b; d; e; f; g.  
Paragraph 4.a; b; c.  
Paragraph 5.

**Article 11 – Media**  
Paragraph 1.a.iii; b.ii; c.ii; d; e.ii.  
Paragraph 2.  
Paragraph 3.

**Article 12 – Cultural activities and facilities**  
Paragraph 1.a; b; c; d; f; g; h.  
Paragraph 3.

**Article 13 – Economic and social life**  
Paragraph 1.c.  
Paragraph 2.d.

**Article 14 – Transfrontier exchanges**  
Paragraph b.

**i) Greek**

**Article 8 – Education**  
Paragraph 1.a.i; b.iv; c.iv; f.ii; g; h; i.

**Article 9 – Judicial authorities**  
Paragraph 1.a.ii; b.ii; b.iii.

**Article 10 – Administrative authorities and public services**  
Paragraph 1.a.ii; c.  
Paragraph 2.a; b; d; e; f; g.  
Paragraph 4.a; b; c.  
Paragraph 5.

**Article 11 – Media**  
Paragraph 1.a.iii; b.ii; c.ii; d; e.ii.  
Paragraph 2.  
Paragraph 3.

**Article 12 – Cultural activities and facilities**  
Paragraph 1.a; b; c; d; f; g; h.  
Paragraph 3.

**Article 13 – Economic and social life**  
Paragraph 1.c.  
Paragraph 2.d.

**Article 14 – Transfrontier exchanges**  
Paragraph b.

**j) Ladin**

**Article 8 – Education**  
Paragraph 1.a.i; b.iii; c.iii; d.iii; f.ii; g; h; i.

**Article 9 – Judicial authorities**  
Paragraph 1.a.ii; b.i; b.ii; b.iii; c.i; c.iii; d.  
Paragraph 2.c.

**Article 10 – Administrative authorities and public services**  
Paragraph 1.a.ii; b; c.  
Paragraph 2.a; b; d; e; f; g.  
Paragraph 3.b.  
Paragraph 4.a; b; c.  
Paragraph 5.

**Article 11 – Media**  
Paragraph 1.a.i; b.ii; c.ii; d; e.i.  
Paragraph 2.  
Paragraph 3.

**Article 12 – Cultural activities and facilities**  
Paragraph 1.a; b; c; d; f; g; h.  
Paragraph 3.

**Article 13 – Economic and social life**  
Paragraph 1.c.  
Paragraph 2.d.

**Article 14 – Transfrontier exchanges**  
Paragraph b.

**k) Occitan**

**Article 8 – Education**  
Paragraph 1.a.i; b.iv; c.iv; f.ii; g; h; i.

**Article 9 – Judicial authorities**  
Paragraph 1.a.ii; b.ii; b.iii.

**Article 10 – Administrative authorities and public services**  
Paragraph 1.a.ii; c.  
Paragraph 2.a; b; d; e; f; g.  
Paragraph 4.a; b; c.  
Paragraph 5.

**Article 11 – Media**  
Paragraph 1.a.iii; b.ii; c.ii; d; e.ii.  
Paragraph 2.  
Paragraph 3.



**Article 12 – Cultural activities and facilities**

Paragraph 1.a; b; c; d; f; g; h.  
Paragraph 3.

**Article 13 – Economic and social life**

Paragraph 1.c.  
Paragraph 2.d.

**Article 14 – Transfrontier exchanges**

Paragraph b.

**l) Sardinian**

**Article 8 – Education**

Paragraph 1.a.i; b.iv; c.iv; f.ii; g; h; i.

**Article 9 – Judicial authorities**

Paragraph 1.a.ii; b.ii; b.iii.

**Article 10 – Administrative authorities and public services**

Paragraph 1.a.ii; c.  
Paragraph 2.a; b; d; e; f; g.  
Paragraph 4.a; b; c.  
Paragraph 5.

**Article 11 – Media**

Paragraph 1.a.iii; b.ii; c.ii; d; e.ii.  
Paragraph 2.  
Paragraph 3.

**Article 12 – Cultural activities and facilities**

Paragraph 1.a; b; c; d; f; g; h.  
Paragraph 3.

**Article 13 – Economic and social life**

Paragraph 1.c.  
Paragraph 2.d.

**Article 14 – Transfrontier exchanges**

Paragraph b.

**m) Slovenian**

**Article 8 – Education**

Paragraph 1.a.i; b.i; c.i; d.i; f.ii; g; h; i.

**Article 9 – Judicial authorities**

Paragraph 1.a.ii; a.iii; b.ii; b.iii.

**Article 10 – Administrative authorities and public services**

Paragraph 1.a.ii; b; c.  
Paragraph 2.a; b; d; e; f; g.  
Paragraph 3.b.  
Paragraph 4.a; b; c.  
Paragraph 5.

**Article 11 – Media**

Paragraph 1.a.i; b.ii; c.ii; d; e.i.  
Paragraph 2.  
Paragraph 3.

**Article 12 – Cultural activities and facilities**

Paragraph 1.a; b; c; d; f; g; h.  
Paragraph 3.

**Article 13 – Economic and social life**

Paragraph 1.c.  
Paragraph 2.d.

**Article 14 – Transfrontier exchanges**

Paragraph a.  
Paragraph b.



## 12. Latvia

Latvia has not signed the European Charter for Regional or Minority Languages (ECRML). However, it ratified the Framework Convention for the Protection of National Minorities (FCNM) in 2005.

### 12.1 Presentation of the regional or minority language situation

According to the definition in Article 1.a of the ECRML, the concept “regional or minority languages” means languages that are i. 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 ii. different from the official language(s) of that State. It does not include either dialects of the official language(s) of the State or the languages of migrants”.

In Latvia, seven traditionally used languages comply with that definition:<sup>174</sup>

- **Belarusian** has had a presence on Latvian territory for several centuries. In 1897, there were about 66 000 Belarusians, 75 000 in 1920 and – owing to immigration from the former Soviet Union – 120 000 in 1989. At present (2010), there are approximately 80 500 Belarusians in Latvia.<sup>175</sup> Most of them live in Latvia’s biggest cities (for example, Liepāja, Riga) or in Latgale. Daugavpils has the highest proportion of Belarusians.<sup>176</sup>

- **Estonian** has been spoken in Latvia since the nineteenth century. At present (2010), the number of persons belonging to the Estonian national minority is about 2 400. The Estonians are concentrated in Riga and along the border with Estonia, mainly in the areas of Alūksne and the border town of Valka.

- **German** has had a traditional presence in Latvia since the thirteenth century. In 1925, 70 964 Germans lived in Latvia (60% of them in Riga, 20% in Courland). From 1939 to 1941, 51 000 Germans left the country while approximately 1 500 remained. At present (2010), about 4 500 Germans reside in Latvia.

- **Lithuanian** has been present in Latvia for at least two centuries. About 29 900 people (2010) identify themselves as Lithuanians. The largest Lithuanian-speaking groups are in Riga and along the southern border of Latvia.

- **Livonian** is an autochthonous Finno-Ugric language used at the coast of Courland. Currently, there are about 100 Livonians in Latvia. However, the Livonian language is on the brink of extinction as fewer than 20 people speak it fluently. Livonian is recognised as an autochthonous language in Article 4 of the Law on the State Language that came into effect on 1 September 2000.

- **Polish** has been spoken in Latvia since the late sixteenth century, when the territory of today’s Latvia came under the control of the Kingdom of Poland. There are currently (2010) about 52 400 persons who belong to the Polish national minority. The largest Polish groups are in Daugavpils and Riga. Traditionally, Polish has been widely used in eastern Latvia, but its role is now much more limited.

<sup>174</sup> See Report submitted by Latvia pursuant to Article 25, paragraph 1 of the Framework Convention for the Protection of National Minorities (ACFC/SR(2006)001), pp. 8-9; European Commission: The Euromosaic study, [http://ec.europa.eu/education/languages/euromosaic/doc4681\\_en.htm](http://ec.europa.eu/education/languages/euromosaic/doc4681_en.htm)

<sup>175</sup> See Latvijas statistika, <http://www.csb.gov.lv>

<sup>176</sup> See Ilmārs Mežs: Ethnic Minorities in Latvia, Latvian Institute, 2010, [http://www.li.lv/index.php?option=com\\_content&task=view&id=77&Itemid](http://www.li.lv/index.php?option=com_content&task=view&id=77&Itemid)

- **Russian** has been spoken in Latvia since the twelfth century, when the first Russian merchants arrived there. In the second half of the seventeenth century, Old Believers settled in Latgale and Riga. The number of Russians significantly increased after Latvia’s incorporation into Russia in 1795. At present (2010), there are about 621 700 Russians in Latvia. Only a small part of this group has its roots in the pre-Soviet period. While the “New Russians” had been settled primarily in urban areas (being currently the majority in Daugavpils and close to the majority in Riga), the “Old Russians” also settle in villages of Latgale.<sup>177</sup>

In addition to the aforementioned regional or minority languages, Romani and Yiddish have traditionally been present in Latvia; they constitute non-territorial languages in the sense of the ECRML:

- **Romani** has arrived in the territory of present Latvia about 500 years ago when the first Roma came to the country mostly from Germany and Poland. During World War II, many lost their lives. The Roma population today (2010) amounts to about 8 500 people, and most of them speak Romani (the knowledge of the written language is much more rare). There is no particular territorial concentration of Romani.

- **Yiddish** has been spoken in Latvia since the sixteenth century, although the largest number of Jews migrated to Latvia in the late nineteenth century. After the atrocities suffered during World War II by both Nazi and Soviet occupation, only approximately 9 700 Jews currently live in Latvia of whom about 1 000 (also) speak Yiddish.

### 12.2 Compliance of legislation with the ECRML

Latvia has adopted a two-fold approach to minorities. On the one hand, a strong identity building of the Latvian State, on the other hand an integration of minorities into that State. The minorities of the post-Soviet groups are regarded as immigrants, many still having non-citizen status.<sup>178</sup> Only one ethnic minority is recognised as an autochthonous minority - the Livonians. The legal basis for the cultural and civil rights of minorities is the Latvian Constitution of 1922, and the Law on Free Development and Rights of Cultural Autonomy of National and Ethnic Groups of 1991.<sup>179</sup>

The integration policies are understood as social cohesion approach – integration of immigrants through the language and traditions of the host country. Other documents addressing national minority issues are “National Programme for Promoting Tolerance 2006-2010” and “National Programme for Roma in Latvia 2007-2009”.

The Russian-speaking population is larger than ethnic Russian population, including other groups of post-Soviet nationalities and Russian-speaking Latvians. The prevailing languages in education are Latvian and Russian. Next to the Latvian and Russian schools a number of bilingual schools of minorities operated, including Roma language teaching classes.<sup>180</sup> There are possibilities of receiving education in five traditional minority languages: Russian, Polish, Belarusian, Lithuanian and Estonian.<sup>181</sup>

In 2009, a reform was initiated to enhance efficiency in the education system by closing schools with small number of students. Minority schools are prone to closure due to a small number of

<sup>177</sup> See Ministry of Foreign Affairs of the Republic of Latvia: Russians in Latvia – History, Current Status and Prospects, lecture by Nils Muižnieks, 8 November 2004, <http://www.mfa.gov.lv/en/policy/4641/4642/Muznieks>; Peter van Elsuwege: Russian-speaking minorities in Estonia and Latvia – Problems of integration at the threshold of the European Union, ECMI Working Paper 20 (2004).

<sup>178</sup> See <http://www.mfa.gov.lv/en/policy/4641/4642/4659/>

<sup>179</sup> See the comparative analysis of national legislation and the provisions of the ECRML in Volume 2 of this Handbook

<sup>180</sup> See [http://www.culturalpolicies.net/down/latvia\\_012011.pdf](http://www.culturalpolicies.net/down/latvia_012011.pdf), LV-23

<sup>181</sup> See <http://www.mfa.gov.lv/en/policy/4641/4642/4643>



pupils. The option of preserving them would be their transformation into multifunctional centres for minority culture and education.

A special section on basic education of minorities is included in the Ministry of Education.<sup>182</sup> Several models of education for minorities have been developed by the Ministry of Education, of which the bilingual model seems to be the most popular.<sup>183</sup> The issue of bilingual education is one of the most debated in the Latvian society.

In the judiciary and court proceedings, criminal, civil as well as administrative proceedings, persons who do not speak the official State language have the right to use the interpreter.<sup>184</sup> All administrative services are officially conducted in the official State language except the territories of the Livonian minority. That includes also the use of place names, which in that territory can be displayed in the Livonian language. The administrative-territorial reform of 2005, completed in 2009, the Regional Development Law, the Law on Local Government 1994, Article 15 defines the autonomous function of the local government “to maintain culture and facilitate the preservation of traditional cultural values and the development of creative folk activity.”<sup>185</sup> In that sense, the local government could use its autonomy to support the minority languages in their areas of jurisdiction.

The Electronic Mass Media Law of 2010 requires at least 65% of production and broadcasting is in the official State language.<sup>186</sup> The Law envisages in the Section 2. Purpose and Scope of Application of this Law, “4) to promote the integration of society on the basis of the Latvian language; while fulfilling the requirements of the Official Language Law, to promote the full implementation of the constitutional functions of Latvian as the official language of Latvia, paying special attention that it should serve as the common language of mutual communication of all inhabitants of Latvia; to ensure its preservation and use, determining the procedures appropriate for the public interests whereby the electronic mass media under the jurisdiction of Latvia shall use the official language during their broadcast time and concurrently envisaging the right to use languages of minorities and other languages in the electronic mass media”.<sup>187</sup> That requirement is extended to cable and private channels as well.

Latvia has developed a long-term programme State Cultural Policy Guidelines “National State” (2006-2015)<sup>188</sup> with the vision of an open and consolidated society,<sup>189</sup> cultural pluralism and intercultural dialogue, yet mostly focused on the Livonians, the identity protection in Latgale<sup>190</sup> culture-historical region (Latgalian aspiring to be recognised as a regional language) and Latvian art and culture.<sup>191</sup> The Association of National Culture Societies of I. Kozakevica unites more than 20 organisations of national culture associations<sup>192</sup> who can apply for public funding.

However, public support goes to the established institutions such as Russian theatre or museums which offer programmes in Russian for students from bilingual schools. Activities outside public sector are financed by the private sector. There is an opportunity to apply for funds by minority organisations to the State Cultural Capital Foundation and the Latvian Society

<sup>182</sup> See <http://izm.izm.gov.lv/education/general-education/minorities.html>

<sup>183</sup> See <http://www.mfa.gov.lv/en/policy/4641/4642/4643/>

<sup>184</sup> It must be noted that the obligations created by Article 9 of the ECRML apply irrespective of whether or not the person concerned speaks the official language of the country.

<sup>185</sup> See [http://www.culturalpolicies.net/download/latvia\\_012011.pdf](http://www.culturalpolicies.net/download/latvia_012011.pdf), LV-7.

<sup>186</sup> See [http://www.baltic-course.com/eng/markets\\_and\\_companies/?doc=29077](http://www.baltic-course.com/eng/markets_and_companies/?doc=29077)

<sup>187</sup> See [www.vvc.gov.lv/export/sites/default/.../Electronic\\_Mass\\_Media\\_Law.doc](http://www.vvc.gov.lv/export/sites/default/.../Electronic_Mass_Media_Law.doc)

<sup>188</sup> See [http://www.culturalpolicies.net/download/latvia\\_012011.pdf](http://www.culturalpolicies.net/download/latvia_012011.pdf)

<sup>189</sup> See [http://www.culturalpolicies.net/download/latvia\\_012011.pdf](http://www.culturalpolicies.net/download/latvia_012011.pdf), LV-21

<sup>190</sup> Latgalian. The Latgalian language in education in Latvia. Mercator European Research Centre on Multilingualism and Language Learning, 2009

<sup>191</sup> *Ibidem*.

<sup>192</sup> *Ibidem*, LV-22.

Integration Foundation.

Despite a wealth of cultural and linguistic diversity in Latvia, and the official cultural policy documents, stressing the need for intercultural dialogue and understanding the diversity, intercultural dialogue is often directed toward transnational collaboration.<sup>193</sup> On the other hand, the integration policy is based on the State national identity as expressed in the above document. Also the debate on bilingualism indicates not only bilingualism for minorities but for the society as a whole, as promoted by different organizations such as e-portal “Dialogi” (Dialogues) in Latvian and Russian ([www.dialogi.lv](http://www.dialogi.lv))<sup>194</sup> supported by the Soros Foundation, and other organisations.<sup>195</sup>

Minorities in Latvia are mostly concentrated in the urban areas in particular regions, which makes the minority language use more extensive. Yet language inspectors have as a task to supervise the observation of the implementation of the State language laws, in both public institutions and private enterprises. It has an implication on the employment situation of the minorities as well.<sup>196</sup>

Latvia has several bilateral agreements on cultural co-operation with neighbouring countries, as well as with minorities’ kin-States. There is a well-established school book exchange and other cultural exchanges between the minorities and their kin-States.

Latvia has experience with a lot of multiethnic and multilingual practices, open ethnic diversity debates on the State policies of integration and bilingualism. Latvia could adopt those practices also in the public sphere, without compromising the integrative and consolidating role of the official State language. Riga – already multiethnic and multilingual - could witness the Latvian cultural diversity as the European Capital of Culture in 2014.

### 12.3 Proposal for an instrument of ratification

While the Latvian authorities have not stated that they will not ratify the ECRML, no preparatory steps are known either. Reference to the ECRML was made only during the process of ratification of the FCNM, which has lasted for a decade. Among the reasons for this long process were the linguistic rights established by the FCNM, in particular concerning the use of minority languages in relations with the authorities, the use of personal and topographical names in minority languages, and education in minority languages.<sup>197</sup>

In its instrument of ratification of 6 June 2005, “[t]he Republic of Latvia declare[d] that it will apply the provisions of Article 10, paragraph 2 [(use of a minority language in relations with the administrative authorities) and Article 11, paragraph 3 (topographical indications)]<sup>198</sup> of the Framework Convention without prejudice to the *Satversme* (Constitution) of the Republic of Latvia and the legislative acts governing the use of the official State language that are currently into force.” These declarations also imply the reasons why Latvia has not yet acceded to the ECRML.<sup>199</sup>

As in Estonia, the overall background of these concerns is the position of the Russian language. The presence of a large Russian-speaking population is mainly the result of immigration during

<sup>193</sup> *Ibidem*. LV-26.

<sup>194</sup> See [http://politik-digital.de/egovernment/international/dibs\\_LettlandDialogiInterview.shtml](http://politik-digital.de/egovernment/international/dibs_LettlandDialogiInterview.shtml)

<sup>195</sup> See [http://www.culturalpolicies.net/download/latvia\\_012011.pdf](http://www.culturalpolicies.net/download/latvia_012011.pdf), LV-27.

<sup>196</sup> See Consideration of Reports Submitted by State Parties under Article 16 and 17 of the Covenant. Concluding observations of the Committee on Economic, Social and Cultural Rights, Latvia. Thirty-eighth session Geneva, 30 April-18 May 2007, E/C.12/LVA/CO/17 January 2008; Section D.12.

<sup>197</sup> See Snežana Trifunovska: The case of the Baltic states, in: Council of Europe (ed.): *Minority language protection in Europe: into a new decade*, Strasbourg 2010, pp. 67-84 (pp. 71-72).

<sup>198</sup> Brackets added. Latvia has made two declarations – one on each of the FCNM provisions in question: <http://conventions.coe.int/Treaty/Commun/ListeDeclarations.asp?NT=157&CM=8&DF=17/08/2011&CL=ENG&VL=1>

<sup>199</sup> See Carmen Schmidt: *Minderheitenschutz im östlichen Europa – Lettland*, research project co-ordinated by Angelika Nußberger, Köln 2005, p. 41.



the Soviet period. In 1989, Latvians represented only 52% of Latvia's population, which created a fear that Latvians could find themselves in a minority in their own country. This led to an exclusive citizenship policy for citizens of pre-1940 Latvia and their successors, whereas for all others, the process for naturalisation included a strict requirement that they possessed knowledge of Latvian. At present (2010), 27.6% of the Latvian population are Russians.

The declaration (instrument of ratification) proposed below takes these concerns into account.

### Explanatory note on the main features of the proposed instrument of ratification

#### 1. The proposal includes nine minority languages, among them Russian.

According to the definition in Article 1.a of the ECRML, the concept “‘regional or minority languages’ means languages that are i. 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 ii. different from the official language(s) of that State. It does not include either dialects of the official language(s) of the State or the languages of migrants”.

In Latvia, the following languages comply with the definition in Article 1.a and, pursuant to Article 2.1, would be covered by the ECRML: Belarusian, Estonian, German, Lithuanian, Livonian, Polish and Russian. Furthermore, Romani and Yiddish have traditionally been present in Latvia; they constitute, as stated in the Explanatory Report on the ECRML,<sup>200</sup> non-territorial languages which would be covered by Part II of the ECRML. Part II would also represent an appropriate framework for the promotion of Livonian, given that this territorial language is highly endangered and only spoken by fewer than 20 people.<sup>201</sup>

In this context it must be noted that the ECRML does not provide for the possibility to exclude one of the regional or minority languages mentioned above from its scope of application. In fact, the Committee of Experts, which is the authoritative body in charge of interpreting the ECRML and monitoring its application<sup>202</sup>, has not accepted the initial intention of some States Parties not to apply the ECRML to certain languages and, with the support of the Committee of Ministers of the Council of Europe, the application of the treaty to those languages.<sup>203</sup>

#### 2. The proposal reiterates that the ECRML confines the protection of regional or minority languages to the geographical area where they are traditionally spoken.

While the Russian language has been spoken in Latvia over a long period and does hence qualify as a “regional or minority language” eligible for ECRML coverage, the Convention itself would limit its geographical scope of application to those territories of Latvia where Russian (and each other regional or minority language) has its “historical base”<sup>204</sup>. The ECRML would consequently not apply to minority languages within territories where speakers of this language have not been present over the centuries.

The application of the ECRML to “languages that are traditionally used within a given territory of

<sup>200</sup> See paragraph 36.

<sup>201</sup> See Jonathan Wheatley: Georgia and the European Charter for Regional or Minority Languages, European Centre for Minority Issues, Working Paper No. 42, June 2009, p. 6.

<sup>202</sup> See, for example, First Report on the Application of the European Charter for Regional or Minority Languages in Slovakia (ECRML(2007)1), paragraph 37.

<sup>203</sup> For example, with regard to Arabic and Portuguese in Spain, Cypriot Maronite Arabic in Cyprus, and Croatian, German and Serbian in Slovenia.

<sup>204</sup> See Explanatory Report on the ECRML, paragraph 34

a State by nationals of that State”<sup>205</sup> is a “general rule”<sup>206</sup> of the treaty. This is emphasised, *inter alia*, in the following paragraphs of the ECRML’s Explanatory Report:

33. The languages covered by the Charter are primarily territorial languages, that is to say languages which are traditionally used in a particular geographical area. (...)  
(...)  
89. The Charter normally confines the protection of regional or minority languages to the geographical area where they are traditionally spoken. (...)

According to the Explanatory Report<sup>207</sup>, it is up to each State to define more precisely the territory where the regional or minority languages have their historical base. In Latvia, the settlements of the Old Believers in Latgale as well as Riga constitute an important part of the Russian language’s historical base.

Against this background, the Committee of Experts’ case law is of interest. When in the past it had to deal with situations in which Russian was being used by both traditional groups like Old Believers and by twentieth century migrants, the Committee of Experts monitored the application of the ECRML to Russian in its traditional language area, namely the Old Believers’ settlements.<sup>208</sup> In respect of these historical settlements, however, the Committee of Experts did not make a distinction between “Old Russians” and “New Russians”. In line with this pragmatic interpretation, non-citizens who speak a regional or minority language and live in the historical territory of that language alongside speakers of the same language who are citizens benefit equally from the application of the ECRML in this territory.<sup>209</sup>

The declaration (instrument of ratification) proposed below contains a statement reiterating that the ECRML shall apply to the Belarusian, Estonian, German, Lithuanian, Livonian, Polish and Russian languages in the territories within which these languages have traditionally been used by nationals of Latvia and where they have their historical base. Furthermore, the statement adds that non-citizens who live in these territories and use the given regional or minority language shall benefit from the rights and duties established by the Charter, drawing on the declaration contained in Latvia’s instrument of ratification concerning the FCNM.

Notwithstanding the ECRML’s focus on traditional language areas, the Latvian authorities would be free to apply the substance of the treaty provisions also in non-traditional language areas. However, such measures would be a matter of domestic policy rather than of applying the ECRML, and consequently not be subject to monitoring by the Committee of Experts.

#### 3. The proposal mirrors the existing legislation and is cost-neutral.

Article 4.2 of the ECRML, and also the treaty’s spirit and purpose, requires that each regional or minority language receives at least the level of protection under the ECRML that it already

<sup>205</sup> See Article 1.a.i of the ECRML.

<sup>206</sup> See Explanatory Report on the ECRML, paragraph 90

<sup>207</sup> See paragraph 34. As an exception, two of the 68 options contained in Part III of the ECRML – Articles 8.2 and 12.2 – deal with regional or minority languages in territories where these languages have not been traditionally present with a view to covering, for example, minority language speakers who have migrated to major cities. Both provisions are not included in the declaration (instrument of ratification) set out below.

<sup>208</sup> No distinction between traditional and non-traditional language areas is made if the minority population has in whole or in part been resettled to another area, for example, owing to lignite mining.

<sup>209</sup> This approach corresponds to the principles of the application of the FCNM by Latvia as outlined in the instrument of ratification: “Persons who are not citizens of Latvia or another State but who permanently and legally reside in the Republic of Latvia, who do not belong to a national minority within the meaning of the Framework Convention for the Protection of National Minorities as defined in this declaration, but who identify themselves with a national minority that meets the definition contained in this declaration, shall enjoy the rights prescribed in the Framework Convention, unless specific exceptions are prescribed by law.”; <http://conventions.coe.int/Treaty/Commun/ListeDeclarations.asp?NT=157&CM=8&DF=17/08/2011&CL=ENG&VL=1>



enjoys at the time of ratification.<sup>210</sup> Therefore, the provisions to be included in the instrument of ratification in respect of these languages need to at least mirror the already existing level of protection provided in accordance with national legislation as well as bilateral or multilateral international agreements such as the FCNM.

The proposed instrument of ratification does not go beyond this minimum requirement and includes only ECRML provisions with which Latvia de facto already complies when applying similar provisions of national legislation and the FCNM.

This “mirror approach” would have political and financial advantages. Firstly, the instrument of ratification would not change the existing status of the minority languages, thereby supporting civic integration in Latvia and contributing to a politically smooth ratification process. In addition, the synchronised application of related provisions of ECRML, FCNM and national legislation would contribute to a coherent minority policy. As far as financial advantages are concerned, the instrument of ratification would make it possible that the application of the ECRML remains by and large cost-neutral.<sup>211</sup> It would also enable considerable synergies in periodic reporting to the Council of Europe as the language-related parts of the State report on the application of the FCNM would represent the basis of the State report on the ECRML.

#### 4. The proposal does not grant a special status to any minority language.

As regards the provisions that can be “mirrored” in the instrument of ratification, it first of all needs to be underlined that the FCNM contains language-related provisions that are fully or partially congruent with 38 ECRML provisions. Given that a State which prepares ratification of Part III (Articles 8-14) of the ECRML needs to select at least 35<sup>212</sup> of the 68 options contained therein, Latvia already complies with more than that minimum number through the application of the FCNM. It follows from this that, currently, Latvian legislation already protects the Belarusian, Estonian, German, Lithuanian, Polish and Russian languages at the level of Part III of the ECRML.

In addition to the ECRML provisions already covered in Latvia through the application of the FCNM (and related national legislation), Latvian national legislation matches further ECRML provisions: Articles 8.1.i (education inspection), 9.1.b.ii and c.ii (possibility to use a minority language during civil and administrative proceedings). The national provisions concerned apply generally and do not grant a special status to a specific minority language in the country, even if the language is widely-used.

On the basis of the existing legal situation in Latvia, and taking account of Article 4.2 of the ECRML (see under 3. above), the proposed instrument of ratification includes 35 ECRML provisions in respect of Belarusian, Estonian, German, Lithuanian, Polish and Russian (32 provisions based on the FCNM plus 3<sup>213</sup> provisions additionally ensuing from national legislation). On this basis, Latvia would ratify the ECRML at the lowest possible level of obligations under Part III, namely the minimum number of 35 (of 68) undertakings required by Article 2.2 of the ECRML.

Furthermore, the ‘menus’ proposed for Belarusian, Estonian, German, Lithuanian, Polish and Russian are identical. Grouping the six minority languages would imply that no language is singled out in the instrument of ratification and granted a de facto special status going beyond the present legal status of the minority languages. Most notably, no language would be granted the status of a second official language at local or national levels. In addition, grouping would comply with the requirement of Article 4.2 that the instrument of ratification needs to at least mirror the already existing level of protection provided in accordance with national legislation as well as

<sup>210</sup> The Committee of Experts and the Committee of Ministers have confirmed that, pursuant to Article 4.2, a State Party cannot validly opt for a level of protection under the ECRML which confers fewer rights. See in this regard Jean-Marie Woehrling: *The European Charter for Regional or Minority Languages – A critical commentary*, Council of Europe Publishing, Strasbourg 2005, p. 99.

<sup>211</sup> See Snežana Trifunovska, op. cit., p. 75.

<sup>212</sup> Pursuant to Article 2.2 of the ECRML.

<sup>213</sup> See Articles 8.1.i, 9.1.b.ii and c.ii of the ECRML.

international agreements.

On the other hand, grouping languages with different numbers of speakers would not exclude that the practical situation of languages used by a higher number of people is further taken into account at a later stage. In accordance with the procedure foreseen in Article 3.2, the Latvian authorities may, if they so wish, accept additional ECRML provisions in respect of some or all minority languages at any time after ratification.

#### 5. The proposal contains only limited obligations concerning the promotion of minority languages in the field of administrative authorities.

As stated above (see under 4.), the FCNM contains language-related provisions that are fully or partially congruent with 38 ECRML provisions. Nonetheless, the proposed instrument of ratification includes only 32 of them, omitting the following six provisions:

Firstly, all four ECRML provisions in Article 10 (administrative authorities and public services) that are only *partially* congruent with the FCNM<sup>214</sup> have been omitted whereas those that are *fully* congruent are contained in the declaration. One of the fully congruent provisions (Article 10.1.a) contains five graduated options (i-v) of which the weakest option (v) constituting the lowest level of commitment has been selected. As a result, the obligations of Latvia concerning the promotion of minority languages in the field of administrative authorities would be considerably limited to the level of full congruence with the FCNM, namely to the level of already existing legal obligations. The only exception is the additional omission of Article 10.2.c; although this provision is also fully congruent with the FCNM, it concerns regional authorities that do not exist in Latvia, making the provision not applicable.

Secondly, Article 8.2, which concerns minority-language education in territories in which the regional or minority languages have *not* been traditionally used, has not been included in the declaration either.

#### 6. The proposal contributes to an integrated Latvian society, including the command of the official State language.

The proposed instrument of ratification does not include ECRML provisions that provide for education with the minority language as the only or main medium of instruction.<sup>215</sup> All provisions proposed for ratification guarantee the use of the official State language as a medium of instruction.

#### Proposed Declaration (instrument of ratification)

1. Latvia declares that, in accordance with Article 2, paragraph 1, of the European Charter for Regional or Minority Languages, the provisions of Part II of the Charter shall apply to the Belarusian, Estonian, German, Lithuanian, Livonian, Polish, Romani, Russian and Yiddish languages.

2. In accordance with Article 2, paragraph 2, and Article 3, paragraph 1, of the Charter, Latvia declares that the following provisions shall apply to the Belarusian, Estonian, German, Lithuanian, Polish and Russian languages:

#### Article 8 – Education

Paragraph 1.a.ii; b.ii; c.ii; d.iv; f.ii; g; h; i.

<sup>214</sup> See Articles 10.1.b, 10.2.a, 10.3 and 10.4.c of the ECRML; see Part I of Volume 2 of this Handbook.

<sup>215</sup> See Articles 8.1.a.i, b.i, c.i, d.i and e.i of the ECRML.



**Article 9 – Judicial authorities**

Paragraph 1.a.ii; b.ii; c.ii.

**Article 10 – Administrative authorities and public services**

Paragraph 1.a.v; c.  
Paragraph 2.b; d; g.  
Paragraph 5.

**Article 11 – Media**

Paragraph 1.a.iii; b.ii; c.ii; d; e.i; f.i; g.  
Paragraph 2.  
Paragraph 3.

**Article 12 – Cultural activities and facilities**

Paragraph 1.a; b; c; d; e; f.

**Article 13 – Economic and social life**

Paragraph 1.a.

**Article 14 – Transfrontier exchanges**

Paragraph a.  
Paragraph b.

3. Latvia declares that, in accordance with Article 1, paragraphs a and b of the Charter, the provisions of the Charter shall apply to the Belarusian, Estonian, German, Lithuanian, Livonian, Polish and Russian languages in the territories within which these languages have traditionally been used by nationals of Latvia and where they have their historical base. Persons who are not citizens of Latvia or another State but who reside in the aforementioned territories and speak a regional or minority language in conformity with Article 1.a.i of the Charter shall benefit from the rights and duties established by the Charter.

**13. Lithuania**

Lithuania has not signed the European Charter for Regional or Minority Languages (ECRML). However, it ratified the Framework Convention for the Protection of National Minorities (FCNM) in 2000.

**13.1 Presentation of the regional or minority language situation**

According to the definition in Article 1.a of the ECRML, the concept “regional or minority languages’ means languages that are i. 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 ii. different from the official language(s) of that State. It does not include either dialects of the official language(s) of the State or the languages of migrants”.

In Lithuania, five traditionally used languages comply with that definition:<sup>216</sup>

- **Belarusian** is one of the oldest minority languages spoken in Lithuania. During Soviet times, the number of Belarusians increased, but the number of Belarusian speakers decreased owing to the prevalence of Russian, similarly to what has happened in Latvia and Estonia. At present (2011), about 41 100 people<sup>217</sup> belong to the Belarusian national minority which is concentrated in particular in the areas of Vilnius and Utena.

- **German** has had a traditional presence in Lithuania since the twelfth century. In 1923, 29 231 Germans lived there (mainly around Vilkaiviškis) whose number increased to about 145 000 owing to the integration of the Memel Territory. At present, there are 3 000 to 8 000 Germans<sup>218</sup> who live mainly in/around Klaipėda/Šilutė, Kaunas and Vilnius. German is, *inter alia*, used as a medium of instruction and in two newspapers.

- **Polish** has had a presence in Lithuania for about a hundred years. At present (2011), about 212 800 people belong to the Polish national minority, making it the biggest minority in the country. The Polish minority is concentrated in the areas of Šalčininkai, Trakai and Švenčionys and constituted 18.7% of the population of the City of Vilnius in 2001.<sup>219</sup> Polish is widely used as a language of instruction, including in higher education, and also present on television and radio as well as in the press (daily “Kurier Wileński” and weeklies).

- **Russian** has been spoken in Lithuania for several centuries, *inter alia*, by Old Believers who began to settle in the country in the late seventeenth century. Unlike Estonia and Latvia, Lithuania was not affected by mass immigration of Russians during Soviet times. At present (2011), about 174 900 people belong to the Russian national minority, making it the second-biggest minority in the country. The Russian minority is concentrated in particular in the areas

<sup>216</sup> See Report submitted by Lithuania pursuant to Article 25, paragraph 1 of the Framework Convention for the Protection of National Minorities (ACFC/SR(2001)007), pp. 21-26; European Commission: The Euromosaic study, [http://ec.europa.eu/education/languages/euromosaic/doc4681\\_en.htm](http://ec.europa.eu/education/languages/euromosaic/doc4681_en.htm). The Karaim language has a traditional presence in Lithuania as well. According to an official survey carried out in 1997, 30 to 50 persons spoke Karaim at the time. While the low number of speakers is not an obstacle to ECRML coverage, the use of Karaim is limited to religious ceremonies as the Karaites mainly consider themselves a religious group (see Second State Report submitted by Lithuania pursuant to Article 25, paragraph 2 of the Framework Convention for the Protection of National Minorities (ACFC/SR/II(2006)007), p. 59). In its monitoring practice, however, the Committee of Experts has pointed out that a language corresponding to the concept of “regional or minority language” must have the potential to be used and promoted in all relevant domains of daily public life, not just in liturgy.

<sup>217</sup> See Statistics Lithuania, <http://www.stat.gov.lt/lt>

<sup>218</sup> See *ibidem* and Markko Kallonen: Minority protection and linguistic rights in Lithuania, Noves SL. Revista de Sociolingüística, 2004, p. 2, <http://www6.gencat.cat/llengcat/noves/hm04tardor/docs/kallonen.pdf>

<sup>219</sup> See Second State Report submitted by Lithuania pursuant to Article 25, paragraph 2 of the Framework Convention for the Protection of National Minorities (ACFC/SR/II(2006)007), p. 6.



of Utena, Vilnius and Kaunas.

- **Ukrainian** has been traditionally present in Lithuania. At present (2011), about 21 100 people belong to the Ukrainian national minority of whom a relatively high percentage arrived during Soviet times. While only a few hundred Ukrainians speak Ukrainian, their language has a good presence in education, on television, radio and in the press. The Ukrainians live, *inter alia*, in the areas of Vilnius and Utena.<sup>220</sup>

In addition to the aforementioned regional or minority languages, Romani and Yiddish have traditionally been present in Lithuania; they constitute non-territorial languages in the sense of the ECRML:

- **Romani** has been present in Lithuania since the fifteenth century. At present, about 2 900 people belong to the Roma minority of whom a few hundred speak Romani.<sup>221</sup> The Roma are not geographically concentrated.

- **Yiddish** has played a very important role in the history of Lithuania, but lost many speakers during the Second World War. No Yiddish education was provided during Soviet times and only recently attempts were made to revive the language. At present (2011), about 3 400 Jews live in Lithuania of whom a few hundred speak Yiddish.<sup>222</sup>

### 13.2 Compliance of legislation with the ECRML

The following legal provisions have been made for the ethnic minorities living in Lithuania<sup>223</sup>: the Constitution of the Republic of Lithuania (1992), the Law on Education (1991), the Law on Higher Education and Research (2009), Law on the Principles of State Protection of Ethnic Culture (1999), the Law of Ethnic Minorities (1989), the Law on the Press and other Mass Media, the Law on Courts (1994), the Law on the Amendment of the Law on Education (2006), Treaty on Friendly Relations and Good Neighbourly Co-operation of the Republic of Lithuania and Republic of Poland (1994), and the Law on the State Language (1995).

The Republic of Lithuania guarantees in Article 37 of the Constitution (1992) that “[C]itizens belonging to ethnic communities shall have the right to foster their language, culture, and customs.” The Law on Education (1991) states that ethnic minorities have the right to be taught in their native tongue in pre-school and general education. The Law on the Amendment of the Law on Education (2006) goes even further to say that minorities have the opportunity in learning subjects in their minority language. However, only pre-school, primary, and secondary education proffers the opportunity for minorities to learn in their native tongue. The Law on Higher Education (2009) states that another language can be allowed in the curricula only if it is related to students’ studies and there is no legislation for minorities to learn in their language in adult or vocational education. However, there are some vocational schools that teach partly in the minority language, such as the Polish vocational schools in Vilnius/Wilno and Baltoji Vokė/Biała Waka, and some adult education facilities offer Polish language courses only sporadically. Only the Polish Institute in Vilnius offers Polish courses on a regular basis in different levels. The Law on the Principles of State Protection of Ethnic Culture (1999) in articles 4 and 9 states that teaching of minority cultures is allowed in the minority languages, but the law doesn’t mention anything about teaching of the minorities’ history in the minority languages. The Constitution also guarantees the right for minorities to foster their

<sup>220</sup> See *Ibidem*.

<sup>221</sup> See Markko Kallonen, op. cit., p. 3.

<sup>222</sup> See Laura Sheeter: Lithuanian Jews revive Yiddish, in: BBC News, 2007, <http://news.bbc.co.uk/2/hi/6303057.stm>

<sup>223</sup> See the comparative analysis of national legislation and the provisions of the ECRML in Volume 2 of this Handbook. See also Mahulena Hošková (now Hofmann): Die rechtliche Stellung der Minderheiten in Litauen. In: Jochen Abraham Frowein/Rainer Hofmann/Stefan Oeter (eds.): Das Minderheitenrecht europäischer Staaten, Teil 2, Berlin 1994, p. 171-215.

customs, culture, and language, but it doesn’t mention anything about fostering their history. The Law on Education (1991) in Article 23 says that teachers have the right to further their training, which includes minority languages. The Law on the Principles of State Protection of Ethnic Culture in Article 23 even goes further to state that teachers have the right to further their training concerning the education of culture.

In relation to court proceedings, the Law on State Language (1995) Article 8 and the Law on Courts (1994) Article 6, both state that if the defendant or the participants in the proceedings cannot speak the official language, he may use an interpreter without being charged for it. The Law on Courts (1994) even states positive discrimination saying that everyone shall not be limited to his or her rights based on language, but shall not be given any privileges.

The Law on Ethnic Minorities (1989) Article 4 states, “In offices and organisations located in areas serving substantial numbers of a minority with a different language, the language spoken by that minority shall be used in addition to Lithuanian” meaning that local authorities and public services must use the minority language as well.

According to the Law on State Language (1995), Article 4 states that audio and visual programmes that are intended for ethnic minorities may use the minority language and the Law on the Press and other Mass Media (1990) states that ethnic minorities have the right to use the minority language in the mass media.

The Law on State Language (1995) in Article 13 states that media programmes that are meant for minorities shall provide dubbing, subtitling, translations, and post-synchronisation activities in the minority language, but doesn’t mention how minorities can access to different means of resources for promoting the minority languages. Also, it mentions only media and not the furthering of other different types of expressions and initiatives promoting and fostering the minority languages. In the Constitution of the Republic of Lithuania (1992), Article 45 says, “Ethnic communities of citizens shall independently manage the affairs of their ethnic culture, education, charity, and mutual assistance. Ethnic communities shall be provided support.” In the Law of Principles of State Protection of Ethnic Cultures Article 10 states that the local authorities must support ethnic culture in their area of administration such as ethnic culture programmes, and other minority institutions.

There is no particular legislation concerning minority languages in economic or social life.

According to the Treaty on Friendly Relations and Good Neighbourly Co-operation of the Republic of Lithuania and the Republic of Poland (1994), the Polish who live in Lithuania have the right to express their culture and language freely without discrimination or persecution in education, practice of religion, and service. They also have the right to use their language and create their own institutions, societies, and organisations to promote the language.

### 13.3 Proposal for an instrument of ratification

The Lithuanian authorities have not made known the reasons for not having ratified the ECRML so far. However, they follow issues related to the ECRML<sup>224</sup> and carried out a study on the feasibility of ratification in 2010.<sup>225</sup> In academia it has been argued that the ECRML’s provisions regarding the use of minority languages in relations with administrative authorities have prevented ratification because such use could make Lithuanian a language of “secondary significance”<sup>226</sup> in

<sup>224</sup> See Report submitted by Lithuania pursuant to Article 25, paragraph 1 of the Framework Convention for the Protection of National Minorities (ACFC/SR(2001)007), p. 16.

<sup>225</sup> See Report: The European Charter for Regional or Minority Languages, by the Committee on Legal Affairs and Human Rights of the Parliamentary Assembly of the Council of Europe, 21 October 2010 (Doc. 12422), paragraph 35.

<sup>226</sup> See Snežana Trifunovska: The case of the Baltic states, in: Council of Europe (ed.): Minority language protection in Europe: into a new decade, Strasbourg 2010, pp. 67-84 (p. 73).



areas with a Polish majority population (for example, around Šalčininkai).

The declaration (instrument of ratification) proposed below takes these concerns into account.

### Explanatory note on the main features of the proposed instrument of ratification

#### 1. The proposal includes seven languages.

According to the definition in Article 1.a of the ECRML, the concept “‘regional or minority languages’ means languages that are i. 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 ii. different from the official language(s) of that State. It does not include either dialects of the official language(s) of the State or the languages of migrants”.

In Lithuania, the following languages comply with the definition in Article 1.a and, pursuant to Article 2.1, would be covered by the ECRML: Belarusian, German, Polish, Russian and Ukrainian. Furthermore, Romani and Yiddish have traditionally been present in Lithuania; they constitute, as stated in the Explanatory Report on the ECRML<sup>227</sup>, non-territorial languages which would be covered by Part II of the ECRML.

In this context it must be noted that the ECRML does not provide for the possibility to exclude one of the regional or minority languages mentioned above from its scope of application. In fact, the Committee of Experts has not accepted the initial intention of some States Parties not to apply the ECRML to certain languages and, with the support of the Committee of Ministers of the Council of Europe, monitors the application of the treaty to those languages.<sup>228</sup>

#### 2. The proposal mirrors the existing legal situation and is cost-neutral.

Article 4.2 of the ECRML, and also the treaty’s spirit and purpose, requires that each regional or minority language receives at least the level of protection under the ECRML that it already enjoys at the time of ratification.<sup>229</sup> Therefore, the provisions to be included in the instrument of ratification in respect of these languages need to at least mirror the already existing level of protection provided in accordance with national legislation as well as bilateral or multilateral international agreements such as the FCNM.

The instrument of ratification proposed below does not go beyond this minimum requirement and includes only ECRML provisions with which Lithuania de facto already complies when applying similar provisions of national legislation and the FCNM.

This “mirror approach” would have political and financial advantages. Firstly, the instrument of ratification would not change the existing status of the minority languages, thereby contributing to a politically smooth ratification process. In addition, the synchronised application of related provisions of ECRML, FCNM and national legislation would contribute to a coherent minority policy. As far as financial advantages are concerned, the instrument of ratification would make it possible that the application of the ECRML remains by and large cost-neutral.<sup>230</sup> It would also enable considerable synergies in periodic reporting to the Council of Europe as the language-related parts of the State report on the application of the FCNM would represent the basis of the State report on the ECRML.

<sup>227</sup> See paragraph 36.

<sup>228</sup> For example, with regard to Arabic and Portuguese in Spain, Cypriot Maronite Arabic in Cyprus, and Croatian, German and Serbian in Slovenia.

<sup>229</sup> The Committee of Experts and the Committee of Ministers have confirmed that, pursuant to Article 4.2, a State Party cannot validly opt for a level of protection under the ECRML which confers fewer rights. See in this regard Jean-Marie Woehrling: *The European Charter for Regional or Minority Languages – A critical commentary*, Council of Europe Publishing, Strasbourg 2005, p. 99.

<sup>230</sup> See Snežana Trifunovska, op. cit., p. 75.

#### 3. The proposal contains three graduated ‘menus’ of ECRML provisions of which the strongest menu applies to Polish and Russian.

As regards the provisions that can be “mirrored” in the instrument of ratification, it first of all needs to be underlined that the FCNM contains language-related provisions that are fully or partially congruent with 38 ECRML provisions. Given that a State which prepares ratification of Part III (Articles 8-14) of the ECRML needs to select at least 35<sup>231</sup> of the 68 options contained therein, Lithuania already complies with more than that minimum number through the application of the FCNM. It follows from this that, currently, Lithuanian legislation already protects the Polish, Russian, Belarusian, German and Ukrainian languages at the level of Part III of the ECRML.

In respect of the aforementioned languages, different (graduated) ‘menus’ of provisions from the ECRML could be applied. The provisions contained in these menus differ not only in *number* from each other, but also regarding the *level of commitment*. The latter is the case for undertakings that have been selected from ECRML provisions containing alternative (stronger and weaker) options. Hence, the menu of provisions applied to Polish and Russian contains more and – as regards alternative (“or”) options – stronger provisions than the menu for Belarusian, and the menu for Belarusian contains more and stronger provisions than the menu for German and Ukrainian.

Furthermore, the menus are interrelated with the FCNM provisions that are congruent with 38 ECRML provisions. These provisions, with which Lithuania de facto already complies when applying the FCNM, are contained in all menus with two exceptions: firstly, Article 10.2.c concerning regional authorities has not been considered because such authorities do not exist in Lithuania; secondly, Article 10.2.a has not been included (see in detail under 4. below).

Given that Lithuania complies with more ECRML provisions than the aforementioned 36 (38 minus 2), the menus also contain provisions additionally based on national legislation. On the basis of the existing legal situation in Lithuania and taking account of Article 4.2 of the ECRML (see under 2. above), the proposed instrument of ratification includes 40 ECRML provisions for Polish and Russian (36 provisions based on the FCNM plus 4<sup>232</sup> provisions additionally ensuing from national legislation), 39 for Belarusian (36 plus 3), and 37 (36 plus 1) for German and Ukrainian.

Concerning education (Article 8 of the ECRML), the menu for Polish and Russian provides mostly for “teaching in” these languages whereas the provisions to be applied to Belarusian foresee mostly that only a “substantial part” of education is made available in this language. Compared to Belarusian, the menu for German and Ukrainian would be weaker regarding pre-school as well as technical and vocational education.

The menus with regard to judicial authorities (Article 9) are identical for Polish, Russian and Belarusian. With respect to German and Ukrainian, only the minimum number of one<sup>233</sup> provision would be applied, in accordance with the FCNM.

In the field of administrative authorities and public services (Article 10), Article 10.1.a.ii would apply to Polish and Russian whereas Belarusian would be covered by the weaker option contained in Article 10.1.a.iii. The weakest option of Article 10.1.a – namely Article 10.1.a.v – would apply to German and Ukrainian, in conformity with the FCNM. As far as public services are concerned, Article 10.3.a would cover Polish and Russian, the weaker option contained in Article 10.3.b Belarusian, and the weakest option – namely Article 10.3.c – German and Ukrainian.

Concerning the media (Article 11), the provisions for Polish, Russian and Belarusian would differ only regarding private broadcasters where the weaker options of Articles 11.1.b and c would apply to Belarusian. Compared to Belarusian, the German and Ukrainian languages would be concerned by only the lower-level alternative option of Article 11.1.f (namely option ii).

<sup>231</sup> Pursuant to Article 2.2 of the ECRML.

<sup>232</sup> See Articles 8.1.e.ii, 9.1.b.ii, 9.1.c.ii and 12.1.g of the ECRML.

<sup>233</sup> As required by Article 2.2 of the ECRML.



With the exception of Article 12.1.g which would apply only to Polish and Russian, the provisions in the field of cultural activities and facilities (Article 12) are identical for all languages.

In economic and social life (Article 13), only the minimum number of one<sup>234</sup> provision would apply to the five languages. Similarly, both provisions in the field of transfrontier exchanges (Article 14) would be applied to all languages.

**4. The proposal contains only limited obligations concerning the use of minority languages by the administrative authorities.**

Article 10.1.a of the ECRML, which is fully congruent<sup>235</sup> with the FCNM, deals with the use of minority languages by local branches of the State authorities. It contains five graduated options (i-v) of which only the second option (ii) has been selected for Polish and Russian. Option ii ensures “that such of their officers as are in contact with the public use the regional or minority languages in their relations with people applying to them in these languages”.

The scenario envisaged by option ii is compatible with the current legal situation that the Lithuanian authorities have described as follows: “[...] in areas with a compact national minority residing therein, employees and officials of public administration institutions may communicate with the people who apply to them not only in the official language but also in the [minority language]”.<sup>236</sup> In particular, option ii does not extend to the use of the regional or minority language as an internal working language of authorities, which is covered by option i.

Furthermore, the proposed declaration (instrument of ratification) does not include Article 10.2.a. This provision, which is only partially congruent with the FCNM, deals with “the use of regional or minority languages within the framework of the regional or local authority” and concerns situations which go beyond what is described above.

As a result, the obligations of Lithuania concerning the use of minority languages by administrative authorities would be limited. Furthermore, the selection of Article 10.1.a.ii and the omission of Article 10.2.a would avoid problems related to possibly conflicting provisions contained in the Law on National Minorities (Article 4) and the Law on the State Language.<sup>237</sup>

**5. The proposal contributes to an integrated Lithuanian society, including the command of the official State language.**

All provisions in the field of education included in the proposed instrument of ratification guarantee the teaching of the official State language.

**Proposed Declaration (instrument of ratification)**

**1.** Lithuania declares that, in accordance with Article 2, paragraph 1, of the European Charter for Regional or Minority Languages, the provisions of Part II of the Charter shall apply to the Belarusian, German, Polish, Romani, Russian, Ukrainian and Yiddish languages.

**2.** In accordance with Article 2, paragraph 2, and Article 3, paragraph 1, of the Charter, Lithuania declares that the following provisions shall apply to the languages concerned:

<sup>234</sup> As required by Article 2.2 of the ECRML.

<sup>235</sup> See Part I of Volume 2 of this Handbook.

<sup>236</sup> See Report submitted by Lithuania pursuant to Article 25, paragraph 1 of the Framework Convention for the Protection of National Minorities (ACFC/SR(2001)007), p. 54.

<sup>237</sup> See Snežana Trifunovska, op. cit., p. 72.

**a) Polish and Russian**

**Article 8 – Education**

Paragraph 1.a.i; b.i; c.i; d.ii; e.ii; f.i; g; h.  
Paragraph 2.

**Article 9 – Judicial authorities**

Paragraph 1.a.ii; b.ii; c.ii.

**Article 10 – Administrative authorities and public services**

Paragraph 1.a.ii; b; c.  
Paragraph 2.b; d; g.  
Paragraph 3.a.  
Paragraph 4.c.  
Paragraph 5.

**Article 11 – Media**

Paragraph 1.a.iii; b.i; c.i; d; e.i; f.i; g.  
Paragraph 2.  
Paragraph 3.

**Article 12 – Cultural activities and facilities**

Paragraph 1.a; b; c; d; e; f; g.

**Article 13 – Economic and social life**

Paragraph 1.a.

**Article 14 – Transfrontier exchanges**

Paragraph a.  
Paragraph b.

**b) Belarusian**

**Article 8 – Education**

Paragraph 1.a.ii; b.ii; c.ii; d.iii; e.ii; f.ii; g; h.  
Paragraph 2.

**Article 9 – Judicial authorities**

Paragraph 1.a.ii; b.ii; c.ii.

**Article 10 – Administrative authorities and public services**

Paragraph 1.a.iii; b; c.  
Paragraph 2.b; d; g.  
Paragraph 3.b.  
Paragraph 4.c.  
Paragraph 5.

**Article 11 – Media**

Paragraph 1.a.iii; b.ii; c.ii; d; e.i; f.i; g.  
Paragraph 2.  
Paragraph 3.



**Article 12 – Cultural activities and facilities**

Paragraph 1.a; b; c; d; e; f.

**Article 13 – Economic and social life**

Paragraph 1.a.

**Article 14 – Transfrontier exchanges**

Paragraph a.

Paragraph b.

**c) German and Ukrainian**

**Article 8 – Education**

Paragraph 1.a.iii; b.ii; c.ii; d.iv; e.ii; f.ii; g; h.

Paragraph 2.

**Article 9 – Judicial authorities**

Paragraph 1.a.ii.

**Article 10 – Administrative authorities and public services**

Paragraph 1.a.v; b; c.

Paragraph 2.b; d; g.

Paragraph 3.c.

Paragraph 4.c.

Paragraph 5.

**Article 11 – Media**

Paragraph 1.a.iii; b.ii; c.ii; d; e.i; f.ii; g.

Paragraph 2.

Paragraph 3.

**Article 12 – Cultural activities and facilities**

Paragraph 1.a; b; c; d; e; f.

**Article 13 – Economic and social life**

Paragraph 1.a.

**Article 14 – Transfrontier exchanges**

Paragraph a.

Paragraph b.

**14. Malta**

Malta signed the European Charter for Regional or Minority Languages (ECRML) on 5 November 1992. Furthermore, it ratified the Framework Convention for the Protection of National Minorities (FCNM) in 1998.

According to the definition in Article 1.a of the ECRML, the concept “‘regional or minority languages’ means languages that are i. 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 ii. different from the official language(s) of that State. It does not include either dialects of the official language(s) of the State or the languages of migrants”.

When ratifying the FCNM, Malta declared that there are no national minorities on its territory.<sup>238</sup> The national language of Malta is Maltese, and English is co-official. About 15 000 people speak English as their mother tongue. No regional or minority language in the sense of Article 1.a of the ECRML is present in Malta.

Nevertheless, Malta could ratify the ECRML as an act of solidarity as it has done with regard to the FCNM and as Liechtenstein and Luxemburg have done regarding the ECRML.

**Proposed Declaration (instrument of ratification)<sup>239</sup>**

Malta declares in accordance with Article 2, paragraph 2, and in accordance with Article 3, paragraph 1, of the European Charter for Regional or Minority Languages of 5 November 1992, that there are no regional or minority languages in the sense of the Charter in the territory of Malta at the time of ratification. Malta considers its ratification of the Charter as an act of solidarity in the view of the objectives of the Convention.

<sup>238</sup> See Second Report submitted by Malta pursuant to Article 25, paragraph 2 of the Framework Convention for the Protection of National Minorities (ACFC/SR/II(2004)011), p. 3.

<sup>239</sup> Based on the declarations contained in the Maltese instrument of ratification regarding the FCNM, deposited on 10 February 1998, and in the instruments of ratification of Liechtenstein regarding the ECRML and the FCNM both deposited on 18 November 1997.



## 15. Moldova

When acceding to the Council of Europe, Moldova committed itself to signing and ratifying the European Charter for Regional or Minority Languages (ECRML) by 13 July 1996.<sup>240</sup> Moldova signed the ECRML on 11 July 2002 and, by virtue of its signature alone, agreed to comply with the ECRML's provisions.<sup>241</sup> Furthermore, Moldova ratified the Framework Convention for the Protection of National Minorities (FCNM) in 1996.

### 15.1 Presentation of the regional or minority language situation

According to the definition in Article 1.a of the ECRML, the concept “regional or minority languages’ means languages that are i. 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 ii. different from the official language(s) of that State. It does not include either dialects of the official language(s) of the State or the languages of migrants”.

In Moldova, six traditionally used languages comply with that definition:<sup>242</sup>

- **Bulgarian** has been spoken in today’s Moldova since the late eighteenth century, when groups of Bulgarians settled in then Bessarabia seeking refuge from Ottoman persecution. According to the 2004 census (which did not extend to Transnistria or the city of Bender), 65 662 ethnic Bulgarians live in Moldova, 81% of whom speak Bulgarian as their mother tongue.<sup>243</sup> Bulgarian is used predominantly in the rural areas in the south of the country. In the Taraclia raion (district), Bulgarians make up 67% of the population.
- **Gagauz** has been present in Moldova for two centuries, when groups of Turkish speaking people moved into what was then Bessarabia. The Gagauz are christianised and bulgarianised Turks or linguistically Turkicised Christian-Orthodox ethnic Bulgarians.<sup>244</sup> The 2004 census recorded 147 500 Gagauz, and 136 155 speak the language as their mother tongue. In the course of history, the Gagauz moved from the north to the south of Moldova and are now concentrated in the territory of the autonomous territorial unit of Gagauzia (Gagauz Yeri).
- **German** has been traditionally present in today’s Moldova since 1821 when Germans founded the first of a total of 53 colonies. In 1940, about 1 000 Germans were exempted from the minority’s resettlement to Germany. The 2004 census recorded 1 616 Germans who have several associations, three schools, a cultural centre, library and radio programme. Two municipalities, Marienfeld (Cimişlia raion) and Alexanderfeld (Cahul raion), have official German names. The most prominent Moldova German is Germany’s former president Horst Köhler.
- **Polish** has been spoken in Moldova since the fourteenth century, when groups of Poles emigrated from Poland (including many of Jewish origin). In the course of time, however, the number of Poles decreased considerably owing to assimilation, especially in the last century. According to the 2004 census, 2 383 people belong to the Polish minority in Moldova. They live in particular in regions of north-eastern Moldova, like Slobozia-Raşcov. Polish is a language of instruction in a kindergarten and in an elementary school, and is also used in the media.

<sup>240</sup> See Opinion of the Parliamentary Assembly of the Council of Europe No. 188(1995).

<sup>241</sup> See Jean-Marie Woehrling: The European Charter for Regional or Minority Languages – A critical commentary, Council of Europe Publishing, Strasbourg 2005, p. 44.

<sup>242</sup> See Third Report submitted by Moldova pursuant to Article 25, paragraph 2 of the Framework Convention for the Protection of National Minorities (ACFC/SR/III(2009)001), p. 6.

<sup>243</sup> See Minority Rights Group, World Directory of Minorities, <http://www.minorityrights.org/?lid=5028&tmpl=printpage>

<sup>244</sup> See Minority Rights Group, World Directory of Minorities, <http://www.minorityrights.org/?lid=5026&tmpl=printpage>

- **Russian** has been spoken in parts of Moldova – particularly in the breakaway region of Transnistria – since before the Soviet time. Its use, however, has immensely increased during that time. According to the 1989 census – which also included Transnistria – ethnic Russians made up 13% of the State population,<sup>245</sup> while the number dropped to 5.9% in the census of 2004 (201 218 Russians). However, Russian is usually spoken in daily life by 540 990 people (16% of the population), and is especially widespread among minorities, notably Ukrainians, Gagauz and Bulgarians. Russian has official status in Gagauzia and Transnistria. It is, however, widely used throughout the country and has the status of a “language of inter-ethnic communication”.

- **Ukrainian** has been spoken for several centuries in the territory of Moldova. The Ukrainians are, according to the 2004 census, the largest minority in Moldova. 282 406 people belong to the Ukrainian minority, which corresponds to 8.3% of the Moldovan population. For 180 981 people (64% of the Ukrainian minority), Ukrainian is the mother tongue. However, a considerable number of Ukrainians use Russian. The Ukrainian language is spoken mostly in the northern and eastern part of the country and has official status in Transnistria.

In addition to the aforementioned regional or minority languages, Romani and Yiddish have traditionally been present in Moldova; they constitute non-territorial languages in the sense of the ECRML:

- **Romani** has been traditionally spoken in Moldova. According to the 2004 census, 12 271 Roma live in the country, *inter alia*, in Soroca, the small settlements of Schinoasa and Ursari (both in the Călăraşi raion), Otaci and Vulcăneşti (Gagauzia).
- **Yiddish** has been known in Moldova since the end of the fourteenth century, when people of Jewish origin emigrated mainly from Germany and Poland. During and after Soviet times, the number of Yiddish speakers decreased significantly. In 2004, 3 608 people indicated Jewish origin, although only a few hundred speak Yiddish, while others are assimilated into other languages (mostly Russian). There is no specific settlement area.

### 15.2 Compliance of legislation with the ECRML

Moldova has a complex legislative framework concerning the use of languages,<sup>246</sup> which corresponds to a large extent to the ECRML. The main provisions are contained in the Constitution of the Republic of Moldova of 29 July 1994, the Law on the Functioning of the Languages Spoken in the Territory of the Republic of Moldova of 1 September 1989<sup>247</sup> (hereafter “the Language Law”) and the Law on the Rights of Persons belonging to National Minorities and the Legal Status of their Organisations of 12 July 2001 (hereafter “the Minority Law”).

The Constitution prescribes in Article 13 that “[t]he State language of the Republic of Moldova shall be Moldovan, using the Latin script”, and that the “State shall recognise and protect the right to the preservation, development and functioning of Russian and of other languages spoken in the territory of the country”. It should be noted that the Language Law refers to Russian as a language of inter-ethnic communication (Article 3) and that the language has a strong position, according to legislation and practice.

In the field of education, Article 35.2 of the Constitution provides that “[t]he State shall ensure, in accordance with the law, the right to choose the language of education and instruction of

<sup>245</sup> See Advisory Committee on the Framework Convention for the Protection of National Minorities, First Opinion on Moldova (ACFC/INF/OP/I(2003)002), p. 9.

<sup>246</sup> See the comparative analysis of national legislation and the provisions of the ECRML in Volume 2 of this Handbook.

<sup>247</sup> The Law on the Functioning of the Languages Spoken in the Territory of the Soviet Socialist Republic of Moldova of 1 September 1989 is still in force. According to the Constitution, it shall remain in force, to the extent it does not contravene to its provisions.



people.” According to Article 6.1 of the Minority Law, “[t]he State shall guarantee the fulfilment of the rights of persons belonging to national minorities to pre-school education, primary education, secondary education (general and vocational), higher and postgraduate education in Moldovan and Russian, and shall create the conditions for fulfilling their right to education and instruction in the mother tongue (Ukrainian, Gagauz, Bulgarian, Hebrew, Yiddish, etc.)”.

Article 8 of the Law on Education (1995) provides that “[t]he State shall ensure [...] the right to choose the language of education and instruction at all levels and stages of education”. Article 18 of the Language Law provides that the State “[s]hall guarantee the right to pre-school education, general secondary education, specialised secondary education, technical-vocational education and higher education in Moldovan and Russian, and shall create the necessary conditions for fulfilling the right of citizens belonging to other nationalities,<sup>248</sup> living in the republic, to education and instruction in the mother tongue (Gagauz, Ukrainian, Bulgarian, Hebrew, Yiddish, etc.)”. The provisions of Article 8.1.a-e of the ECRML are therefore covered. The course “History, culture and traditions of the people (Russian/Ukrainian/Gagauz/Bulgarian)” is also taught,<sup>249</sup> thereby covering Article 8.1.g of the ECRML. According to Article 6.2 of the Minority Law, the State undertakes to “contribute to the [...] training of teachers”, corresponding to Article 8.1.h of the ECRML.

As far as Article 9 of the ECRML is concerned, Article 118 of the Constitution states that “[p]ersons who do not know or do not speak Moldovan<sup>250</sup> have the right to familiarise themselves with all the documents and materials of the case file, and to speak in court through an interpreter”. A similar provision appears in Article 9 of the Law on the Judicial Organisation (1995). According to Article 15 of the Language Law, “[p]articipants who do not know the language of the legal proceedings shall be ensured the right to familiarise themselves with the documents of the case file, and to take part in the criminal prosecution and judicial activities through a translator, as well as to speak and testify in the mother tongue”. The same provision prescribes that according to the procedural legislation, “the criminal and judicial prosecution documents shall be presented to the accused, to the defendant and to other participants translated into the language they know”.

Article 9.1.a of the ECRML is also covered by the Criminal Procedure Code (2003), which provides that “[t]he person who does not know or does not speak the State language has the right to familiarise themselves with all the documents and materials of the case file, and to speak before the criminal prosecution body and in court through an interpreter” (Article 16.2) and that “the procedural documents of the criminal prosecution body and of the court shall be presented to the suspect, to the accused and to the defendant translated into his or her mother tongue or in the language he or she speaks, as provided by the present Code” (Article 16.4). The same Code prescribes that the witness is entitled “to make statements in the mother tongue or in another language he or she speaks” (Article 90.12.8).

Article 9.1.b of the ECRML corresponds to Article 24 of the Civil Procedure Code (2003), which prescribes that “[t]he people interested in solving the case who do not know or do not speak Moldovan have the right to familiarise themselves with the documents and the materials of the case file, and to speak at a trial through an interpreter”.

With respect to Article 9.1.c of the ECRML, Article 278 of the Civil Procedure Code provides that “[a]dministrative cases shall be examined by the respective courts according to the general provisions of the present Code, with the exceptions and completions provided by the legislation on administrative disputes”. Article 9.3 of the ECRML is reflected in Article 8.1 of the Minority

<sup>248</sup> “Nationality” means “ethnicity”.

<sup>249</sup> See Third State Report submitted by the Republic of Moldova pursuant to Article 25, paragraph 2 of the Framework Convention for the Protection of National Minorities (ACFC/SR/III(2009)001), p. 28.

<sup>250</sup> It must be noted that the obligations created by Article 9 of the ECRML apply irrespective of whether or not the person concerned speaks the official language of the country. Considering that many persons belonging to national minorities in Moldova are not able to speak the state language fluently, the national provisions in question maintain, however, their relevance in many cases.

Law, which provides that “[t]he State shall ensure the publication of the legal acts, official communications and other information of national relevance in Moldovan and Russian” and Article 1.1 of the Law on the Publication and Entry into Force of Official Acts (1994), which prescribes that a large category of national legal acts “shall be published [...] in the State language with translation into Russian and into other languages according to the legislation”.

Concerning Article 10 of the ECRML, it should be noted that Article 3 of Law on the Special Status of Gagauzia (Gagauz Yeri) (1994) provides that “[t]he official languages of Gagauzia shall be Moldovan, Gagauz and Russian”, thereby ensuring the use of Gagauz and Russian in the Territorial Autonomous Unit of Gagauzia. Article 6.2 of the Law on the Fundamental Provisions of the Special Legal Status of the Localities on the Left Bank of the Dniester (Transnistria) (2005) prescribes that “[t]he official languages in Transnistria shall be Moldovan, using the Latin script, Ukrainian and Russian”.

The provisions of Articles 10.1 and 10.2 of the ECRML are covered by the Minority Law and the Language Law. Article 9 of the Language Law defines the State language as the working language and the language of the secretariat works in State authorities, but refers also to translation into Russian. The same article prescribes that “[i]n localities with a Gagauz population, the working language and the language of the secretariat works of the State authorities shall be the State language, Gagauz or Russian” and that “[t]he language of activities and of the secretariat works” of the State authorities “[i]n localities where the Ukrainian, Russian, Bulgarian or another nationality constitutes the majority of the population shall be the official State language, the mother tongue or another acceptable language”.

Article 12 of the Minority Law provides that “[p]ersons belonging to national minorities have the right to address public institutions orally or in writing in Moldovan or Russian and to receive a reply in the language in which they formulated their request”. In localities with special autonomy status, “one of the official languages established by the respective laws may be used as the language of communication in relations with the public authorities” and “[i]n areas where persons belonging to a national minority constitute a considerable part of the population, the language of the respective minority may also be used as the language of communication with the public authorities”.

According to Article 6 of the Language Law, in relations with the State authorities, as well as with other organisations, enterprises and institutions, “the language of oral or written communication – Moldovan or Russian – shall be chosen by the citizen”, “[i]n localities with a population of Gagauz nationality, the right of the citizen to also use Gagauz in the above-mentioned relations shall be guaranteed”, and “[i]n localities where the population of Ukrainian, Russian, Bulgarian or another nationality constitutes the majority, the mother tongue or another acceptable language shall be used for communication”.

Article 11 of the same law provides that “[i]n the case of written communication” by the State authorities with citizens, “Moldovan or Russian shall be used, and in localities with a Gagauz population, Moldovan, Gagauz or Russian”. For issuing documents, “Moldovan or Russian, or Moldovan and Russian shall be used, according to the free choice of the citizen, and in localities with a Gagauz population Moldovan, Gagauz or Russian or Moldovan, Gagauz and Russian”. According to the same article, State authorities, as well as organisations, enterprises and institutions “shall receive and examine documents from the citizens in Moldovan or Russian, and in localities with a Gagauz population in Moldovan, Gagauz or Russian. For documents in other languages, translation into Moldovan or Russian shall be enclosed”. Article 27 of the Language Law prescribes that “[o]fficial forms [...] shall be drafted in the State language and in Russian, and in the respective localities in the State language, in Gagauz and in Russian.”

According to Article 10 of the Language Law, the acts of State authorities “[s]hall be drawn up and adopted in the State language, followed by translation into Russian” and “[i]n localities with a Gagauz population in the State language or Gagauz or Russian, followed by translation”. The same article prescribes that “[t]he acts of the local bodies of the State authority, the State



administration [...] in the areas where Ukrainian, Russian, Bulgarian or another nationality constitutes the majority of the population may be adopted in the mother tongue or another acceptable language, followed by translation into the State language”.

Article 8 of the Minority Law provides for the publication in localities with special autonomy status of “the legal acts of local relevance, official communications and other information [...] also in the official language established by the respective laws” and prescribes that “[i]n areas where persons belonging to a national minority constitute a considerable part of the population, the acts of the local public administrative authorities shall be published in the language of the respective minority if necessary, and at the same time in Moldovan and Russian”.

Article 10<sup>251</sup> of the Minority Law provides that place names “shall be indicated in Moldovan, but, as the case may require, pursuant to a decision of the local public administrative authorities, also in another language, according to the legislation in force”. Article 11 of the Minority Law provides that various pieces of information, including related to public services, “may also be drawn up in other official languages” in localities with special autonomy status and “shall also be published, as the case may require, in the language of the respective minority” in areas where persons belonging to a national minority constitute a considerable part of the population.

Article 27 of the Language Law prescribes that “[t]he forms used in the social field [...] shall be printed in the State language and in Russian [...] and [...] shall be filled in using one of the languages on the form”. Article 7 of the Language Law prescribes conditions related to the knowledge of Russian and Gagauz for employees of authorities and other enterprises, organisations and institutions which “by reason of their duty, come into contact with citizens”. Article 16 of the Minority Law prescribes the right of persons belonging to national minorities to “use their name, first name and patronymic [...], including in official documents, in the form accepted in their mother tongue”.

With respect to Article 11 of the ECRML, the legal provisions mostly concern the public broadcasters. Article 13.2 of the Minority Law provides that “[t]he State shall ensure the production of programmes in the languages of national minorities at the State radio and television”. Article 54 of the Audiovisual Code (2006) prescribes that the activity of the public national broadcaster includes “producing radio and television programmes [...] in the languages of the national minorities”. Article 29.4 of the same Code provides that in localities where persons belonging to a national minority constitute more than 20% of the population “service distributors [...] shall also ensure the retransmission of programme services in the language of the respective minority”. The Audiovisual Code also guarantees the right to free reception of programmes offered by “broadcasters under the jurisdiction of the Republic of Moldova, of the EU member States and of the States Parties to the European Convention on Transfrontier Television” (Article 9.1). Article 41.1 of the Audiovisual Code also provides that the Audiovisual Co-ordinating Council is bound to protect “the linguistic and cultural-national heritage, including the culture and languages of national minorities”.

With regard to Article 12 of the ECRML, Article 10.2 of the Constitution prescribes that “[t]he state shall acknowledge and guarantee the right of all citizens to maintain, develop and express their ethnic, cultural, linguistic and religious identity”. Article 5 of the Minority Law provides that the state contributes to “creating the necessary conditions to maintain, develop and express the ethnic, cultural, linguistic and religious identity of the persons belonging to national minorities” and “shall ensure the conducting of scientific research in the fields of history, language and culture of the national minority”. According to Article 20 of the same law, “[o]rganisations of persons belonging to national minorities shall benefit from the support of the State in carrying out programmes in the fields of culture, science, education [...] historical research”. Article 4

<sup>251</sup> See Article 10 as amended by Law No. 343 of 22 December 2005 on amending the Law on the Rights of Persons belonging to National Minorities and the Legal Status of their Organisations No. 382 of 12 July 2001.

of the Language Law provides that the State “shall guarantee the use of Ukrainian, Russian, Bulgarian, Hebrew, Yiddish, Romani, of languages of other ethnic groups living in the republic, for meeting their national-cultural needs”.

Article 13 of the ECRML is reflected by the provisions of Articles 6, 7, 11 and 27 of the Language Law as well as by Article 11 of the Minority Law.

With respect to Article 14.a of the ECRML, Article 6 of the Minority Law provides that the State contributes to the preparation of teaching materials and to the training of teachers “co-operating in this field with other countries” and that persons belonging to national minorities are entitled “to attend higher education and postgraduate studies in their historical homeland and in other countries based on international treaties and agreements”.

Concerning Article 14.b, Article 17 of the Minority Law stipulates that the State “shall contribute to the facilitation of [...] contacts of persons belonging to national minorities with their historical homeland”. Article 21 of the same law provides that the organisations of persons belonging to national minorities “have the right to co-operate with institutions and departments in other countries, which have in their competence matters of interest for the respective organisations, from the point of view of achieving their statutory purposes”.

### 15.3 Proposal for an instrument of ratification

In Moldova, ratification of the ECRML has been under preparation over the last decade<sup>252</sup> and remains an objective of the National Human Rights Action Plan for the years 2011-2014.

The main issue that the Moldovan authorities wish to clarify is how the legal and practical situation of the Russian language can be dealt with in the context of the ECRML. Russian is considered a “language of inter-ethnic communication” pursuant to Article 3 of the 1989 Language Law. This concept reflects that Russian is not only used by the Russian national minority, but also by persons belonging to other nationalities. According to the Moldovan authorities, the “inclusion [of Russian] in the European Charter as a regional language or a language of a national minority will not provide it with [the] necessary protection”.<sup>253</sup> The status of Russian, in particular the question of whether it could in the future become a second official language of Moldova as a whole, also plays a role with regards to the settlement of the problem of Transnistria.

The declaration (instrument of ratification) proposed below takes these concerns into account.

### Explanatory note on the main features of the proposed instrument of ratification

#### 1. The proposal includes eight languages, among them Russian.

According to the definition in Article 1.a of the ECRML, the concept “‘regional or minority languages’ means languages that are i. 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 ii. different from the official language(s) of that State. It does not include either dialects of the official language(s) of the State or the languages of migrants”.

<sup>252</sup> See Second State Report submitted by the Republic of Moldova pursuant to Article 25, paragraph 2 of the Framework Convention for the Protection of National Minorities (ACFC/SR/II(2004)005), pp. 8-9, 37; Third State Report submitted by the Republic of Moldova pursuant to Article 25, paragraph 2 of the Framework Convention for the Protection of National Minorities (ACFC/SR/III(2009)001), pp. 12, 27, 38.

<sup>253</sup> See *Ibidem* p. 9.



The Committee of Experts of the ECRML, which is the authoritative body in charge of interpreting the ECRML and monitoring its application,<sup>254</sup> considers a language “traditionally used” if it has been present in the State concerned for a period of approximately 100 years.<sup>255</sup> In Moldova, the following languages consequently comply with the definition in Article 1.a and, pursuant to Article 2.1, would be covered by the ECRML: Bulgarian, Gagauz, German, Polish, Russian and Ukrainian. Furthermore, Romani and Yiddish have traditionally been present in Moldova; they constitute, as stated in the Explanatory Report on the ECRML,<sup>256</sup> non-territorial languages which would be covered by Part II of the ECRML.

It needs to be underlined that, from the viewpoint of the ECRML, there are no legal or socio-linguistic obstacles to applying the Convention to the Russian language as well. Firstly, Russian is not an official language of the whole State. As a result, no provision of Moldovan legislation pertaining to Russian goes beyond the substance of the ECRML. Hence, the ECRML’s flexible ‘menu’ system will permit the existing legal status of Russian to be reflected in the instrument of ratification.

Secondly, Russian is not the language of the majority of the citizens because only 16% (540 990 out of 3 383 332 people in Moldova) stated in the 2004 census that they “usually speak” Russian. This figure comprises the Russian speakers belonging to non-Russian national minorities, although the fact that Russian is used by various nationalities has no legal relevance for the ECRML which focuses on the language rather than the speakers.

In this context it must be noted that the ECRML does not provide for the possibility to exclude one of the regional or minority languages mentioned above from its scope of application. In fact, the Committee of Experts has not accepted the initial intention of some States Parties not to apply the ECRML to certain languages and, with the support of the Committee of Ministers of the Council of Europe, monitors the application of the treaty to those languages.<sup>257</sup>

## 2. The proposal mirrors the existing legal situation and is cost-neutral.

Article 4.2 of the ECRML, and also the treaty’s spirit and purpose, requires that each regional or minority language receives at least the level of protection under the ECRML that it already enjoys at the time of ratification.<sup>258</sup> Therefore, the provisions to be included in the instrument of ratification in respect of these languages need to at least mirror the already existing level of protection provided in accordance with national legislation as well as bilateral or multilateral international agreements such as the FCNM.

The instrument of ratification proposed below does not go beyond this minimum requirement and includes only ECRML provisions with which Moldova de facto already complies when applying similar provisions of national legislation and the FCNM.

This “mirror approach” would have political and financial advantages. Firstly, the instrument of ratification would not change the existing status of the minority languages, thereby contributing to a politically smooth ratification process. In addition, the synchronised application of related provisions of ECRML, FCNM and national legislation would contribute to a coherent minority policy. As far as financial advantages are concerned, the instrument of ratification would make

<sup>254</sup> See, for example, First Report on the Application of the European Charter for Regional or Minority Languages in Slovakia (ECRML(2007)1), paragraph 37.

<sup>255</sup> The 100-years rule is, *inter alia*, based on Article 1.2 of Hungary’s Law No. LXXVII of 1993 relating to the rights of ethnic and national minorities.

<sup>256</sup> See paragraph 36.

<sup>257</sup> For example, with regard to Arabic and Portuguese in Spain, Cypriot Maronite Arabic in Cyprus, and Croatian, German and Serbian in Slovenia.

<sup>258</sup> The Committee of Experts and the Committee of Ministers have confirmed that, pursuant to Article 4.2, a State Party cannot validly opt for a level of protection under the ECRML which confers fewer rights. See in this regard Jean-Marie Woehrling: The European Charter for Regional or Minority Languages – A critical commentary, Council of Europe Publishing, Strasbourg 2005, p. 99.

it possible that the application of the ECRML remains by and large cost-neutral.<sup>259</sup> It would also enable considerable synergies in periodic reporting to the Council of Europe as the language-related parts of the State report on the application of the FCNM would represent the basis of the State report on the ECRML.

## 3. The proposal contains five graduated ‘menus’ of ECRML provisions of which the strongest menu applies to Russian.

As regards the provisions that can be “mirrored” in the instrument of ratification, it first of all needs to be underlined that the FCNM contains language-related provisions that are fully or partially congruent with 38 ECRML provisions. Given that a State which prepares ratification of Part III (Articles 8-14) of the ECRML needs to select at least 35<sup>260</sup> of the 68 options contained therein, Moldova already complies with more than that minimum number through the application of the FCNM. It follows from this that, currently, Moldovan legislation already protects the Russian, Gagauz, Ukrainian, Bulgarian, German and Polish languages at the level of Part III of the ECRML.

In addition to the 38 ECRML provisions already covered in Moldova through the application of the FCNM (and related national legislation), Moldovan national legislation matches further ECRML provisions. Most of them concern Russian and only to a lesser extent Gagauz. This shows that the status enjoyed by Russian under Moldovan legislation is shared by no other minority language in the country.

In respect of Russian, Gagauz, Ukrainian, Bulgarian, German and Polish, different (graduated) ‘menus’ of provisions from the ECRML could be applied. The provisions contained in these menus differ not only in *number* from each other, but also regarding the *level of commitment*. The latter is the case for undertakings that have been selected from ECRML provisions containing alternative (stronger and weaker) options. Hence, the menu of provisions applied to Russian contains more and – as regards alternative (“or”) options – stronger provisions than the menu for Gagauz. Similarly, the Gagauz menu contains more and stronger provisions than the menu for Ukrainian, and so forth.

Furthermore, the menus are interrelated with the FCNM provisions that are congruent with 38 ECRML provisions. These 38 provisions, with which Moldova de facto already complies when applying the FCNM, are contained in, and form the basis of, all menus. Given that Moldova complies with more ECRML provisions than the aforementioned 38, the menus also contain provisions additionally based on national legislation.

On the basis of the existing legal situation in Moldova and taking account of Article 4.2 of the ECRML (see under 2. above), the proposed instrument of ratification includes 54 ECRML provisions for Russian (38 provisions interrelated with the FCNM plus 16<sup>261</sup> additionally ensuing from national legislation), 51 for Gagauz, 48 for Ukrainian, 46 for Bulgarian and 43 for German and Polish.

Concerning education (Article 8 of the ECRML), the menu for Russian provides mostly for “teaching in” this language whereas the provisions to be applied to Gagauz, Ukrainian and Bulgarian foresee mostly that only a “substantial part” of education is made available in them. For German and Polish, however, the weakest undertakings under Article 8 are included.

The menus with regard to judicial authorities (Article 9) are identical for all languages with the exception of Article 9.3 that applies to Russian only.

<sup>259</sup> See Snežana Trifunovska: The case of the Baltic states, in: Council of Europe (ed.): Minority language protection in Europe: into a new decade, Strasbourg 2010, pp. 67-84 (p. 75)

<sup>260</sup> Pursuant to Article 2.2 of the ECRML.

<sup>261</sup> See Articles 8.1.e.i, 9.1.a.iii, a.iv, b.ii, c.ii, 9.3, 10.2.e, f, 10.4.b, 12.1.h, 13.1.c, d, 13.2.a, b, c and d of the ECRML.



In the field of administrative authorities and public services (Article 10), the status of Russian would be mirrored by applying Article 10.1.a.i to it throughout the country, thereby covering the use of Russian as an internal working language of local branches of the State authorities. The same provision would apply to Gagauz, but only in Gagauzia. Given that Moldovan legislation does not provide for the use of Ukrainian as an internal working language of State authorities in Transnistria (of which it is an official language), the weaker Article 10.1.a.ii would apply to Ukrainian in Transnistria. In addition, Article 10.1.a.iii would apply to Ukrainian outside Transnistria, to Gagauz outside Gagauzia, and to Bulgarian. The weakest provision – Article 10.1.a.v – would apply to German and Polish, in conformity with the FCNM.

Articles 10.2.e and f, which deal with regional authorities, would apply only to Russian, Gagauz and Ukrainian as regional official languages in Gagauzia (Gagauz, Russian) and Transnistria (Russian, Ukrainian). As far as public services are concerned, Article 10.3.a would apply to Russian, Gagauz in Gagauzia and Ukrainian in Transnistria, the weaker Article 10.3.b to Ukrainian outside Transnistria and Bulgarian, and the weakest provision – Article 10.3.c – to German and Polish. The application of Article 10.4.b would be limited to Russian and Gagauz.

Concerning the media (Article 11), the provisions would be the same for Russian, Gagauz, Ukrainian and Bulgarian. However, the weaker alternative options under Article 11 would apply to German and Polish.

The provisions in the field of cultural activities and facilities (Article 12) are identical for Russian, Gagauz, Ukrainian and Bulgarian. With the exception of Article 12.1.h, this menu also applies to German and Polish.

In economic and social life (Article 13), seven provisions would apply to Russian, five to Gagauz, three to Ukrainian and Bulgarian, and only the minimum number of one<sup>262</sup> to German and Polish.

To all languages, both provisions in the field of transfrontier exchanges (Article 14) would be applied.

### Proposed Declaration (instrument of ratification)

1. Moldova declares that, in accordance with Article 2, paragraph 1, of the European Charter for Regional or Minority Languages, the provisions of Part II of the Charter shall apply to the Bulgarian, Gagauz, German, Polish, Romani, Russian, Ukrainian and Yiddish languages.
2. In accordance with Article 2, paragraph 2, and Article 3, paragraph 1, of the Charter, Moldova declares that the following provisions shall apply to the languages concerned:

#### a) Russian

##### Article 8 – Education

Paragraph 1.a.i; b.i; c.i; d.ii; e.i; f.i; g; h.  
Paragraph 2.

##### Article 9 – Judicial authorities

Paragraph 1.a.ii; a.iii; a.iv; b.ii; c.ii.  
Paragraph 3.

##### Article 10 – Administrative authorities and public services

Paragraph 1.a.i; b; c.  
Paragraph 2.a; b; c; d; e (in Gagauzia and Transnistria); f (in Gagauzia and Transnistria); g.

<sup>262</sup> As required by Article 2.2 of the ECRML.

Paragraph 3.a.  
Paragraph 4.b; c.  
Paragraph 5.

##### Article 11 – Media

Paragraph 1.a.iii; b.i; c.i; d; e.i; f.i; g.  
Paragraph 2.  
Paragraph 3.

##### Article 12 – Cultural activities and facilities

Paragraph 1.a; b; c; d; e; f; h.

##### Article 13 – Economic and social life

Paragraph 1.a; c; d.  
Paragraph 2.a; b; c; d.

##### Article 14 – Transfrontier exchanges

Paragraph a.  
Paragraph b.

#### b) Gagauz

##### Article 8 – Education

Paragraph 1.a.ii; b.ii; c.ii; d.iii; e.ii; f.ii; g; h.  
Paragraph 2.

##### Article 9 – Judicial authorities

Paragraph 1.a.ii; a.iii; a.iv; b.ii; c.ii.

##### Article 10 – Administrative authorities and public services

Paragraph 1.a.i (in Gagauzia) / a.iii (outside Gagauzia); b; c.  
Paragraph 2.a; b; c; d; e (in Gagauzia); f (in Gagauzia); g.  
Paragraph 3.a (in Gagauzia) / 3.b (outside Gagauzia).  
Paragraph 4.b; c.  
Paragraph 5.

##### Article 11 – Media

Paragraph 1.a.iii; b.i; c.i; d; e.i; f.i; g.  
Paragraph 2.  
Paragraph 3.

##### Article 12 – Cultural activities and facilities

Paragraph 1.a; b; c; d; e; f; h.

##### Article 13 – Economic and social life

Paragraph 1.a.  
Paragraph 2.a; b; c; d.

##### Article 14 – Transfrontier exchanges

Paragraph a.  
Paragraph b.

#### c) Ukrainian

##### Article 8 – Education

Paragraph 1.a.ii; b.ii; c.ii; d.iii; e.ii; f.ii; g; h.  
Paragraph 2.



**Article 9 – Judicial authorities**

Paragraph 1.a.ii; a.iii; a.iv; b.ii; c.ii.

**Article 10 – Administrative authorities and public services**

Paragraph 1.a.ii (in Transnistria) / a.iii (outside Transnistria); b; c.  
Paragraph 2.a; b; c; d; e (in Transnistria); f (in Transnistria); g.  
Paragraph 3.a (in Transnistria) / 3.b (outside Transnistria).  
Paragraph 4.c.  
Paragraph 5.

**Article 11 – Media**

Paragraph 1.a.iii; b.i; c.i; d; e.i; f.i; g.  
Paragraph 2.  
Paragraph 3.

**Article 12 – Cultural activities and facilities**

Paragraph 1.a; b; c; d; e; f; h.

**Article 13 – Economic and social life**

Paragraph 1.a.  
Paragraph 2.b; d.

**Article 14 – Transfrontier exchanges**

Paragraph a.  
Paragraph b.

**d) Bulgarian**

**Article 8 – Education**

Paragraph 1.a.ii; b.ii; c.ii; d.iii; e.ii; f.ii; g; h.  
Paragraph 2.

**Article 9 – Judicial authorities**

Paragraph 1.a.ii; a.iii; a.iv; b.ii; c.ii.

**Article 10 – Administrative authorities and public services**

Paragraph 1.a.iii; b; c.  
Paragraph 2.a; b; c; d; g.  
Paragraph 3.b.  
Paragraph 4.c.  
Paragraph 5.

**Article 11 – Media**

Paragraph 1.a.iii; b.i; c.i; d; e.i; f.i; g.  
Paragraph 2.  
Paragraph 3.

**Article 12 – Cultural activities and facilities**

Paragraph 1.a; b; c; d; e; f; h.

**Article 13 – Economic and social life**

Paragraph 1.a.  
Paragraph 2.b; d.

**Article 14 – Transfrontier exchanges**

Paragraph a.  
Paragraph b.

**e) German and Polish**

**Article 8 – Education**

Paragraph 1.a.iii; b.iv; c.iv; d.iv; e.ii; f.ii; g; h.  
Paragraph 2.

**Article 9 – Judicial authorities**

Paragraph 1.a.ii; a.iii; a.iv; b.ii; c.ii.

**Article 10 – Administrative authorities and public services**

Paragraph 1.a.v; b; c.  
Paragraph 2.a; b; c; d; g.  
Paragraph 3.c.  
Paragraph 4.c.  
Paragraph 5.

**Article 11 – Media**

Paragraph 1.a.iii; b.ii; c.ii; d; e.ii; f.ii; g.  
Paragraph 2.  
Paragraph 3.

**Article 12 – Cultural activities and facilities**

Paragraph 1.a; b; c; d; e; f.

**Article 13 – Economic and social life**

Paragraph 1.a.

**Article 14 – Transfrontier exchanges**

Paragraph a.  
Paragraph b.

3. Moldova declares that, pursuant to its legislation, Russian constitutes a language of inter-ethnic communication in Moldova.

4. Moldova declares that it is at present unable to guarantee the application of the provisions of the Charter in the localities on the left bank of the Dniester (Transnistria).



## 16. Monaco

Monaco has not signed the European Charter for Regional or Minority Languages (ECRML). Furthermore, it has neither ratified, nor signed the Framework Convention for the Protection of National Minorities.

### 16.1 Presentation of the regional or minority language situation

According to the definition in Article 1.a of the ECRML, the concept “regional or minority languages” means languages that are i. 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 ii. different from the official language(s) of that State. It does not include either dialects of the official language(s) of the State or the languages of migrants”.

In Monaco, *Monegasque* is the only language that complies with that definition. In a population of approximately 33 000 people, about 22% are Monegasque. Among those, Monegasque is spoken primarily by the older generation.

### 16.2 Compliance of legislation with the ECRML

As stated in Titre I, Article 8 of the Monegasque constitution, French is the only official language of the Principality of Monaco. With the aim of passing on the Monegasque language and culture to the country’s youth, however, Prince Rainier III created the “Académie des Langues Dialectales” and introduced the instruction of courses in Monegasque and the history of Monaco in schools. The academy is engaged in activities that include conferences on dialectics, the creation of scientific publications, and adult education classes in the Monegasque language. In all of the schools, Monegasque is a compulsory subject at primary school level and an optional subject at secondary school level. Additionally, street signs in older sections of the city are written in both French and Monegasque.

### 16.3 Proposal for an instrument of ratification

Monaco does not envisage ratifying the ECRML, because Monegasque “is spoken only rarely within the State territory.”<sup>263</sup>

#### Explanatory note on the main features of the proposed instrument of ratification

The low number of speakers of Monegasque is not an obstacle to ratifying the ECRML which does not define a minimum number of speakers in Article 1.a. In fact, the Convention already covers languages with a very low number of speakers in several States Parties. Examples include Yiddish and certain Sami languages. For some languages, the number of speakers is even below ten.

Furthermore, Monegasque can be covered by the ECRML because it is not an official language. As regards the question of whether Monegasque could be covered by Parts II and III of the ECRML or only by Part II, the national regulations pertaining to Monegasque do not yet match a

<sup>263</sup> Report: The European Charter for Regional or Minority Languages, by the Committee on Legal Affairs and Human Rights of the Parliamentary Assembly of the Council of Europe, 21 October 2010 (Doc. 12422), paragraph 34.

minimum of 35 Part III provisions needed for a ratification of that part of the treaty. Consequently, Part II of the ECRML may be applied to Monegasque.

#### Proposed Declaration (instrument of ratification)

Monaco declares that, in accordance with Article 2, paragraph 1, of the European Charter for Regional or Minority Languages, the provisions of Part II of the Charter shall apply to the Monegasque language.



## 17. Portugal

Portugal has not signed the European Charter for Regional or Minority Languages (ECRML). However, it ratified the Framework Convention for the Protection of National Minorities (FCNM) in 2002.

### 17.1 Presentation of the regional or minority language situation

According to the definition in Article 1.a of the ECRML, the concept “regional or minority languages’ means languages that are i. 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 ii. different from the official language(s) of that State. It does not include either dialects of the official language(s) of the State or the languages of migrants”.

In Portugal, the *Mirandese* language complies with that definition.<sup>264</sup> Mirandese is an autochthonous distinct language which has existed since the twelfth century. Various sources indicate that between several hundred<sup>265</sup> and 15 000 people (including those using the language sporadically) speak Mirandese in the north of Portugal, in particular in the municipalities of Miranda do Douro, Mogadouro, Bragança and Vimioso.<sup>266</sup> The language is legally recognised because it can be used – along with Portuguese – for local matters in the above-mentioned municipalities.<sup>267</sup>

In addition to the aforementioned regional or minority language, *Romani* has traditionally been present in Portugal; it constitutes a non-territorial language in the sense of the ECRML. According to estimates, the number of Roma living in Portugal ranges from 40 000 to 60 000 people, most of whom are Portuguese citizens.<sup>268</sup> Only about 2 000 are estimated to speak Romani, mostly in the form of the so called Calão Romani, a mixed language between Romani and Portuguese. Most Roma live in the south of Portugal. The Roma are recognised as an “ethnic minority” in Portugal which the Portuguese authorities do not consider “incompatible with the non-recognition of national minorities in Portugal”.<sup>269</sup>

### 17.2 Compliance of legislation with the ECRML

As of the fifth Constitutional revision in December 2001, the official language in Portugal is Portuguese. This is stated in Constitutional Law No. 1/2001. The country’s only other recognised language is Mirandese. The Portuguese government granted the Mirandese Community official recognition of their linguistic rights in January 1999 by passing Law No. 7/99 “Official Recognition of Linguistic Rights of the Mirandese Community”. This law recognises and promotes the Mirandese language through the following articles:<sup>270</sup>

<sup>264</sup> European Commission: The Euromosaic study, [http://ec.europa.eu/education/languages/euromosaic/doc4681\\_en.htm](http://ec.europa.eu/education/languages/euromosaic/doc4681_en.htm)

<sup>265</sup> See Report submitted by Portugal pursuant to Article 25, paragraph 1 of the Framework Convention for the Protection of National Minorities (ACFC/SR(2004)002), p. 4.

<sup>266</sup> See Advisory Committee on the Framework Convention for the Protection of National Minorities, First Opinion on Portugal (ACFC/OP/I(2006)002), p. 8.

<sup>267</sup> See Law No. 7 of 29 January 1999.

<sup>268</sup> See Advisory Committee on the Framework Convention for the Protection of National Minorities, First Opinion on Portugal (ACFC/OP/I(2006)002), p. 8.

<sup>269</sup> See Second Report submitted by Portugal pursuant to Article 25, paragraph 2 of the Framework Convention for the Protection of National Minorities (ACFC/SR/II(2009)001), p. 2.

<sup>270</sup> See the comparative analysis of national legislation and the provisions of the ECRML in Volume 2 of this Handbook.

#### Article 2

The Portuguese State recognises the right to develop and promote the Mirandese language, as cultural patrimony, an instrument of communication and support of the identity of Terra da Miranda.

#### Article 3

The State recognises the child’s right to learn Mirandese, in the terms of its regulation.

#### Article 4

The public institutions located in the Council of Miranda do Douro will be able to issue their documents along with a version in Mirandese.

#### Article 5

The State recognises the right to scientific and educational support concerning the formation of Mirandese language and culture teaching staff, in the terms of its regulation. (...)”<sup>271</sup>

In 1992 Mirandese was taught at the senior primary-school level and the first three years of secondary school at the Miranda do Douro secondary school. Mirandese language education is encouraged by the local authorities and was enforced after the Ministry of Education drafted the Normative Document No. 35/99. The Miranda do Douro local authorities promote the Mirandese language by publishing works in Mirandese, offering specialised linguistic studies, through culture, and by organising a song festival, as well as by funding theatre productions and using Mirandese in some official speeches. It has, however, been reported that there are large gaps in the system for teaching Mirandese because there is neither a course inspectorate nor training and in-service secondments for teachers.

After the Official Recognition of Linguistic Rights of the Mirandese Community was passed, the Ministry of Education drafted the Normative Document No. 35/99 which addresses Articles 3 and 5 of Law No. 7/99. This documents states the following:

“1. Students attending primary and secondary education in Council of Miranda do Douro schools have the faculty to learn Mirandese as a source of curriculum enrichment.

2. The availability of the instructive offer referred to in the preceding clause corresponds to those Council of Miranda do Douro primary and secondary schools by means of the development of projects aimed at the preservation and the promotion of the Mirandese language.

2.1. The projects must consider methodological and pedagogical purposes, so as the identification of the necessary means and resources, especially in the field of teacher training.”<sup>272</sup>

The Court of Portugal uses only Portuguese as their official language, there is, however, the opportunity for Mirandese interpretation.

The Romani language is not mentioned in the national curriculum.

<sup>271</sup> See Law No. 7/99 „Official Recognition of Linguistic Rights of the Mirandese Community“, U.S English Foundation Research, Portugal, Legislation, <http://www.usefoundation.org/view/493>

<sup>272</sup> See Normative Document No. 35/99 Ministry of Education, U.S English Foundation Research, Portugal, Legislation, <http://www.usefoundation.org/view/494>



### 17.3 Proposal for an instrument of ratification

Portugal considers that there are neither regional or minority languages<sup>273</sup>, nor national minorities (including a Spanish national minority) in the country because Portuguese legislation does not use the concept of “national minority”.<sup>274</sup>

#### Explanatory note on the main features of the proposed instrument of ratification

##### 1. The proposal includes Mirandese and Romani.

The fact that the Mirandese and Romani speakers are not recognised as “national minorities” by the Portuguese legal order does not constitute an obstacle to applying the ECRML to both languages. In fact, the ECRML does not use the notion of “national minority” either, “since its aim is not to stipulate the rights of ethnic and/or cultural minority groups, but to protect and promote regional or minority languages as such”.<sup>275</sup>

According to the definition in Article 1.a of the ECRML, the concept “‘regional or minority languages’ means languages that are i. 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 ii. different from the official language(s) of that State. It does not include either dialects of the official language(s) of the State or the languages of migrants”.

In Portugal, the Mirandese language complies with this definition. Furthermore, Romani is a non-territorial language as stated in the Explanatory Report on the ECRML<sup>276</sup> and would be covered by Part II.

##### 2. The proposal mirrors national legislation and the FCNM.

As regards the provisions that could be included in the instrument of ratification, it needs to be borne in mind that the FCNM contains language-related provisions that are fully or partially congruent with 38 ECRML provisions. Against the background of the ongoing dialogue of the Advisory Committee of the FCNM and the Portuguese authorities about an application of the FCNM to the Mirandese speakers,<sup>277</sup> Portugal may wish to consider the application of these 38 provisions to Mirandese and of Part II to Romani as a non-territorial language. National regulations pertaining to Mirandese do in substance not go beyond the aforementioned provisions so that the ‘menu’ for Mirandese would mirror the congruent linguistic provisions of the FCNM.

#### Proposed Declaration (instrument of ratification)

1. Portugal declares that, in accordance with Article 2, paragraph 1, of the European Charter for Regional or Minority Languages, the provisions of Part II of the Charter shall apply to the Mirandese and Romani languages.

2. In accordance with Article 2, paragraph 2, and Article 3, paragraph 1, of the Charter, Portugal declares that the following provisions shall apply to the Mirandese language:

<sup>273</sup> See Report: The European Charter for Regional or Minority Languages, by the Committee on Legal Affairs and Human Rights of the Parliamentary Assembly of the Council of Europe, 21 October 2010 (Doc. 12422), paragraph 31

<sup>274</sup> See Report submitted by Portugal pursuant to Article 25, paragraph 1 of the Framework Convention for the Protection of National Minorities (ACFC/SR(2004)002), pp. 2, 5.

<sup>275</sup> See Explanatory Report on the ECRML, paragraph 17; see also *ibidem*, paragraph 11.

<sup>276</sup> See paragraph 36.

<sup>277</sup> See Advisory Committee on the Framework Convention for the Protection of National Minorities, First Opinion on Portugal (ACFC/OP/I(2006)002), p. 9.

#### Article 8 – Education

Paragraph 1.a.iii; b.iv; c.iv; d.iv; f.ii; g; h.

Paragraph 2.

#### Article 9 – Judicial authorities

Paragraph 1.a.ii.

#### Article 10 – Administrative authorities and public services

Paragraph 1.a.ii; b; c.

Paragraph 2.a; b; c; d; g.

Paragraph 3.a.

Paragraph 4.c.

Paragraph 5.

#### Article 11 – Media

Paragraph 1.a.iii; b.ii; c.ii; d; e.ii; f.ii; g.

Paragraph 2.

Paragraph 3.

#### Article 12 – Cultural activities and facilities

Paragraph 1.a; b; c; d; e; f.

#### Article 13 – Economic and social life

Paragraph 1.a.

#### Article 14 – Transfrontier exchanges

Paragraph a.

Paragraph b.



## 18. Russian Federation

When acceding to the Council of Europe, the Russian Federation committed itself to signing and ratifying the European Charter for Regional or Minority Languages (ECRML) by 28 February 1998.<sup>278</sup> The Russian Federation signed the ECRML on 10 May 2001 and, by virtue of its signature alone, agreed to comply with the ECRML's provisions.<sup>279</sup> Furthermore, the Russian Federation ratified the Framework Convention for the Protection of National Minorities (FCNM) in 1998.

From 2009 to 2011, the Council of Europe, the European Union and the Russian Federation organised a Joint Programme "Minorities in Russia" which aimed, *inter alia*, at assisting the Russian authorities in their preparations for ratification of the ECRML. For that purpose, a "Joint Working Group on the Drafting of an Instrument of Ratification" was established which discussed at experts' level legal, political and inter-ethnic aspects related to this issue. Elements of the draft instrument of ratification (see below under 18.3) were proposed by an independent European expert to this Joint Working Group at the meeting of 24-25 February 2011.

### 1.1 Presentation of the regional or minority language situation

According to the definition in Article 1.a of the ECRML, the concept "regional or minority languages" means languages that are i. 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 ii. different from the official language(s) of that State. It does not include either dialects of the official language(s) of the State or the languages of migrants".

In the Russian Federation, a considerable number of traditionally used languages comply with that definition. The presentation below concentrates on those languages that are recommended to be covered by Part III of the ECRML (see below under 18.3):

- **Abaza** is (along with Cherkess, Karachay, Nogai and Russian) an official language in the Republic of Karachay-Cherkessia, but is also spoken beyond the republic's borders. According to the 2002 census, there are 38 247 speakers of Abaza and 37 942 persons belonging to the Abaza people in the whole of Russia. The Abaza population in the Republic of Karachay-Cherkessia (2002 census) consists of 32 346 citizens, which accounts for 7.4% of the republic's population.
- **Adyghe** is, along with Russian, the official language of the Republic of Adygea, where 24.2% (108 115 citizens) of the population belong to this people. The Adyghe language is also used beyond the borders of the Republic of Adygea and, according to the 2002 census, has 129 419 speakers.
- **Aghul** is one of the official languages<sup>280</sup> of the Republic of Dagestan. Of the 28 300 persons belonging to the Aghul people in Russia (2002 census), 23 314 live in Dagestan, which is 0.9% of the republic's population.
- **Altai** is a State language of the Republic of Altai, where, numbering 67 745 citizens, the Altai people account for 33.5% of the local population. According to the 2002 census, in Russia there are 65 534 speakers of Altai.
- **Armenian** has, according to the 2002 census, 904 892 speakers in the Russian Federation. The Armenian population in Russia is 1 130 491 in total (2002 census). It does not have its own administrative-territorial entity and it is dispersed all over the country. However, the Armenian

<sup>278</sup> See Opinion of the Parliamentary Assembly of the Council of Europe No. 193(1996).

<sup>279</sup> See Jean-Marie Woehrling: The European Charter for Regional or Minority Languages – A critical commentary, Council of Europe Publishing, Strasbourg 2005, p. 44.

<sup>280</sup> Dagestan has a high number of official languages: Russian, Agul, Avar, Azeri, Chechen, Dargin, Kumyk, Lak, Lezgian, Nogai, Rutul, Tabasaran, Tat and Tsakhur.

population is concentrated in the Central Federal District, South Federal District, and Stavropol territory. Armenian settlement has a long tradition in the territory of today's Russian Federation. As early as the eleventh century Armenians settled in Vladimir and Novgorod. In the fifteenth and sixteenth centuries they were invited by the tsars to Moscow and during that time an Armenian colony also established itself in Astrachan.

- **Avar** is (along with Russian and the languages of the other peoples of Dagestan) a State language of the Republic of Dagestan where the Avar population constitutes 29.4%, that is 744 000 citizens, of the republic's population. According to the 2002 census, there are 784 840 speakers of Avar and 814 473 Avars in Russia.
- **Azeri** (also called Azerbaijani) is (along with Russian and the languages of the other peoples of Dagestan) a State language of the Republic of Dagestan and is spoken by 669 757 people in Russia (2002 census). With 111 656 citizens, the Azeri population makes up 4.3% of Dagestan's population. In total there are 621 840 Azeris living in Russia, most of them in Dagestan, the Central and the South Federal Districts.
- **Balkar** is, along with Russian and Kabardian, the official State language of Kabardino-Balkaria. Here the Balkar people account for 11.6% (104 951 citizens) of the population. According to the 2002 census, in Russia there are 108 426 Balkars and 302 748 speakers of Karachay-Balkar language.
- **Bashkir** is, alongside Russian, the official State language of the Republic of Bashkortostan, where most of the 1 673 389 Bashkirians of the Russian Federation live; 29% (1 221 302 citizens) of the population of Bashkortostan belong to the Bashkirian people and in total there are 1 379 727 speakers of Bashkir in Russia (2002 census).
- **Belarusian** is, according to the 2002 census, spoken in Russia by 316 890 people who do not have their own national administrative-territorial entity. Most of the 807 970 Belarusians live in the Central and in the North-West Federal Districts. In around 1900, they emigrated to the European part of Russia, Siberia and the Far East for economic reasons.
- **Buryat** is spoken by 368 807 people in Russia (2002 census). It is, along with Russian, the official language of the Republic of Buryatia, where most of the 445 175 Buryats in Russia live. Numbering 272 910 citizens they account for 27.8% of the republic's population. The Buryat language also benefits from local autonomy in areas of compact settlements, such as in Agin-Buryat Okrug (62.5% Buryat population, that is 45 149 citizens) and in Ust-Ord Buryat Okrug (39.6% Buryat population, that is 53 649 people).
- **Chechen** is an official language of Chechnya and Dagestan. In Chechnya 93.5% of the population are Chechens (1 031 647 citizens) and in Dagestan 3.4% (87 867 citizens). According to the 2002 census, 1 360 253 Chechens live in Russia and 1 331 844 people speak Chechen.
- **Cherkess** is, alongside Russian, Abaza, Nogai and Karachay, an official language of the Republic of Karachay-Cherkessia. Here 11.3% of the population (49 591 citizens) belong to the Cherkess people. According to the 2002 census, there are 60 517 Cherkess and 587 547 speakers of Kabardino-Cherkess in Russia.
- **Chuvash** is, along with Russian, the official language of Chuvashia. In total 1 637 094 Chuvashians live in Russia (2002 census) 889 286 thereof in Chuvashia, which is 67.7% of the local population. Chuvash is spoken by 1 637 094 people in the Russian Federation (2002 census).
- **Dargin** is one of the official languages of Dagestan, where 16.5% (425 526 citizens) of the local population belong to the Dargin people. According to the 2002 census, there are 510 156 Dargins and 503 523 speakers of Dargin in the Russian Federation.



- **Georgian** is spoken by 286 285 people in Russia according to the 2002 census. However, fewer people consider themselves Georgian (197 934). They do not have their own national administrative-territorial entity and they are dispersed all over the country, although in larger concentrations in the Central and Southern Federal Districts. Georgian has had a tradition in the Russian territory since the early Middle Ages. In the twelfth century there were Georgians in Novgorod and Vladimir active in the fields of craft and arts. Later waves of Georgian emigration brought them to Moscow, where they had a close connection with the court. In 1724 a third large wave took place, when King Vakhtang VI went into exile in Russia following a military defeat to the Ottomans. A part of the population who followed him to Moscow stayed in the North Caucasus.

- **German** is spoken by 2 895 147 people in Russia, and there are 597 212 Germans. While Germans have been present in Russia since the ninth century, large-scale migration to the Volga, Sankt Petersburg, Voronezh, Urals, Siberia and Caucasus areas began in 1763. German territorial autonomy temporarily ended with the dissolution of six national rayons in 1938/39 and the Volga German Autonomous Republic in 1941, followed by the deportation of Germans to Siberia and Kazakhstan. In 1991/92, the German National Rayons of Halbstadt (Altai Krai) and Asovo (Omsk Oblast) were restored. In 1992, Russia and Germany also concluded the Protocol about Co-operation on the Gradual Restoration of the Statehood of the Russian Germans.

- **Greek** has 56 473 speakers in Russia, but the 97 827 Greeks (2002 census) do not have their own national administrative-territorial entity. Most of them (70 736 people) live in the Southern Federal District. After the fall of Constantinople, many Greeks migrated to Russia. Along with the German migration wave at the end of the eighteenth century, Greeks also came to settle along the northern shore of the Black Sea.

- **Ingush** is, alongside Russian, the official State language of the Republic of Ingushetia. With 361 057 citizens, the Ingush people accounts for 77.3% of the population there. In total 413 016 Ingush live in Russia and Ingush is spoken by 405 343 people (2002 census).

- **Kabardian** is alongside, Russian and Balkar, an official language of the Republic of Kabardino-Bakaria, where 55.3% of the local population belong to the Kabardian people (489 702 citizens). During the 2002 census, 519 958 Kabardians and 587 547 speakers of Kabardino-Cherkess were counted in the Russian Federation.

- **Kalmyk** and Russian are the official languages of the Republic of Kalmykia, where approximately half (53.3%, that is 155 938 citizens) of the population belong to the Kalmyk people. In the whole of the Russian Federation there are 173 996 Kalmyks and 153 602 speakers of the Kalmyk language (2002 census).

- **Karachay** has, according to the 2002 census, 302 748 speakers in Russia. It is (along with Abaza, Cherkess, Nogai and Russian) an official language in the Republic of Karachay-Cherkessia. Of the 192 182 Karachays living in Russia, 169 198 live in this republic, where they account for 38.5% of the population.

- **Karelian** is recognised by the Constitution of the Republic of Karelia, although only Russian is an official language there. Most members of the Karelian people (93 344 people in the whole of the Russian Federation) live in Karelia, where, numbering 65 651 citizens, they account for 9.16% of the local population. Another area of concentrated Karelian settlement is the Tver Region (14 633 people) in the North-West Federal District.

- **Kazakh** is used in official communication in areas of compact settlement of Kazakhs in the Republic of Altai in the Siberian Federal District. According to the 2002 census, 123 914 Kazakhs live in this district. In total there are 653 962 Kazakhs in Russia. Most of them live in the Regions Astrakhan (142 633 people) and Orenburg (125 568 people). In total Kazakh is spoken by 563 749 people in Russia.

- **Khakas** is, along with Russian, the official language of the Republic of Khakassia, where Khakassians account for 12% of the local population (65 421 citizens). In the whole of the Russian Federation 75 622 Khakassians live and there are 52 217 Khakas speakers.

- **Komi** and Russian are the official languages of the Republic of Komi. That is where most of the 293 406 Komi in Russia live, namely 256 464 citizens, who constitute 25.2% of the republic's population. Altogether, Komi is spoken by 217 316 people in Russia (2002 census).

- **Komi-Permyak** is spoken by 94 328 people in Russia, where, altogether, 125 235 Komi-Permiaks live (2002 census). Most of them - namely 80 327 - live in the Komi-Permyak Autonomous Okrug, which makes up 59% of the local population. Although not an official language, it may be used for official purposes alongside Russian.

- **Korean** is spoken in the national administrative-territorial entity of the Korean National Micro Rayon Su-Chan. According to the 2002 census, 148 556 Koreans live in Russia and 60 088 people speak Korean. Korean emigration to Russia started after the Treaty of Beijing (1860) when Russia became a neighbour of Korea. Until the 1920s more Koreans came to Russia in order to escape hunger and misery in their homeland.

- **Kumyk** is an official language of Dagestan, where 14.2% of the population belong to the Kumyk people (365 804 citizens). According to the 2002 census, there are 422 409 Kumyks and 458 121 speakers of Kumyk in Russia.

- **Lak** is an official language of Dagestan. With 139 732 citizens the Lak people account for 5.4% of the local population. According to the 2002 census, Lak is spoken by 153 373 people in Russia, where, in total, there are 156 545 Laks.

- **Lezgian** (also called Lezgin) has 397 310 speakers in Russia. According to the 2002 census, there are 411 535 Lezgins in the Russian Federation. Most of them (336 698 citizens, which is 13.1% of the population) live in Dagestan, where Lezgian is an official language.

- **Mari (Mountain and Meadow)** is, along with Russian, the official State language of the Republic of Mari El. Approximately half of the 604 298 Maris living in Russia live in that republic (312 178), they represent 42.9% of the local population. According to the 2002 census, there are 451 033 Mari speakers in the whole of the Russian Federation.

- **Moldovan** is spoken by 147 035 people in Russia, where in total 172 330 Moldovans live (2002 census). Moldovans do not have their own national administrative-territorial entity and although dispersed all over the country, they live in a stronger concentration in the Central Federal District, especially the region of Moscow.

- **Mordovian (Moksha and Erzya)** is spoken by 614 260 people in the Russian Federation (2002 census). Most of the 843 350 Mordvinians in Russia live in the Volga Federal District (655 926 people), which includes the 283 861 Mordvinians in Mordovia who account for 31.9% of the local population. Mordovian is, along with Russian, the official language of the Republic of Mordovia.

- **Nogai** is an official language of the Republics of Dagestan and Karachay-Cherkessia. In Karachay-Cherkessia, there are 14 873 Nogai, which represents 3.4% of the republic's population. In Dagestan there are 38 168 Nogai, which represents 1.5% of the local population. In total in the Russian Federation there are 90 666 Nogai and 90 020 speakers of that language (2002 census).



- **Ossetian** is, alongside Russian, the official State language of the Republic of North Ossetia-Alania, where most of the 514 875 Ossetians in Russia live (2002 census), namely 445 310 citizens (62.7% of the republic's population).
- **Polish** has 94 038 speakers in Russia. The 73 001 Poles in the Russian Federation do not have their own national administrative-territorial entity. Larger concentrations of Polish settlement are to be found in the Central, Southern and North-West Federal Districts (2002 census). Deportations of Poles to Siberia during the nineteenth and twentieth centuries have led to the existence of a Polish minority in Russia.
- **Rutul** is an official language of the Republic of Dagestan. According to the 2002 census, in the whole of Russia 29 383 speakers of Rutul and 29 929 Rutulians live. Most of the Rutulians live in Dagestan (24 298 citizens), where they account for 0.9% of the population.
- **Sakha** (also called Yakut) is spoken by 456 288 people in Russia (2002 census) and is, alongside Russian, the official language of the Republic of Sakha (Yakutia). According to the 2002 census, 443 852 Yakutians live in Russia, which represents 45.5% of the population.
- **Tabasaran** is an official language of the Republic of Dagestan. According to the 2002 census, in the whole of Russia, 128 391 speakers of Tabasaran and 131 785 persons belonging to the Tabasaran people live. Most of them live in Dagestan (110 152), where they account for 4.3% of the population.
- **Tajik** is spoken by 131 530 people in Russia. There is no national administrative-territorial entity for the 120 136 Tajiks in the Russian Federation. They live mostly in the Siberian, Volga, Ural and Central Federal Districts. In the latter, 46 738 Tajiks live (2002 census).
- **Tat** is one of the official languages of Dagestan, where 825 Tats live (2002 census). In total in the Russian Federation there are 2 303 Tats and 3 016 speakers of Tat.
- **Tatar** is, along with Russian, the official language of the Republic of Tatarstan. It is spoken by 5 347 706 people in Russia, where, according to the 2002 census, 5 554 601 Tatars live. In Tatarstan there are 2 000 116 Tatars, which is 52.9% of the local population.
- **Tsakhur** is spoken by 9 771 people in Russia. In total there are 10 366 members of this people. Most of them live in the Republic of Dagestan (2002 census), where it is an official language.
- **Turkish** is spoken by 161 319 citizens of the Russian Federation according to the 2002 census. In total 92 415 Turks live in Russia, most of them in the Southern Federal District (72 703 people). They do not have their own national administrative-territorial entity.
- **Tuvan** is, along with Russian, the official language of the Republic of Tuva, where 235 313 members of the Tuvanian people make up 77% of the population. In total there are 242 754 speakers of Tuvan and 243 442 Tuvians in Russia (2002 census).
- **Udmurt** is, alongside Russian, the official language of the Republic of Udmurtia, where 29.3% of the population belong to the Udmurtian people (460 584 citizens). During the 2002 census, 636 906 Udmurtians and 463 837 speakers of Udmurt were counted in the whole of the Russian Federation.
- **Ukrainian** is spoken by 1 815 210 people in Russia (2002 census), where according to the same census, 2 942 961 Ukrainians live. They do not have their own national administrative-territorial entity and they live all over the federation. Ukrainian settlement within the borders of today's Russian Federation has a long tradition.

- **Uzbek** is, according to the 2002 census, spoken by 238 831 people in Russia. The 122 916 Uzbek citizens of the Russian Federation do not have their own national administrative-territorial entity and live all over Russia.

## 18.2 Compliance of legislation with the ECRML

Russian legislation complies with a considerable number of provisions contained in Part III of the ECRML.<sup>281</sup>

In respect of Article 8.1.a of the ECRML, its provisions are implemented in a number of legislative acts of the Russian Federation. Thus, Federal Law No. 74-FZ of 17 June 1996 "On National-Cultural Autonomy" stipulates that, for the purpose of guaranteeing the right to receive basic general education in one's ethnic/native language and choose the language of child nurturing and education, national-cultural autonomies may, *inter alia*, set up non-State/public-initiative pre-school establishments or groups in such establishments with child nurturing in the ethnic/native language.

Under this federal law, the federal executive authorities and the executive authorities of the Federation's constituent entities shall guarantee the right to receive basic general education in one's ethnic/native language and choose the language of child nurturing and tuition through the setting up, where necessary, of groups in state and municipal pre-school establishments with tuition in the ethnic/native language.

In respect of Article 8.1.b of the ECRML, Federal Law No. 74-FZ of 17 June 1996 "On National-Cultural Autonomy" stipulates that, for the purpose of guaranteeing the right to receive basic general education in one's ethnic/native language and choose the language of child nurturing and education, national-cultural autonomies may set up non-State/public-initiative (primary...) educational establishments with tuition in the ethnic/native language.

Where secondary and vocational education are concerned, Article 8.1.c–e of the ECRML, these areas are also covered by the foregoing general norms of federal legislation in the sphere of education.

The sole reference to "secondary education" and "higher education" is in Article 11 of Federal Law No. 74-FZ of 17 June 1996 "On National-Cultural Autonomy", which states that, for the purpose of guaranteeing the right to receive basic general education in one's ethnic/native language and choose the language of child nurturing and education, national-cultural autonomies may set up non-State/public-initiative (... secondary and higher vocational education) educational establishments with tuition in the ethnic/native language.

In respect of Article 8.1.f–i of the ECRML, special legislative regulation also exists, alongside the aforementioned general provisions of federal legislation. Russian Federation Law No. 1807-1 of 25 October 1991 "On the languages of the peoples of the Russian Federation" also contains an article devoted to programmes for the preservation, development and study of the languages of the peoples of the Russian Federation, under which, provision is to be made to ensure the functioning of other languages of the peoples of the Russian Federation, as well as to train specialists in this sphere and improve the education system with a view to developing the languages of the peoples of the Russian Federation and other measures.

Federal Law No. 74-FZ of 17 June 1996 "On National-Cultural Autonomy" sets forth a norm whereby, for the purpose of guaranteeing the right to receive basic general education in one's ethnic/native language and choose the language of child nurturing and education, national-cultural autonomies may:

<sup>281</sup> See the comparative analysis of national legislation and the provisions of the ECRML in Volume 2 of this Handbook.



- participate in the devising of education programmes by competent educational institutions, publish textbooks, methodological aids and other pedagogical literature necessary to guarantee the right to receive education in one's ethnic/native language;
- submit proposals to federal executive authorities, executive authorities of Russian Federation constituent entities and local authorities of municipal and urban districts on the setting up of State and municipal educational establishments with tuition in Russian and in-depth study of the ethnic/native language and ethnic history and culture;
- participate in the devising of federal State education standards as well as model basic education programmes for State and municipal educational establishments with tuition in the ethnic/native language and other languages;
- organise the training and retraining of teaching and other staff for non-State/public-initiative educational establishments;
- conclude agreements with non-governmental organisations outside the frontiers of the Russian Federation on the creation of conditions for the exercise of the right to receive education in one's ethnic/native language, notably agreements on the training of teaching staff and the provision of academic/methodological, textbook and artistic literature and audiovisual material for teaching in the ethnic/native language.

In accordance with Article 12 of the federal law, federal executive authorities and executive authorities of Russian Federation constituent entities, bearing in mind the proposals of national-cultural autonomies and the actual conditions in the region concerned, set up State educational establishments with tuition in the ethnic/native language and in Russian with in-depth study of the ethnic/native language and ethnic history and culture; they assist the devising, publication and acquisition of education programmes, textbooks, methodological aids and other pedagogical literature necessary for tuition in the ethnic/native language; and they organise, primarily on recommendations by national-cultural autonomies, retraining and further training of teaching and other staff for educational establishments providing tuition in the ethnic/native language and other languages, including on the basis of agreements between Russian Federation constituent entities and inter-State agreements. In addition, for the purpose of guaranteeing the right to preserve and develop ethnic culture, federal executive authorities and executive authorities of Russian Federation constituent entities consider proposals from national-cultural autonomies on the inclusion, in federal State education standards for educational establishments implementing education programmes in an ethnic/native language, of courses for studying history, culture, ethnography (see Article 14 of the Federal Law).

The main provisions governing access for Russian Federation citizens to education in their native language are set out in Russian Federation Law No. 3266-1 of 10 July 1992 "On education", which focuses above all on State guarantees for the rights of Russian Federation citizens in the area of education. Under Articles 5 and 6 of the Federal Law, Russian Federation citizens are guaranteed the possibility of receiving education irrespective of their sex, race, nationality/ethnicity, language, origin, place of residence, attitude to religion, personal convictions, membership of public organisations/associations, age, state of health, social, material or official status or criminal record. This principle entails Russian Federation citizens being entitled to access to basic general education in their native language and also a choice of tuition language within the limits of the possibilities offered by the education system. In that process, access for Russian Federation citizens to education in their native language is guaranteed by the creation of the necessary number of corresponding educational establishments, classes and groups and also by the creation of conditions in which they can function. The parents of children or persons fulfilling the parental function in accordance with Russian Federation legislation are entitled to choose an educational establishment using a given language for child nurturing and tuition. The State also provides Russian Federation citizens residing outside their ethnic State and ethnic territorial boundaries or stateless people, representatives of minority peoples and ethnic groups with assistance for organising various forms of child nurturing and tuition in their native language irrespective of their number and in accordance with their requirements.

These norms echo those of Russian Federation Law No. 1807-1 of 25 October 1991 "On the languages of the peoples of the Russian Federation" (Article 9) and Federal Law No. 74-FZ of 17 June 1996 "On National-Cultural Autonomy" (Articles 10 and 11), enshrining the right of citizens to choose the languages of child nurturing and tuition.

In respect of Article 9.1 of the ECRML, the basic codified acts governing questions of judicial procedure in the Russian Federation set out general norms to the effect that criminal, civil and administrative proceedings (Code of Criminal Procedure of the Russian Federation of 18 December 2001, No. 174-FZ (Article 18), Code of Civil Procedure of the Russian Federation of 14 November 2002, No. 138-FZ (Article 9), the Code of Administrative Infringements of the Russian Federation of 30 December 2001, No. 195-FZ (Article 24.2)) take place in Russian and also the State languages of the republics making up the Russian Federation. Participants in proceedings with no or an insufficient ability to speak the language in which the proceedings are conducted<sup>282</sup> must have explained and guaranteed to them their right to make statements, give explanations and evidence, lodge an application, bring a complaint, familiarise themselves with the case material and address the court in their native language or another language spoken by them and avail themselves of the assistance of a translator. These provisions have been developed in subsequent articles of the aforementioned codes.

Where criminal proceedings are concerned, under Article 47 of the Code of Criminal Procedure of the Russian Federation, the accused is entitled to give evidence and explanations in their native language or another language spoken by them. The participation of the defence counsel in criminal proceedings is obligatory where a suspect or accused person does not speak the language in which the criminal case proceedings take place (Article 51 of the Code of Criminal Procedure of the Russian Federation).

If investigative and judicial documents are subject to mandatory communication to a suspected or accused person as well as other participants in criminal proceedings, the documents in question must be translated into the native language of the corresponding participant or another language spoken by them (Article 18). A witness participating in criminal proceedings is entitled to give evidence in their native language or another language spoken by them (Article 56 of the Code of Criminal Procedure of the Russian Federation). Specific articles enshrining the rights of participants in proceedings concerning the use of language are also set out in the Code of Administrative Infringements of the Russian Federation. Article 25.6 of the Code, for example, entitles a witness to give evidence in their native language or another language spoken by them and also to avail themselves of the services of a translator free of charge.

In respect of Article 9.2 of the ECRML, their content is reflected in general provisions of federal legislation - in Articles 4 and 18 of the Russian Federation Law "On the languages of the peoples of the Russian Federation", Article 10 of the Federal Constitutional Law "On the judicial system of the Russian Federation", Articles 5 and 13 of the RFSFR Law "On the judicial organisation of the RFSFR", Article 6 of the Code of Civil Procedure of the Russian Federation and Article 1.4 of the Code of Administrative Infringements of the Russian Federation.

In respect of Article 10 of the ECRML, Russian Federation legislation reflects the provisions as follows: Article 15 of Russian Federation Law No. 1807-1 of 25 October 1991 "On the languages of the peoples of the Russian Federation" governs the use of languages in the work of State authorities, organisations, enterprises and institutions. It stipulates that in the activity of the Russian Federation's State authorities, organisations, enterprises and institutions, the State language of the Russian Federation, the State languages of republics and other languages of the peoples of the Russian Federation shall be used. Russian Federation citizens unable to speak the State language of the Russian Federation and the State language of the republic

<sup>282</sup> It must be noted that the obligations created by Article 9 of the ECRML apply irrespective of whether or not the person concerned speaks the official language of the country.



concerned shall be entitled to speak at meetings, work sessions and gatherings in State authorities, organisations, enterprises and institutions in the language which they are able to speak. Translation shall be provided where necessary. Russian Federation citizens are entitled to submit proposals, applications or complaints to State authorities, organisations, enterprises and institutions of the Russian Federation in their native language or any other language of the peoples of the Russian Federation spoken by them. Replies to proposals, applications or complaints from Russian Federation citizens to State authorities, organisations, enterprises and institutions of the Russian Federation shall be given in the language used in the proposals, applications or complaints.

Provisions in Article 10.1.b and c of the ECRML, are implemented in Russian Federation Law No. 1807-1 of 25 October 1991 "On the languages of the peoples of the Russian Federation", which stipulates the rules for the use of languages in official procedures. Under Article 16 of the Law, the text of documents (letterheads/forms, seals, stamps) and signs bearing the names of State authorities, organisations, enterprises and institutions shall be in the State language of the Russian Federation, the State languages of republics and other languages of the peoples of the Russian Federation, as determined by the legislation of the republics.

Concerning Article 10.2 of the ECRML, these provisions are reflected in the aforementioned norms of Russian Federation Law No. 1807-1 of 25 October 1991 "On the languages of the peoples of the Russian Federation" establishing the procedure for using languages in the work of State authorities, organisations, enterprises and institutions (Article 15) and also in the norms of Federal Law No. 152-FZ of 18 December 1997 "On place names" establishing rules for the standardisation and use of place names (Article 8) and rules for the registration and listing of place names (Article 10).

Under Article 8 of this federal law standardisation of place names in other languages of the peoples of the Russian Federation follows the rules and traditions governing the use of place names in the languages concerned. Place names on road signs and other types of sign on Russian Federation territory are to be written in Russian. Where necessary, place names are also written in other languages of peoples of the Russian Federation, taking due account of the interests of the local community, and there may also be a parallel Roman alphabet version.

Under Article 10 of this federal law, authorities of Russian Federation constituent entities may carry out registration, listing, preparation and publication of catalogues, dictionaries and reference guides of place names in languages of the peoples of the Russian Federation, taking due account of the interests of the local community.

In respect of Article 10.3.a and b of the ECRML, Russian Federation Law No. 1807-1 of 25 October 1991 "On the languages of the peoples of the Russian Federation" governs the questions linked to the use of languages in the work of State authorities, organisations, enterprises and institutions (Article 15).

It is stipulated that the State language of the Russian Federation, the State languages of republics and other languages of peoples of the Russian Federation shall be used in the activity of State authorities, organisations, enterprises and institutions of the Russian Federation. Russian Federation citizens unable to speak the State language of the Russian Federation and the State language of the republic concerned shall be entitled to speak at meetings, work sessions and gatherings in State authorities, organisations, enterprises and institutions in the language which they are able to speak. Translation shall be provided where necessary.

In respect of Article 10.3.c of the ECRML, Russian Federation Law No. 1807-1 of 25 October 1991 "On the languages of the peoples of the Russian Federation" notes that Russian Federation citizens are entitled to submit proposals, applications or complaints to State authorities, organisations, enterprises and institutions of the Russian Federation in the State language

of the Russian Federation, their native language or any other language of the peoples of the Russian Federation spoken by them.

In respect of Article 10.4 of the ECRML, Russian Federation citizens unable to speak the State language of the Russian Federation and the State language of the republic concerned are entitled, in accordance with Russian Federation Law No. 1807-1 of 25 October 1991 "On the languages of the peoples of the Russian Federation", to speak at meetings, work sessions and gatherings in State authorities, organisations, enterprises and institutions in the language which they are able to speak. Translation shall be provided where necessary. Russian Federation citizens unable to speak the language in which a meeting, work session or gathering is conducted in a State authority, organisation, enterprise or institution shall be provided with a translation where necessary in a language acceptable to them or in the State language of the Russian Federation.

In respect of Article 10.5 of the ECRML, under Article 16 of Russian Federation Law No. 1807-1 of 25 October 1991 "On the languages of the peoples of the Russian Federation", documents attesting to the identity of a Russian Federation citizen, excerpts from civil status records, work records and also documents concerning education, military service records and other documents shall be drawn up taking due account of ethnic naming traditions in the State language of the Russian Federation, and in the territory of a republic having instituted its own State language such documents may be drawn up in the State language of the republic alongside the State language of the Russian Federation.

In respect of Article 11.1.a.iii of the ECRML, in accordance with Russian Federation Law No. 1807-1 of 25 October 1991 "On the languages of the peoples of the Russian Federation", the Russian Federation government devises federal targeted programmes for the preservation, study and development of languages of the peoples of the Russian Federation and takes steps to implement these programmes. The authorities of Russian Federation constituent entities may devise corresponding regional targeted programmes. Programmes for the preservation, study and development of languages of the peoples of the Russian Federation are to provide for arrangements to ensure the functioning of the State languages of republics and other languages of the peoples of the Russian Federation and create conditions for the dissemination via the media of announcements and material in languages of the peoples of the Russian Federation with a view to developing the languages of the peoples of the Russian Federation and other measures (Article 7).

In the media of constituent entities of the Russian Federation, the Russian language, the State languages of the republics and other languages of peoples residing on their territories are to be used (Article 12).

In accordance with Article 21 of the Fundamental principles of Russian Federation legislation on culture No. 3612-1 of 9 October 1992, the Russian Federation guarantees the right of all ethnic communities residing in concentrations outside their own ethnic State entities or not possessing their own State to national-cultural autonomy. National-cultural autonomy means the right of the aforementioned ethnic communities to the free exercise of their cultural identity by setting up ethnic cultural centres, ethnic societies and fraternities on the basis of the will of the population or at the initiative of individual citizens.

In accordance with the aforementioned article of the Fundamental principles, ethnic cultural centres, ethnic societies and fraternities may:

- devise and submit proposals to the corresponding authorities and administrative directorates for the preservation and development of ethnic culture;
- run festivals, exhibitions and other similar events;
- promote the organisation of local ethnography and the creation of ethnographic and other museums;



- create ethnic clubs, art workshops and collectives, and organise libraries, circles and workshops for the study of ethnic language and Russia-wide, regional and other associations.

Under Article 22 of the Fundamental principles, the Russian Federation affords protection for the preservation and restoration of the ethno-cultural identity of minority ethnic communities of the Russian Federation via exceptional protection and incentive measures provided for in federal State socio-economic, ecological, ethnic and cultural development programmes.

Under Article 24, the Russian Federation is to define the conditions, on the basis of inter-State agreements, for support from foreign countries for ethnic cultural centres, ethnic societies, fraternities, associations, study and other organisations of a cultural orientation of nationals residing in the Russian Federation, and to guarantee legal protection for those bodies.

In respect of Article 12.1.c of the ECRML, in accordance with the Russian Federation Law “On the languages of the peoples of the Russian Federation”, the State language of the Russian Federation, State languages of the republics and other languages are to be used for the translation and dubbing of cinematographic and video productions, taking due account of the interests of the local community (Article 20).

In respect of Article 12.1.f of the ECRML, under Federal Law No. 78-FZ of 29 December 1994 “On library services” ethnic libraries may be set up in the Russian Federation’s republics, autonomous districts and autonomous *oblasti* [provinces] by the corresponding authorities.

In respect of Article 12.1.h of the ECRML, Russian Federation Law No. 1807-1 of 25 October 1991 “On the languages of the peoples of the Russian Federation” mentions programmes for the preservation, study and development of languages of the peoples of the Russian Federation devised by both the Russian Federation Government and the authorities of the Russian Federation’s constituent entities (Article 7). In those programmes there is to be provision for the funding of academic research in the area of preservation, study and development of languages of the peoples of the Russian Federation. The funding of federal targeted programmes for the preservation, study and development of languages of the peoples of the Russian Federation or corresponding regional targeted programmes is provided for in the federal law on the federal budget for the corresponding year or the laws of Russian Federation constituent entities respectively.

In respect of Article 13.1.a of the ECRML, Russian Federation Law No. 1807-1 of 25 October 1991 “On the languages of the peoples of the Russian Federation” notes that in the Russian Federation the creation of obstacles, restrictions and privileges in language use contrary to constitutionally established principles of ethnic policies and other infringements of the legislation of the Russian Federation on the languages of the peoples of the Russian Federation shall not be permitted. The law further contains norms linked to that legislative stipulation, *inter alia*, governing the use of languages in the spheres of industry, communications, transport and energy. At local level, alongside the State language of the Russian Federation and the State languages of republics, other languages may be used in these spheres taking due account of the interests of the local community.

In respect of Article 13.1.b of the ECRML, the applicable provisions in this case are the aforementioned norms of the Russian Federation Law “On the languages of the peoples of the Russian Federation” governing the use of languages in the work of State authorities, organisations, enterprises and institutions, in official procedures, in the spheres of industry, communications, transport and energy and in the sphere of services and commercial activity (Articles 15, 16, 21 and 22).

Under Article 37 of Russian Federation Law No. 3185-1 of 2 July 1992 “On psychiatric assistance and guarantees of the rights of citizens in its provision”, the patient must receive an explanation of the grounds and purposes of their placement in a psychiatric facility, their rights and the rules established in the facility in a language spoken by them, of which a note is made in their medical record.

In respect of Article 13.2.e of the ECRML, Russian Federation Law No. 2300-1 of 7 February 1992 “On the protection of rights of consumers” it is stipulated that the consumer shall be entitled to demand necessary and reliable information on a manufacturer/contractor/vendor, their work regulations and the products/works/services realised by them. This information is to be provided to consumers in clear and accessible form upon the concluding of buying and selling agreements and agreements on the execution of works/provision of services by means adopted in the individual consumer service spheres, in Russian, and also, at the discretion of the manufacturer/contractor/vendor, in the State languages of Russian Federation constituent entities and the native languages of the peoples of the Russian Federation (Article 8).

In respect of Article 14 of the ECRML, under Article 6 of the Draft federal law No. 66064-5 “On transfrontier co-operation” currently being examined by the State Duma, transfrontier co-operation of a scientific or humanitarian nature may be carried out, including: (...)  
b) devising and implementing joint scientific and technical programmes and projects;  
c) development of partnership links between educational establishments: exchange of teaching and scientific/pedagogical staff, devising of education programmes geared to the specific characteristics of transfrontier co-operation territories of the Russian Federation and border territories of adjacent States, interaction in the study and teaching of languages and the cultural history of the peoples of the Russian Federation and adjacent States.

In addition, this article states that it is necessary to create favourable conditions for the spiritual development of the population of transfrontier co-operation territories of the Russian Federation and border territories of adjacent States, including national minorities and ethnic communities, publish books, travel guides and atlases, publish articles, promote cultural exchange, organise festive events, run exhibitions, concerts, sports competitions and ethnographical and historical research; it also stipulates the need to support nationals residing on the border territories of adjacent States.

### 18.3 Proposal for an instrument of ratification

On 7 October 2010, the Committee for the Affairs of Nationalities of the State Duma of the Federal Assembly of the Russian Federation held a hearing dealing, *inter alia*, with the issue of ratification of the ECRML. In its recommendations, the committee also made reference to concerns regarding ratification of the ECRML:

“[T]he possibility formulated in the Charter of legal recognition of various levels of protection for different languages and even a different degree of protection of one and the same language in different subjects of the Russian Federation cause certain difficulties. In Russia it means recognition of differences in the legal status of the citizens of Russia and may become a source of conflict. In addition, the demand for a list of services in native languages as it is stipulated in the Charter needs special study. It is also necessary to verify the application procedure of the monitoring mechanism of the Council of Europe in the Russian Federation in view of the fact that upon Charter ratification more than 160 languages or even 230 languages together with dialects will be covered by protection in the Russian Federation. Therefore, with regard to specifics of the language situation in the Russian Federation it seems advisable to elaborate further on the ethnopolitical, administrative, organizational and financial consequences of the Charter ratification.”<sup>283</sup>

<sup>283</sup> See Recommendations: Language Diversity of the Russian Federation: Problems and Prospects.



The declaration (instrument of ratification) proposed below takes these concerns into account.

### Explanatory note on the main features of the proposed instrument of ratification

#### 1. The proposal grants Part III status to those 49 regional or minority languages in the Russian Federation that are either a State language of a republic or used by a people (national minority) to which at least 50 000 persons in the Russian Federation belong.

As far as the criterion of “State language” is concerned, Article 68.2 of the Russian Constitution gives republics the right to establish State languages (*gosudarstvennye yaziki*) other than Russian within the republics’ territories.<sup>284</sup> Although some such languages have only relatively few speakers (for example, 65 534 speakers of the Altai language in the Russian Federation; see 2002 census<sup>285</sup>) or are used by a relatively modest share of the population in the republic concerned (for example, Nogai in Karachay-Cherkessia: 3.4%; Khakas in Khakasia: 12%; 2002 census), they should be considered under Part III for political and legal reasons. In fact, granting Part III protection to State languages<sup>286</sup> would take into account the Russian Federation’s decision to grant republics the right to establish their own State languages and constitutions.

The minimum threshold of 50 000 is derived from Article 1.1 of the Federal Law “On the Guarantees of the Rights of the Small-in-number Indigenous People of the Russian Federation” which defines ‘small-in-number’ peoples as those with fewer than 50 000 representatives.<sup>287</sup> While the figure of 50 000 is used in Russian legislation in the specific context of indigenous people and not in relation to regional or minority languages as such, it nonetheless provides a threshold differentiating between small-in-number and other peoples. The ECRML contains such a differentiation as well: Part III is conceived to be applied to “big” languages while “small” languages are covered by Part II only. Thus, applying Part III to a language used by a people (national minority) to which at least 50 000 persons belong would reflect the differentiation between “small” and “big” peoples/languages existing in both Russian legislation and the ECRML.

In light of the 2002 census, 49 regional or minority languages qualify for Part III coverage in accordance with at least one of the aforementioned criteria. Considering the size of the Russian Federation in terms of territory and population, this number is reasonable and, in comparison with some States Parties to the ECRML (Poland: 15 Part III languages; Serbia: 10; Slovak Republic: 9), it is not excessively high.

#### 2. The proposal divides the 49 Part III languages into three groups: 1) State languages, 2) languages benefiting from local autonomy and 3) languages used by citizens living outside the borders of their republics or national administrative-territorial entities.

The 49 Part III languages could be divided into three groups in the instrument of ratification:

<sup>284</sup> This is reiterated in Article 3.2 of the 1991 Law “On the Languages of the Peoples of the Russian Federation”, N1807-I.

<sup>285</sup> The results of the 2010 census are not yet available.

<sup>286</sup> State languages comply with the definition of a regional or minority language (Article 1.a of the ECRML) as their official status is limited to a part of the State.

<sup>287</sup> See FZ-N 82, 1999. It defines indigenous peoples as those “living on the territories traditionally inhabited by their ancestors, preserving their traditional way of life, traditional management and trade, counting fewer than 50 000 and realising themselves as a separate ethnic community”.

#### Group 1: State languages

This group concerns languages recognised as ‘State languages’ in the constitutions and language laws of the republics<sup>288</sup> which would constitute the geographical scope of application for the ECRML provisions to be applied to this group (see under 3. below).

*Group 2: languages benefiting from local autonomy (languages of peoples having “national administrative-territorial entities” and/or benefiting from local autonomy in “areas of compact settlement”; these entities/areas would constitute the geographical scope of application for the ECRML provisions to be applied to this group)*

(Non-Russian) citizens living outside the borders of their republics (*natsional’no-gosudarstvennoe obrazovanie*), or having no such entities, can establish “national administrative-territorial entities” (national rayons, national settlements and national village councils). These entities have the features of a local autonomous entity<sup>289</sup> and shall satisfy ethno-cultural and linguistic needs: they guarantee the use of the mother tongue (namely the minority language), the creation of national (namely minority) groups in pre-school facilities, national classes and schools, the development of national culture, tradition and lifestyle, and information/media in the mother tongue. Furthermore, the views of national administrative-territorial entities regarding draft laws concerning the use of the mother tongue shall be considered.<sup>290</sup> National administrative-territorial entities have been established for the Karelian,<sup>291</sup> German and Korean national minorities.<sup>292</sup>

The notion of ‘areas of compact settlement’ used in Russian language legislation is also relevant in this context. As regards federal laws, Article 3.4 of the 1991 Law ‘On the Languages of the Peoples of the Russian Federation’ States: “In densely populated localities, communities which do not have their own ethno-national and ethno-territorial entities, or which reside outside their borders, may use the language of the community of the locality in question alongside Russian and the State languages of the republic in official spheres of communication. (...)” Similarly, the 1992 Law “On Fundamentals of the Russian Federation Legislation” stipulates in Article 21 that ethnic communities living in a compact settlement outside their ‘own’ entities, or having no entity of their own, are guaranteed the right to cultural and national autonomy.<sup>293</sup>

<sup>288</sup> Group 1 does not comprise the Karelian language as Karelia is the only republic not to have a State language in addition to Russian. The Karelian Constitution establishes that the only official language is Russian. However, there exists the Law of the Republic of Karelia for the Support of the Karelian, Vepps and Finnish languages in the Republic of Karelia, No. 759-3PK, 19 March 2004, and the Karevsky, Pryazsky and Olonetsk Karelian National Rayons. Consequently, Karelian is included in Group 2. Furthermore, the German language is not yet included in Group 1 pending the implementation of the “Protocol about the Co-operation of the Government of the Russian Federation and the Government of the Federal Republic of Germany concerning the Gradual Restoration of the Statehood of the Russian Germans” of 10 July 1992 (in force since 23 March 1993, see *Bjulleten’ mezhdunarodnykh dogovorov* 1993 No. 3, pp. 67-70). As regards Dagestan, there is no legal clarity about the number of official languages. Article 11 of Dagestan’s Constitution states that the State languages are “Russian and the languages of the peoples of Dagestan.” The languages that are commonly considered to be ‘official’ in Dagestan are the ones that are written languages. These languages have been considered in the present proposal.

<sup>289</sup> See Valery Tishkov: Status of and Support for Linguistic Diversity in the Russian Federation, 2009 (paper submitted to the “Joint Working Group on the Drafting of an Instrument of Ratification” established as part of the Joint Programme “Minorities in Russia” of the Council of Europe, the European Union and the Russian Federation), p. 10.

<sup>290</sup> See Articles 7, 10 and 11 of the Law of 26 April 1990 “On the free national development of citizens of the USSR living outside the borders of their national-administrative entities, or having no such entities in the territory of the USSR”. This law is still in force, see Carmen Schmidt: Minderheitenschutz im östlichen Europa – Russland, research project co-ordinated by Angelika Nußberger, Köln 2004, p. 31, [http://www.uni-koeln.de/jur-fak/ostrecht/minderheitenschutz/Vortraege/Russland/Russland\\_Schmidt.pdf](http://www.uni-koeln.de/jur-fak/ostrecht/minderheitenschutz/Vortraege/Russland/Russland_Schmidt.pdf). See also Mahulena Hošková (now Hofmann): Die rechtliche Stellung der Minderheiten in Russland. In: Jochen Abraham Frowein/Rainer Hofmann/Stefan Oeter (eds.): *Das Minderheitenrecht europäischer Staaten*, Teil 2, Berlin 1994, pp. 246-285.

<sup>291</sup> See Law “On the Legal Status of the National Rayon, the National Settlements and Village Soviets in the Republic of Karelia” of 24 October 1991.

<sup>292</sup> The Report submitted by the Russian Federation pursuant to Article 25, paragraph 1 of the Framework Convention for the Protection of National Minorities (ACFC/SR(1999)015) includes a list of existing national-administrative territorial entities (p. 12, 29).

<sup>293</sup> There are other examples: Pursuant to Article 3 of the Law “On Denomination of Geographical Objects” and Article 23 of the Law “On the Languages of the Peoples of the Russian Federation”, geographical names and signs can be displayed in a minority language in an area of compact settlement.



In addition, some republics' laws on languages establish the possibility to use minority languages for official purposes in "areas of compact settlement". The Law on Languages of the Republic of Altai provides that Kazakh can be used for official purposes alongside the State languages (Altai and Russian) in regions where Kazakhs live compactly (Article 4). Similar provisions are contained in the language laws of Bashkortostan, Sakha<sup>294</sup> and Udmurtia.

The languages of the peoples giving their names to autonomous okrugi are also at times recognised as official, or have de facto official status. The *Ustav* (charter) of the former Komi-Permyak Autonomous Okrug<sup>295</sup> states that Komi-Permyak (which, unlike Komi, is not a State language) can be used as the language of official communication alongside Russian (Article 11). The *ustavi* of the former Ust-Ord Buryat Autonomous Okrug<sup>296</sup> and the former Agin-Buryat Autonomous Okrug<sup>297</sup> refer to the Buryat language.

*Group 3: languages used by citizens living outside the borders of their republics or national administrative-territorial entities (for example, national rayons), or having no republics/entities in the territory of the Russian Federation (languages benefiting mainly from national-cultural autonomy).*

This group concerns languages used by (non-Russian) citizens living outside the borders of their republics or national administrative-territorial entities, or having no such entities. While comprising mostly languages that are also included in Groups 1 or 2, the ECRML provisions to be applied to Group 3 (see under 3. below) concern different territories (namely excluding the "ethnic" entities which are relevant for Groups 1 and 2). The need for Group 3 arises from the fact that only 35% of the non-Russian population of the Russian Federation live inside their 'own' ethnic territory.<sup>298</sup> Relying only on the principle of territoriality, therefore, would not satisfy the needs of these peoples. Group 3 further reflects the adoption of the federal Law "On National-Cultural Autonomy" in 1996.

These three groups reflect the three already existing models of minority protection in the Russian Federation: 1) regional autonomy/federalism, 2) local autonomy, and 3) cultural autonomy for non-titular minorities, or diaspora titular minorities (for example, Tatars residing outside the Republic of Tatarstan).

### 3. The proposal contains three 'menus' for the three language groups containing 58, 48 and 38 provisions respectively.

According to Article 2.2 of the ECRML, a State which prepares ratification of Part III needs to select at least 35 of the 68 options contained therein, including at least three from the fields of education and culture, and one from judicial authorities, administrative authorities, media and economic and social life.

In respect of the proposed three language groups (see under 2. above), three different (graduated) 'menus' of provisions from the ECRML could be applied. The provisions contained in the three menus differ not only in *number* from each other, but also regarding the *level of commitment*. The latter is the case for undertakings that have been selected from ECRML provisions containing alternative (stronger and weaker) options. Hence, the menu of provisions applied to Group 1 contains more and – as regards alternative ("or") options – stronger provisions than the Group 2 menu. Similarly, the Group 2 menu contains more and stronger provisions than the Group 3 menu.

<sup>294</sup> Unlike the language laws of Bashkortostan and Udmurtia, the Law on Languages of the Republic of Sakha specifies the local official languages: Evenk, Even, Yukaghir, Dolgan and Chukchi. These languages, however, do not fulfil either of the two proposed criteria for Part III status (unlike Buryat and Komi-Permyak).

<sup>295</sup> Although some of the autonomous okrugi no longer exist following mergers with other regions, their *ustavi* are still in force in their territories as long as they do not contradict the Constitution.

<sup>296</sup> See *Ustav* of the Ust-Ord Buryat Autonomous Okrug, 13 June 1995, No. 8-O3, with later amendments.

<sup>297</sup> See *Ustav* of the Agin-Buryat Autonomous Okrug, 23 November 1994, with later amendments.

<sup>298</sup> See Ulrike Köhler: *Sprachengesetzgebung in Russland*, Wien 2005, p. 53.

As regards the number of provisions, it is proposed to apply 58 provisions to the languages in Group 1, 48 provisions to Group 2 and 38 provisions to Group 3 respectively. This would be a modest and reasonable choice. By way of comparison, the United Kingdom has chosen 39 undertakings for Scottish Gaelic, Romania 48 undertakings for Serbian and 58 for German, and Spain all 68 undertakings for the languages of its Autonomous Communities. Thus, the number of provisions to be applied to the State languages in Group 1 (58) would be significantly lower than the number of provisions that Spain applies, for example, to Catalan (68).

Furthermore, the three menus are interrelated with the FCNM which contains language-related provisions that are fully or partially congruent with 38 ECRML provisions. 37 of these 38 provisions<sup>299</sup> form the basis of the menus for Groups 1 and 2. Whereas the Group 3 menu comprises all 38 congruent provisions, it does not contain any other but them and hence mirrors only the level of protection granted by the FCNM.

Given that the Russian Federation complies in respect of certain languages with more ECRML provisions than the aforementioned 38, the menus for Groups 1 and 2 also contain provisions additionally based on national legislation. On the basis of the existing legal situation in the Russian Federation, the proposed instrument of ratification therefore includes 58 ECRML provisions for Group 1 (37 provisions interrelated with the FCNM plus 21<sup>300</sup> additionally ensuing from national legislation) and 48 (37 plus 11) provisions for Group 2 while, as stated above, the Group 3 menu contains only the 38 provisions that are congruent with the FCNM.

The number of provisions concerning education (Article 8 of the ECRML) would be almost the same for all three groups (nine for Groups 1 and 2, eight for Group 3). For the languages in Groups 1 and 2, however, a "substantial part" of education would be made available *in* those languages, whereas the languages in Group 3 could also be taught only as a *subject*. This is reflected in Russian practice, with the availability of teaching in and/or of the languages of 'minorities within minorities' (nationalities residing in other titular nationalities' republics).

The differentiation of the three menus would be significantly greater with regard to judicial authorities (Article 9), where nine provisions would be applied to Group 1, but only four to Group 2 and only the minimum number of one (as required by Article 2.2) to Group 3. In doing so, the menus would take account of the different legal statuses of the languages.

With regard to the field of administrative authorities and public services (Article 10), 13 provisions would be applied to Groups 1 and 2 respectively and eleven to Group 3. A further graduated differentiation between the three groups would be made regarding the use of minority languages by the State (federal) administration (Article 10.1.a: options ii [Group 1], iii [Group 2] and iv [Group 3]) and by public services (Article 10.3: options a [Group 1], b [Group 2] and c [Group 3]).

Concerning the media (Article 11), the number of provisions would be the same for all three groups. Some differentiation would nonetheless be made with regard to public radio and television broadcasting (Article 11.1.a: options i [Group 1], ii [Group 2] and iii [Group 3]).

The number of provisions regarding the three groups would differ in the fields of cultural activities and facilities (Article 12: nine [Group 1], seven [Group 2] and six [Group 3] provisions respectively) and economic and social life (Article 13: seven [Group 1], four [Group 2] and one [Group 3] provisions respectively).

<sup>299</sup> One of the 38 congruent provisions, namely Article 8.2, has been omitted. This provision deals with territories of the country where minority languages have no traditional presence and therefore by definition does not concern Groups 1 and 2, which comprise languages used inside republics or national administrative-territorial entities (namely traditional settlement areas). It is, however, contained in the menu for Group 3.

<sup>300</sup> See Articles 8.1.e.ii, 8.1.i, 9.1.a.iii, a.iv, b.ii, b.iii, c.ii, c.iii, 9.2.a, 9.3, 10.2.e, f, 12.1.g, h, 12.3, 13.1.b, c, d, 13.2.b, c and e of the ECRML.



To all groups, both provisions in the field of transfrontier exchanges (Article 14) would be applied.

**4. The proposal mirrors the existing status of the minority languages and is cost-neutral.**

Article 4.2 of the ECRML, and also the treaty's spirit and purpose, requires that each minority language receives at least the level of protection under the ECRML that it already enjoys at the time of ratification.<sup>301</sup> Therefore, the provisions to be included in the instrument of ratification in respect of these languages need to at least mirror the already existing level of protection provided in accordance with national legislation as well as bilateral or multilateral international agreements such as the FCNM.

The proposed instrument of ratification does not go beyond this minimum requirement and includes only ECRML provisions with which the Russian Federation de facto already complies when applying similar provisions of national legislation and the FCNM.

This "mirror approach" would have several advantages taking account of the "ethnopolitical, administrative, organisational and financial consequences of the Charter ratification" referred to in the Duma resolution (see the introduction to 18.3 above).

As regards the "ethno-political" dimension, the instrument of ratification would not change the existing status of the minority languages, thereby avoiding inter-ethnic tensions and contributing to a politically smooth ratification process. In addition, the synchronised application of related provisions of ECRML, FCNM and national legislation would contribute to a coherent minority policy. As far as financial, administrative and organisational advantages are concerned, the instrument of ratification would make it possible that the application of the ECRML remains by and large cost-neutral.<sup>302</sup> It would also enable considerable synergies in periodic reporting to the Council of Europe as the language-related parts of the State report on the application of the FCNM would represent the basis of the State report on the ECRML.

**5. The proposal covers all regional or minority languages in the Russian Federation, but avoids establishing a definitive "language list".**

Languages present in the territory of the Russian Federation that comply with the definition of "regional or minority languages" contained in Article 1.a of the ECRML, but not with the two criteria above (see under 1. above), would be covered by Part II (Article 7) of the ECRML *only*, namely either Articles 7.1–7.4 or Article 7.5 (with regard to Romani and Yiddish, see Article 1.c of the ECRML). Part II would also apply to the 49 languages which receive additional promotion under Part III.

While the State must designate in the instrument of ratification the languages that will receive protection under Part III (pursuant to Article 3.1), the ECRML does not oblige the State to list the languages that will be covered by Part II only. In fact, Article 2.1 obliges the State only to apply Part II to all the regional or minority languages spoken within its territory, but not to list them. The possibility not to enumerate all languages used by small or tiny peoples offers the Russian authorities considerable flexibility and avoids controversies about the completeness of a language list, including controversies relating to dialects or the degree of autochthony of a language.

<sup>301</sup> The Committee of Experts and the Committee of Ministers have confirmed that, pursuant to Article 4.2, a State Party cannot validly opt for a level of protection under the ECRML which confers fewer rights. See in this regard Jean-Marie Woehrling: *The European Charter for Regional or Minority Languages – A critical commentary*, Council of Europe Publishing, Strasbourg 2005, p. 99.

<sup>302</sup> See Snežana Trifunovska: *The case of the Baltic states*, in: Council of Europe (ed.): *Minority language protection in Europe: into a new decade*, Strasbourg 2010, pp. 67 (p. 75).

**Proposed Declaration (instrument of ratification)**

1. In accordance with Article 2, paragraph 1 of the Charter, the Russian Federation undertakes to apply the provisions of Part II to all the regional or minority languages spoken within its territory and which comply with the definition in Article 1.

2. In accordance with Article 2, paragraph 2, and Article 3, paragraph 1, of the Charter, the Russian Federation declares that the provisions set out below shall apply to the following languages in the specified territories:

Abaza (Republic of Karachay-Cherkessia), Adyghe (Republic of Adyghea), Aghul (Republic of Dagestan), Altai (Republic of Altai), Avar (Republic of Dagestan), Azeri (Republic of Dagestan), Balkar (Republic of Kabardino-Balkaria), Bashkir (Republic of Bashkortostan), Buryat (Republic of Buryatia), Chechen (Republics of Chechnya and Dagestan), Cherkess (Republic of Karachay-Cherkessia), Chuvash (Republic of Chuvashia), Dargin (Republic of Dagestan), Ingush (Republic of Ingushetia), Kabardian (Republic of Kabardino-Balkaria), Kalmyk (Republic of Kalmykia), Karachay (Republic of Karachay-Cherkessia), Khakas (Republic of Khakasia), Komi (Republic of Komi), Kumyk (Republic of Dagestan), Lak (Republic of Dagestan), Lezgian (Republic of Dagestan), Mountain and Meadow Mari (Republic of Mari El), Moksha and Erzya Mordovian (Republic of Mordovia), Nogai (Republics of Dagestan and Karachay-Cherkessia), Ossetic (Republic of North Ossetia), Rutul (Republic of Dagestan), Sakha (Republic of Sakha), Tabasaran (Republic of Dagestan), Tat (Republic of Dagestan), Tatar (Republic of Tatarstan), Tsakhur (Republic of Dagestan), Tuvan (Republic of Tuva) and Udmurt (Republic of Udmurtia)

**Article 8 – Education**

Paragraph 1.a.i; b.ii; c.ii; d.ii; e.ii; f.i; g; h; i.

**Article 9 – Judicial authorities**

Paragraph 1.a.ii; a.iii; a.iv; b.ii; b.iii; c.ii; c.iii.  
Paragraph 2.a.  
Paragraph 3.

**Article 10 – Administrative authorities and public services**

Paragraph 1.a.ii; b; c.  
Paragraph 2.a; b; c; d; e; f; g.  
Paragraph 3.a.  
Paragraph 4.c.  
Paragraph 5.

**Article 11 – Media**

Paragraph 1.a.i; b.ii; c.ii; d; e.i; f.i; g.  
Paragraph 2.  
Paragraph 3.

**Article 12 – Cultural activities and facilities**

Paragraph 1.a; b; c; d; e; f; g; h.  
Paragraph 3.

**Article 13 – Economic and social life**

Paragraph 1.a; b; c; d.  
Paragraph 2.b; c; e.



**Article 14 – Transfrontier exchanges**

Paragraph a.  
Paragraph b.

3. In accordance with Article 2, paragraph 2, and Article 3, paragraph 1, of the Charter, the Russian Federation declares that the provisions set out below shall apply to the following languages in the specified territories:

Buryat (Agin-Buryat Okrug and Ust-Orda Buryat Okrug), German (National Rayons of Asovo and Halbstadt), Karelian (Karelia), Kazakh (Republic of Altai), Komi-Permyak (Komi-Permyak Okrug) and Korean (Korean National Micro Rayon ‘Su-Chan’)

**Article 8 – Education**

Paragraph 1.a.ii; b.ii; c.ii; d.ii; e.ii; f.ii; g; h; i.

**Article 9 – Judicial authorities**

Paragraph 1.a.ii; b.iii; c.iii.  
Paragraph 2.b.

**Article 10 – Administrative authorities and public services**

Paragraph 1.a.iii; b; c.  
Paragraph 2.a; b; c; d; e; f; g.  
Paragraph 3.b.  
Paragraph 4.c.  
Paragraph 5.

**Article 11 – Media**

Paragraph 1.a.ii; b.ii; c.ii; d; e.i; f.i; g.  
Paragraph 2.  
Paragraph 3.

**Article 12 – Cultural activities and facilities**

Paragraph 1.a; b; c; d; e; f; g.

**Article 13 – Economic and social life**

Paragraph 1.a; d.  
Paragraph 2.b; c.

**Article 14 – Transfrontier exchanges**

Paragraph a.  
Paragraph b.

4. In accordance with Article 2, paragraph 2, and Article 3, paragraph 1, of the Charter, the Russian Federation declares that the provisions set out below shall apply to the following languages:

Abaza, Adyghe, Aghul, Altai, Armenian, Avar, Azeri, Balkar, Bashkir, Belorussian, Buryat, Chechen, Cherkess, Chuvash, Dargin, Georgian, German, Greek, Ingush, Kabardian, Kalmyk, Karachay, Karelian, Kazakh, Khakas, Komi, Komi-Permyak, Korean, Kumyk, Lak, Lezgian, Mari (Mountain and Meadow), Moldovan, Mordovian (Moksha and Erzya), Nogai, Ossetic, Polish, Rutul, Sakha, Tabasaran, Tajik, Tat, Tatar, Tsakhur, Turkish, Tuvan, Udmurt, Ukrainian and Uzbek

**Article 8 – Education**

Paragraph 1.a.iii; b.iv; c.iv; d.iv; f.ii; g; h.  
Paragraph 2.

**Article 9 – Judicial authorities**

Paragraph 1.a.ii.

**Article 10 – Administrative authorities and public services**

Paragraph 1.a.iv; b; c.  
Paragraph 2.a; b; c; d; g.  
Paragraph 3.c.  
Paragraph 4.c.  
Paragraph 5.

**Article 11 – Media**

Paragraph 1.a.iii; b.ii; c.ii; d; e.ii; f.ii; g.  
Paragraph 2.  
Paragraph 3.

**Article 12 – Cultural activities and facilities**

Paragraph 1.a; b; c; d; e; f.

**Article 13 – Economic and social life**

Paragraph 1.a.

**Article 14 – Transfrontier exchanges**

Paragraph a.  
Paragraph b.

The aforementioned provisions shall apply in the territories in which these regional or minority languages are used. Pursuant to paragraphs 2 and 3 above, the territory of republics and/or national administrative-territorial entities where a regional or minority language is a State language or used by the titular people shall be excluded from the scope of application.



## 19. San Marino

San Marino has not signed the European Charter for Regional or Minority Languages (ECRML). However, it ratified the Framework Convention for the Protection of National Minorities in 1998.

According to the definition in Article 1.a of the ECRML, the concept “‘regional or minority languages’ means languages that are i. 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 ii. different from the official language(s) of that State. It does not include either dialects of the official language(s) of the State or the languages of migrants”.

There are no regional or minority languages in the sense of Article 1.a or national minorities in the Italian-speaking Republic of San Marino.<sup>303</sup> Nevertheless, San Marino could ratify the ECRML as an act of solidarity as Liechtenstein and Luxemburg have done it.

### Proposed Declaration (instrument of ratification)<sup>304</sup>

San Marino declares in accordance with Article 2, paragraph 2, and in accordance with Article 3, paragraph 1, of the European Charter for Regional or Minority Languages of 5 November 1992, that there are no regional or minority languages in the sense of the Charter in the territory of San Marino at the time of ratification. San Marino considers its ratification of the Charter as an act of solidarity in the view of the objectives of the Convention.

<sup>303</sup> See Third Report submitted by San Marino pursuant to Article 25, paragraph 2 of the Framework Convention for the Protection of National Minorities (ACFC/SR/III(2009)004), p. 1.

<sup>304</sup> Based on the declarations contained in the instruments of ratification by Liechtenstein regarding the ECRML and the FCNM both deposited on 18 November 1997.

## 20. “The former Yugoslav Republic of Macedonia”

When acceding to the Council of Europe, “the former Yugoslav Republic of Macedonia” committed itself to signing and ratifying the European Charter for Regional or Minority Languages (ECRML) by 9 November 1996.<sup>305</sup> It signed the ECRML on 25 July 1996 and, by virtue of its signature alone, agreed to comply with the ECRML’s provisions.<sup>306</sup> Furthermore, the country ratified the Framework Convention for the Protection of National Minorities (FCNM) in 1997.

### 20.1 Presentation of the regional or minority language situation

According to the definition in Article 1.a of the ECRML, the concept “‘regional or minority languages’ means languages that are i. 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 ii. different from the official language(s) of that State. It does not include either dialects of the official language(s) of the State or the languages of migrants”.

In “the former Yugoslav Republic of Macedonia”, six traditionally used languages comply with that definition:<sup>307</sup>

- **Albanian** was being spoken on the present territory of “the former Yugoslav Republic of Macedonia” long before the establishment of the Albanian State in 1912. At present, Albanian speakers account for 25.2% of the State’s population, making up the largest minority in the country (509 083 people according to the 2002 census).<sup>308</sup> Albanian is concentrated in the north-west and in the west, along the borders with Albania. In several municipalities, Albanian is the language of the majority (Tetovo, Struga, Debar, Gostivar), and in others, including Kumanovo and the capital Skopje, it is spoken by consistent minorities of more than 20%.

- **Bosnian** has been present in the current territory of “the former Yugoslav Republic of Macedonia” since the seventeenth century (although not under this name).<sup>309</sup> Further migration from Bosnia took place after the Berlin Treaty in 1878 and World War I. According to the 2002 census, 17 018 people belong to the Bosniak national minority (0.84% of the population). The area where the language is mostly spoken is between Skopje and Veles in the centre of the country.

- **Romani** has been spoken in the country since the fourteenth century, when (different) Roma groups emigrated at the time of the Turkish conquest. In the 2002 census, 53 879 people declared to be Roma (2.66% of the overall population). It is estimated, however, that the effective number is much higher, since many Roma tend to hide their identity and because of the presence of different groups that are sometimes associated with Roma but counted separately, such as the Egyptians (4 000 people). The number of Romani speakers is, however, lower (38 528). Bigger Roma groups are settled in the capital Skopje, including Čair and Centar, and in Prilep, Debar and Vinica. The municipality of Šuto Orizari (Skopje) has a Roma majority and Romani is a co-official language.<sup>310</sup>

<sup>305</sup> See Opinion of the Parliamentary Assembly of the Council of Europe No. 191(1995).

<sup>306</sup> See Jean-Marie Woehrling: The European Charter for Regional or Minority Languages – A critical commentary, Council of Europe Publishing, Strasbourg 2005, p. 44.

<sup>307</sup> The languages specified in the preamble of the Constitution and in the declaration contained in the instrument of ratification concerning the FCNM are: Albanian, Turkish, Serbian, Vlach, Bosnian and Romani.

<sup>308</sup> See also Advisory Committee on the Framework Convention for the Protection of National Minorities, First Opinion on “the former Yugoslav Republic of Macedonia” (ACFC/INF/OP/I(2005)001), p. 9.

<sup>309</sup> See <http://www.joshuaproject.net/people-profile.php?peo3=10953&rog3=MK>

<sup>310</sup> See Slavko Milosavljević/Mirče Tomovski: Albanians in the Republic of Macedonia 1945-1995: Legislative, Political Documentation, Statistics, Skopje 1997, p. 295.



- **Serbian** has been present in the territory of “the former Yugoslav Republic of Macedonia” since medieval times when the area was part of the Serbian kingdom. In the course of history, further immigration from Serbia occurred. There were 35 939 Serbs (1.78% of the population) in 2002. The language is mostly spoken in the north of the country, such as in the municipality of Staro Nagoričane and others.

- **Turkish** has been spoken in the territory of “the former Yugoslav Republic of Macedonia” since Turkish occupation in the fourteenth century. According to the 2002 census, Turks are the second largest minority and account for 3.85% of the country’s population (77 959 people). Turkish is mostly concentrated in the western and north-western parts of the country<sup>311</sup> as well as in Skopje, Debar, Gostivar and Strumica.<sup>312</sup>

- **Vlach** is autochthonous in the country although its origins are disputed. According to 2002 census, Vlachs (sometimes called Aromanians) amount to 9 695 people (0.48%). The highest concentration of Vlach speakers is in the areas around Bitola, Resen and Kruševo.<sup>313</sup>

## 20.2 Compliance of legislation with the ECRML

The legislation of “the former Yugoslav Republic of Macedonia” corresponds to a large extent to the provisions of the ECRML.<sup>314</sup> The Ohrid Framework Agreement of 13 August 2001 comprises important provisions related to the use of languages, which were further reflected in specific laws.

The main provisions are reflected in the Constitution of 17 November 1991, as amended after the Ohrid Framework Agreement. It should be noted that Amendment V, replacing Article 7 of the Constitution, states that “[t]he Macedonian language and its Cyrillic alphabet shall be the official language throughout the Republic of Macedonia and in the international relations of the Republic of Macedonia” and “[a]nother language spoken by at least 20% of citizens shall also be an official language, written using its alphabet, as determined in this article”. According to the same provision, “[i]n the organs of the state authority, any official language other than Macedonian may be used in accordance with the law”.<sup>315</sup> These specific provisions apply only to Albanian. However, in Article 3.1, the ECRML provides that a State may choose to apply Part III to an “official language which is less widely used on the whole or part of its territory”.

In the field of education, the legislation complies to a large extent with the provisions of Article 8 of the ECRML. Article 6.1 of the Ohrid Framework Agreement, “Education and Use of Languages”, highlighted that “instruction will be provided in the students’ native languages [in primary and secondary education] while at the same time uniform standards for academic programmes will be applied throughout Macedonia”.<sup>316</sup> The Constitution provides that “[m]embers of the communities shall have the right to instruction in their mother tongue in primary and secondary education in the manner determined by law” (Amendment VIII, replacing Article 48). Similar provisions appear in the Law on Primary Education of 13 September 1995 and the Law on Secondary Education of 13 September 1995.

With respect to higher education, according to Article 6.2 of the Ohrid Framework Agreement, “[s]tate funding will be provided for university level education in languages spoken by at least 20% of the population of Macedonia, on the basis of specific agreements”. The Law of 17 July

<sup>311</sup> See Hugh Poulton: *The Balkans. States and Minorities in Conflict*, Minority Rights Group, London 1993, p. 8.

<sup>312</sup> See Slavko Milosavljević/Mirče Tomovski, op. cit., p. 294.

<sup>313</sup> See Victor Friedman: *The Vlach Minority in Macedonia: Language, Identity, Dialectology, and Standardization*, in: Juhani Nuoluo/Martii Leiwo/Jussi Halla-aho (eds.): *Selected Papers in Slavic, Balkan, and Balkan Studies*, University of Helsinki, 2001, pp. 26-50; Tom Winniffrith: *The Vlachs of Macedonia*, [http://www.farsarotul.org/nl20\\_1.htm](http://www.farsarotul.org/nl20_1.htm)

<sup>314</sup> See the comparative analysis of national legislation and the provisions of the ECRML in Volume 2 of this Handbook.

<sup>315</sup> See Report submitted by “the former Yugoslav Republic of Macedonia” pursuant to Article 25, paragraph 1 of the Framework Convention for the Protection of National Minorities (ACFC/SR(2003)002), p. 87.

<sup>316</sup> See Ohrid Framework Agreement (2001), <http://www.vmacedonia.com/crisis/doc/fagreeme.htm>

2003 on amending and supplementing the Law on Higher Education<sup>317</sup> and the Law on the Use of Languages spoken by at least 20% of the Citizens of the Republic of Macedonia and in units of local self-government of 13 August 2008<sup>318</sup> reflect this provision and prescribe for State financing of higher education in the language spoken by at least 20% of the population. The laws further lay down the right of members of the communities to higher education in their language.

With respect to the judicial authorities, Article 6.7 of the Ohrid Framework Agreement stated that “[i]n criminal and civil judicial proceedings at any level, an accused person or any party will have the right to translation at State expense of all proceedings as well as documents in accordance with relevant Council of Europe documents.” Pursuant to the Law amending the Law on Criminal Procedure of 19 June 2002, “the official language in criminal proceedings is Macedonian and its Cyrillic alphabet. Another official language, written in its alphabet, spoken by at least 20% of citizens is used in accordance with this law”.<sup>319</sup> Consequently, “the accused, damaged, private plaintiff, witnesses and other people participating in the proceedings who speak an official language other than Macedonian, have the right to use their language and alphabet during the pre-investigative, investigative and other court actions and the main hearing”<sup>320</sup> and the court is responsible for the interpretation of statements and the translation of documents.<sup>321</sup>

“Other parties, witnesses and participants in the proceedings have the right to free assistance of an interpreter if they cannot understand or speak the language used in court.”<sup>322</sup> “Citizens who speak an official language other than Macedonian may file documents in their language and alphabet; such documents will be translated by the court and sent to other parties to the proceedings. Other people who do not speak or understand Macedonian and its Cyrillic alphabet may file documents in their language and alphabet.”<sup>323</sup> “The accused who does not understand the languages of the proceedings will be given a translation of the indictment in the language he or she uses in the proceedings.”<sup>324</sup> “The citizens who speak an official language other than Macedonian are sent summons, decisions and other writs in that language as well.”<sup>325</sup> These provisions correspond to a large extent to Article 9.1.a. of the ECRML.

As regards civil proceedings, in accordance with the Law amending and supplementing the Law on Civil Procedure of 19 June 2002, “civil proceedings are conducted in Macedonian and its Cyrillic alphabet. Another official language, written in its alphabet, spoken by at least 20% of citizens, is used in civil proceedings in accordance with this law”.<sup>326</sup> “A member of the community, party or participant in the proceedings, who does not understand and speak Macedonian and its Cyrillic alphabet, is entitled to an interpreter. The costs of interpretation are borne by the court”.<sup>327</sup>

“The parties or other participants in the proceedings who speak another official language which is also an official language in the Republic of Macedonia have the right to use their language in the court process and in oral statements before the court.”<sup>328</sup> “The parties and other participants in the proceedings who are citizens of the Republic of Macedonia and who speak an official language other than Macedonian are sent summons, decisions and other writs in that language

<sup>317</sup> See Klaus Schrameyer: *Minderheitenschutz im östlichen Europa – Makedonien*, research project co-ordinated by Angelika Nußberger, Köln 2003, pp. 110-111.

<sup>318</sup> See <http://www.sobranie.mk/fr/WBStorage/Files/LOIRELATIVEpdf.pdf> for the French version

<sup>319</sup> See Report submitted by “the former Yugoslav Republic of Macedonia” pursuant to Article 25, paragraph 1 of the Framework Convention for the Protection of National Minorities (ACFC/SR(2003)002), p. 53.

<sup>320</sup> *Ibidem*.

<sup>321</sup> *Ibidem*.

<sup>322</sup> *Ibidem*.

<sup>323</sup> *Ibidem*.

<sup>324</sup> *Ibidem*.

<sup>325</sup> *Ibidem*, p. 54.

<sup>326</sup> *Ibidem*.

<sup>327</sup> *Ibidem*.

<sup>328</sup> *Ibidem*.



as well.”<sup>329</sup> “The parties and other participants in the proceedings who are citizens of the Republic of Macedonia and who speak an official language other than Macedonian may submit applications, complaints and other documents in their language and alphabet.”<sup>330</sup> “The parties and other participants in the proceedings who are citizens of the Republic of Macedonia and whose mother tongue is neither Macedonian and its Cyrillic alphabet nor an official language other than Macedonian and its Cyrillic alphabet have the right to use their mother tongue in the court process and oral statements before the court.”<sup>331</sup> The costs of interpretation are borne by the court.<sup>332</sup> These provisions correspond to Article 9.1.b of the ECRML.

According to the Law amending the Law on Administrative Disputes, the provisions of the Law on Civil Procedure also apply to the administrative proceedings,<sup>333</sup> thereby covering Article 9.1.c of the ECRML.

Similar provisions concerning the use of languages in judicial proceedings are comprised in the Law on the Use of Languages spoken by at least 20% of the Citizens of the Republic of Macedonia and in units of local self-government.

Pursuant to the Law for Amending the Law on Publication of Laws and Other Regulations in the “Official Gazette of the Republic of Macedonia”, “[t]he laws shall also be published in another official language and its alphabet spoken by at least 20% of the citizens belonging to the communities in the Republic of Macedonia”,<sup>334</sup> corresponding to Article 9.3 of the ECRML.

Macedonian legislation also reflects the provisions of Article 10. Alongside the provisions referring to the official language, already mentioned above, the Constitution provides that “[a]ny citizen living in a unit of local self-government in which at least 20% of the citizens speak an official language other than Macedonian may use any official language to communicate with the regional office of the ministries; regional offices responsible for those local self-government units shall reply in Macedonian and its Cyrillic alphabet and in the official language and alphabet used by that citizen. Any citizen may use one of the official languages and its alphabet to communicate with ministries, while ministries shall reply in Macedonian and its Cyrillic alphabet and in the official language and alphabet used by the particular citizen” (Amendment V, replacing Article 7). Similar provisions were included in the Ohrid Framework Agreement. The Constitution also provides that the “[p]ersonal documents of citizens speaking an official language other than Macedonian shall be issued in Macedonian and its alphabet, as well as in that other language and alphabet in accordance with the law” (Amendment V, replacing Article 7).<sup>335</sup>

Furthermore, the Law on the Use of Languages spoken by at least 20% of the Citizens of the Republic of Macedonia and in units of local self-government prescribes in Article 4 that citizens living in a unit of local self-government where at least 20% of the citizens speak a language other than Macedonian may use that other language to communicate with the local branches of the ministries. These will reply in Macedonian as well as in the language used by the citizen.

With respect to local authorities, corresponding to Article 10.2, the Constitution further provides that “[i]n the units of local self-government, the language and its alphabet used by at least 20% of the population shall be used as an official language in addition to Macedonian and the Cyrillic alphabet. The organs of the self-government unit shall decide on the use of languages spoken by less than 20% of the population of a unit of local self-government (Amendment V, replacing Article 7).” A similar provision was included in the Ohrid Framework Agreement. The Law on Local Self-Government of 24 January 2004, as well as in the Law on the Use of Languages

<sup>329</sup> *Ibidem*.

<sup>330</sup> *Ibidem*.

<sup>331</sup> *Ibidem*, p. 55.

<sup>332</sup> *Ibidem*.

<sup>333</sup> *Ibidem*.

<sup>334</sup> *Ibidem*, p. 99.

spoken by at least 20% of the Citizens of the Republic of Macedonia and in units of local self-government contains similar provisions.

Furthermore, the law provides that in municipalities where at least 20% of the population uses an official language other than Macedonian, place names shall be written in Macedonian, as well as in the language used by at least 20% of the citizens of the respective municipality.

The provisions of Article 11 of the ECRML are reflected as well in Macedonian legislation. The Law on Broadcasting (2005) provides that the offer of public broadcaster includes one television programme service and one radio programme service “in the language spoken by at least 20% of the citizens, different from Macedonian and in the languages of the non-majority communities”.<sup>335</sup> The same law provides that “broadcasters broadcast the programme in Macedonian, and in cases when the programme is aimed at a community which does not represent the majority, it is broadcast in the language of that community”.<sup>336</sup> Furthermore, according to the same law, the composition of the Broadcasting Council “requires appropriate and equitable representation of the citizens who belong to all communities”.<sup>337</sup> Similar provisions are included in the Law on the Use of Languages spoken by at least 20% of the Citizens of the Republic of Macedonia and in units of local self-government.

With respect to cultural activities, the Constitution provides that “[m]embers of communities shall have the right to freely express, foster and develop their identity and characteristics of their communities and to use the symbols of their community. The Republic of Macedonia shall guarantee the protection of ethnic, cultural, linguistic and religious identity of all communities. Members of the communities shall have the right to establish cultural, art, educational institutions as well as scientific and other associations for expressing, fostering and developing their identity” (Amendment VIII, replacing Article 48),<sup>338</sup> thereby corresponding to Article 12 of the ECRML.

### 20.3 Proposal for an instrument of ratification

The authorities have been preparing the ratification of the ECRML and progress seems to have been made.<sup>339</sup> The need to adopt national legislation relevant for the use of languages appears to be one of the reasons for the delay in this respect.<sup>340</sup>

#### Explanatory note on the main features of the proposed instrument of ratification

##### 1. The proposal includes six languages, among them Albanian.

According to the definition in Article 1.a of the ECRML, the concept “‘regional or minority languages’ means languages that are i. 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 ii. different from the official language(s) of that State. It does not include either dialects of the official language(s) of the State or the languages of migrants”.

<sup>335</sup> See Second Report submitted by “the former Yugoslav Republic of Macedonia” pursuant to Article 25, paragraph 2 of the Framework Convention for the Protection of National Minorities (ACFC/SR/II(2006)004), p. 25.

<sup>336</sup> *Ibidem*, p. 26.

<sup>337</sup> *Ibidem*.

<sup>338</sup> See Report submitted by “the former Yugoslav Republic of Macedonia” pursuant to Article 25, paragraph 1 of the Framework Convention for the Protection of National Minorities (ACFC/SR(2003)002), p. 87.

<sup>339</sup> See Fourth Report by the European Commission against Racism and Discrimination on “the former Yugoslav Republic of Macedonia” (CRI(2010)19), p. 11.

<sup>340</sup> See Third Report by the European Commission against Racism and Discrimination on “the former Yugoslav Republic of Macedonia” (CRI(2005) 4), p. 41.



Article 3.1 of the ECRML provides for the possibility to apply Part III of the treaty to an “official language which is less widely used on the whole or part of its territory”. The application of Part II to such languages is not mentioned in this provision.

In “the former Yugoslav Republic of Macedonia” the following languages consequently would be covered by the ECRML: Albanian, Bosnian, Romani, Serbian, Turkish and Vlach.

## 2. The proposal mirrors the existing legal situation.

Article 4.2 of the ECRML, and also the treaty’s spirit and purpose, requires that each regional or minority language receives at least the level of protection under the ECRML that it already enjoys at the time of ratification.<sup>341</sup> Therefore, the provisions to be included in the instrument of ratification in respect of these languages need to at least mirror the already existing level of protection provided in accordance with national legislation as well as bilateral or multilateral international agreements such as the FCNM.

The instrument of ratification proposed below does not go beyond this minimum requirement and includes only ECRML provisions with which “the former Yugoslav Republic of Macedonia” de facto already complies when applying similar provisions of national legislation and the FCNM.

This “mirror approach” would have political and financial advantages. Firstly, the ratification instrument would not change the existing status of the minority languages, thereby contributing to a politically smooth ratification process. In addition, the synchronised application of related provisions of ECRML, FCNM and national legislation would contribute to a coherent minority policy. As far as financial advantages are concerned, the ratification instrument would make it possible that the application of the ECRML remains by and large cost-neutral. It would also enable considerable synergies in periodic reporting to the Council of Europe as the language-related parts of the State report on the application of the FCNM would represent the basis of the State report on the ECRML.

## 3. The proposal contains two graduated ‘menus’ of ECRML provisions of which the strongest menu applies to Albanian.

As regards the provisions that can be “mirrored” in the ratification instrument, it first of all needs to be underlined that the FCNM contains language-related provisions that are fully or partially congruent with 38 ECRML provisions. Given that a State which prepares ratification of Part III (Articles 8-14) of the ECRML needs to select at least 35<sup>342</sup> of the 68 options contained therein, “the former Yugoslav Republic of Macedonia” already complies with more than that minimum number through the application of the FCNM. It follows from this that, currently, the legislation of “the former Yugoslav Republic of Macedonia” already protects the aforementioned six languages at the level of Part III of the ECRML.

In addition to the ECRML provisions already covered in “the former Yugoslav Republic of Macedonia” through the application of the FCNM (and related national legislation), the national legislation matches further ECRML provisions.

In respect of “the former Yugoslav Republic of Macedonia”, two different (graduated) ‘menus’ of provisions from the ECRML could be applied. The provisions contained in these menus differ not only in *number* from each other, but also regarding the *level of commitment*. The latter is the case for undertakings that have been selected from ECRML provisions containing alternative (stronger and weaker) options. Hence, the menu of provisions applied to Albanian contains more and – as regards alternative (“or”) options – stronger provisions than the menu for the other languages.

<sup>341</sup> The Committee of Experts and the Committee of Ministers have confirmed that, pursuant to Article 4.2, a state party cannot validly opt for a level of protection under the ECRML which confers fewer rights. See in this regard Jean-Marie Woehrling: *The European Charter for Regional or Minority Languages – A critical commentary*, Council of Europe Publishing, Strasbourg 2005, p. 99.

<sup>342</sup> Pursuant to Article 2.2.

Furthermore, the menus are interrelated with the FCNM provisions that are congruent with 38 ECRML provisions. 37 of these 38 provisions<sup>343</sup> are contained in, and form the basis of, all menus. Given that “the former Yugoslav Republic of Macedonia” complies with more ECRML provisions than the aforementioned 37, the menus also contain provisions additionally based on national legislation.

On the basis of the existing legal situation in “the former Yugoslav Republic of Macedonia” and taking account of Article 4.2 of the ECRML (see under 2. above), the proposed instrument of ratification includes 46 ECRML provisions for Albanian and 42 for Bosnian, Romani, Serbian, Turkish and Vlach.

Concerning education (Article 8 ECRML), the menu for Albanian provides for “teaching in” this language whereas the provisions to be applied to Bosnian, Romani, Serbian, Turkish and Vlach foresee mostly that only a “substantial part” of education is made available in them.

The menus with regard to judicial authorities (Article 9) includes more provisions for Albanian in respect of civil and administrative proceedings. Article 9.3 applies to Albanian only. In the field of administrative authorities and public services (Article 10) stronger provisions would apply to Albanian than to Bosnian, Romani, Serbian, Turkish and Vlach. The situation is similar concerning the media (Article 11 ECRML), where stronger provisions would apply to Albanian.

The provisions in the field of cultural activities and facilities (Article 12), in economic and social life (Article 13), and in the field of transfrontier exchanges (Article 14) would be the same for all languages, mirroring the provisions of the FCNM.

## Proposed Declaration (instrument of ratification)

1. Macedonia declares that, in accordance with Article 2, paragraph 1, of the European Charter for Regional or Minority Languages, the provisions of Part II of the Charter shall apply to Bosnian, Romani, Serbian, Turkish and Vlach.

2. In accordance with Article 2, paragraph 2, and Article 3, paragraph 1, of the Charter, Macedonia declares that the following provisions shall apply to Albanian:

### Article 8 – Education

Paragraph 1.a.i; b.i; c.i; d.i; e.i; f.i; g; h.  
Paragraph 2.

### Article 9 – Judicial authorities

Paragraph 1.a.ii; a.iii; a.iv; b.ii; b.iii; c.ii; c.iii.  
Paragraph 3.

### Article 10 – Administrative authorities and public services

Paragraph 1.a.ii; b; c.  
Paragraph 2.a; b; d; f; g.  
Paragraph 3.a.  
Paragraph 4.c.  
Paragraph 5.

<sup>343</sup> One of the 38 congruent ECRML provisions (Article 10.2.c) concerns regional authorities that do not exist in the country.



**Article 11 – Media**

Paragraph 1.a.iii; b.i; c.i; d; e.i; f.i; g.  
Paragraph 2.  
Paragraph 3.

**Article 12 – Cultural activities and facilities**

Paragraph 1.a; b; c; d; e; f.

**Article 13 – Economic and social life**

Paragraph 1.a.

**Article 14 – Transfrontier exchanges**

Paragraph a.  
Paragraph b.

3. In accordance with Article 2, paragraph 2, and Article 3, paragraph 1, of the Charter, Macedonia declares that the following provisions shall apply to Bosnian, Romani, Serbian, Turkish and Vlach:

**Article 8 – Education**

Paragraph 1.a.i; b.ii; c.ii; d.iii; e.ii; f.ii; g; h.  
Paragraph 2.

**Article 9 – Judicial authorities**

Paragraph 1.a.ii; a.iii; a.iv; b.ii; c.ii.

**Article 10 – Administrative authorities and public services**

Paragraph 1.a.iii; b; c.  
Paragraph 2.a; b; d; g.  
Paragraph 3.c.  
Paragraph 4.c.  
Paragraph 5.

**Article 11 – Media**

Paragraph 1.a.iii; b.ii; c.ii; d; e.i; f.ii; g.  
Paragraph 2.  
Paragraph 3.

**Article 12 – Cultural activities and facilities**

Paragraph 1.a; b; c; d; e; f.

**Article 13 – Economic and social life**

Paragraph 1.a.

**Article 14 – Transfrontier exchanges**

Paragraph a.  
Paragraph b.

**II. States currently Not Ready to Ratify**

**1. Belarus**

Belarus is not a member of the Council of Europe. According to Article 20.1 of the European Charter for Regional or Minority Languages (ECRML), “the Committee of Ministers of the Council of Europe may invite any State not a member of the Council of Europe to accede to this Charter”. On 13 January 1997, however, Belarus’ special guest status was suspended by the Office of the Parliamentary Assembly of the Council of Europe. Since then, the Committee of Ministers has not invited Belarus to ratify the ECRML (or the Framework Convention for the Protection of National Minorities) and the possibility to invite Belarus to other conventions in which it has expressed an interest remains under discussion within the Committee of Ministers.<sup>344</sup>

Notwithstanding the currently poor prospects for ratification of the ECRML, it deserves to be mentioned that there are regional or minority languages in the sense of the ECRML in Belarus. According to the definition in Article 1.a of the ECRML, the concept “regional or minority languages’ means languages that are i. 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 ii. different from the official language(s) of that State. It does not include either dialects of the official language(s) of the State or the languages of migrants”.

In Belarus, four traditionally used languages comply with that definition:

- **Russian** has an old traditional presence because it has been used not only by immigrants of Soviet times but also by religious dissidents settling in the territory of today’s Belarus as early as in the seventeenth century. Although the number of Russians has dropped significantly from 1989 onwards, they still constitute a substantial minority of 785 000 people according to the census of 2009.<sup>345</sup> The use of the language is not limited to the Russian minority and specific areas within Belarus, but also common among other minorities, especially Ukrainians, Jews, and Belarusians. Moreover, Article 17 of the constitution grants Russian the status of a co-official language alongside Belarusian. In the (hypothetical) case of a ratification of the ECRML, Russian could be covered as an official language which is less widely used on the whole or part of the State’s territory, pursuant to Article 3.1 of the ECRML.

- **Polish** has an old traditional presence. According to the 2009 census, there are 295 000 Poles in Belarus. They mainly inhabit the west of the country, with 230 000 people living in the *voblast* of Grodno.

- **Ukrainian** has an old traditional presence in the area of today’s Belarus. The census of 2009 indicates that there are 159 000 Ukrainians. Although many of those living in urban areas have been assimilated by the Russian minority, Ukrainians in rural areas have largely retained their language.<sup>346</sup> However, only in some south-western districts of the Brest *voblast* do they constitute more than 4% of the local population.

<sup>344</sup> See Recommendation 1874 (2009) of the Parliamentary Assembly of the Council of Europe: “The possibility of Belarus being invited to accede to other Council of Europe conventions, including both those in which it has expressed an interest (principally in the field of multilateral co-operation on criminal matters), as well as the other conventions (notably the European Convention for the Prevention of Torture and Inhuman or Degrading Treatment) remains under discussion within the Committee of Ministers.”; Declaration of the Committee of Ministers on the situation in Belarus (adopted by the Committee of Ministers on 12 January 2011): “The worrying developments that took place in Belarus following the Presidential elections held on 19 December 2010 raise a number of questions, in particular for the Council of Europe. The Committee of Ministers asks the Belarus authorities to provide additional information on what basis the presidential candidates, journalists and human rights activists were arrested in the wake of the elections. They should be immediately released and their human rights guaranteed. Political freedoms should be fully respected. The Committee of Ministers will continue supporting the establishment of closer relations between the Council of Europe and Belarus only on the basis of respect for European values and principles.”

<sup>345</sup> See National Statistical Committee of the Republic of Belarus, <http://belstat.gov.by/homep/en/census/2009/main.php>

<sup>346</sup> See Minority Rights Group, World Directory of Minorities, <http://www.minorityrights.org/4676/belarus/ukrainians.html>



- **German** has had a traditional presence in today's Belarus since the sixteenth century when Germans settled near Domačëvo and later also in other areas. Before World War II, the German minority had local autonomy ("national village councils"). 4 805 Germans lived in Belarus in 1999 who have associations in Minsk, Bobrjusk, Vitebsk and Gomel.<sup>347</sup>

In addition to the aforementioned regional or minority languages, **Yiddish** has been traditionally present in Belarus; it constitutes a non-territorial language in the sense of the ECRML. Yiddish has had an old traditional presence since German Jews, fleeing from persecution by crusaders, settled in the territory in the twelfth century. According to the 2009 census, 13 000 people are Jewish. Despite the widespread use of Russian, official figures from 1999 suggest that Eastern Yiddish is still actively spoken by 7% of the Jewish minority and understood by a clearly larger share. They predominantly live in urban areas such as Minsk, Gomel, Mogilev and Vitebsk in particular.

<sup>347</sup> See Carmen Schmidt, Minderheitenschutz im östlichen Europa – Weißrussland, research project co-ordinated by Angelika Nußberger, Köln 2004, p. 17; Rudolf Mark: Die deutsche Minderheit in Weißrussland – eine historische Skizze, in: Deutsche Studien, 1997, pp. 135-148; Paragraph 12 of the Joint Declaration on the Basic Principles of the Relations between the Federal Republic of Germany and the Republic of Belarus of 25 August 1994: "The maintenance of language, culture, national traditions and free practice of religion is allowed to Belorussian citizens of German origin in Belarus [...]".

## 2. France

France signed the European Charter for Regional or Minority Languages (ECRML) on 7 May 1999 and submitted a draft instrument of ratification to the Council of Europe which is set out for information below. By virtue of its signature alone, France agreed to comply with the ECRML's provisions.<sup>348</sup> France has neither ratified, nor signed the Framework Convention for the Protection of National Minorities.

### 2.1 Presentation of the regional or minority language situation

According to the definition in Article 1.a of the ECRML, the concept "regional or minority languages" means languages that are i. 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 ii. different from the official language(s) of that State. It does not include either dialects of the official language(s) of the State or the languages of migrants".

From the point of view of the European Commission's "Euromosaic" study, seven traditionally used languages comply with that definition in France:<sup>349</sup>

- **Basque** has an old traditional presence where France borders the Basque-speaking area of Spain. On the basis of a survey conducted in 1991, it is estimated that about 85 000 people speak Basque. They live mainly in the western part of the Pyrénées-Atlantiques department in the Aquitaine region with language skills clearly decreasing from the hinterland of Lower Navarre and Soule to the coastal area of Labourd and especially its urban zone Bayonne-Anglet-Biarritz. In the two first-mentioned hinterland territories even the majority of the population speaks Basque.

- **Breton** has an old traditional presence in the Region of Brittany. According to estimates, Breton is spoken by 320 000 people while 180 000 use it on an everyday basis. Breton speakers are concentrated in western Brittany and rather dispersed in the eastern part of the region.

- **Catalan** has an old traditional presence where France borders the Spanish Autonomous Community of Catalonia. It is reckoned that approximately 140 000 people can speak this language. Catalan speakers mainly inhabit the Pyrénées-Orientales department in the Region of Languedoc-Roussillon.

- **Corsican** has an old traditional presence on the island of Corsica. It is estimated that Corsican is the first language of about 25 000 people and that about 125 000 people have some command of this language. Corsican is spread all over the island.

- **Dutch** has an old traditional presence in French Flanders, which borders Belgium. The number of speakers of Western Flemish dialects of Dutch is estimated at roughly 80 000 who live in the Nord department.

- **German** (namely dialects of German and standard German) is the regional language of the Region of Alsace and the Moselle department of the Region of Lorraine (Alsace-Moselle) where it has an old traditional presence.<sup>350</sup> According to a survey carried out in 2001, 61% of the Alsatian population (1 115 000 people) are German speaking. In the eastern part of the Moselle department, the number of German speakers is estimated at 150 000.

<sup>348</sup> See Jean-Marie Woehrling: The European Charter for Regional or Minority Languages – A critical commentary, Council of Europe Publishing, Strasbourg 2005, p. 44.

<sup>349</sup> European Commission: The Euromosaic study, [http://ec.europa.eu/education/languages/euromosaic/doc4681\\_en.htm](http://ec.europa.eu/education/languages/euromosaic/doc4681_en.htm). There are no official figures of the number of regional language speakers in France. The estimates referred to in the Euromosaic study, which are reproduced here, need to be treated with caution.

<sup>350</sup> See Bulletin officiel [B.O.] hors-série n° 2, 19 June 2003, and <http://www.deutsch-langueregionale.eu>



• **Occitan** has an old traditional presence. According to a survey conducted in 1992, it is estimated that about six million people have some command of the language. Occitan speakers are concentrated in the southern regions of Languedoc-Roussillon, Limousin, Aquitaine, Auvergne, Provence-Alpes-Côte d’Azur, Midi-Pyrénées and Rhône-Alpes.

In their draft instrument of ratification submitted to the Council of Europe in 1999, the French authorities did not specify the aforementioned eight regional or minority languages. In fact, the political discussion in France, which goes beyond the legal considerations underpinning the above presentation, has so far not produced a final consensus about what is to be considered a regional or minority language. The following elements are the cornerstones of this debate:

1. Basque, Breton, Catalan, Corsican, Franco-Provençal, Gallo, German (“langue mosellane et langue régionale d’Alsace”), several Melanesian languages, Occitan and Tahitian are in some respects taken into consideration by the public school system, which de facto represents the highest form of recognition in France at present.

2. In 1999, the French government commissioned Bernard Cerquiglini, the Director of the “Institut national de la langue française”, to examine which languages correspond to the definition of “regional or minority languages” contained in the ECRML. His often-quoted, albeit legally non-binding report came to the conclusion that there were 75 such languages, including (in addition to what has been mentioned above):

- “Western Flemish” (namely the dialect of Dutch used in France);
- several “langues d’oil”: Bourguignon-Morvandiau, Franc-Comtois, Gallo, Lorrain, Norman, Picard, Poitevin-Saintongeais, Walloon;
- a high number of languages used in French overseas territories such as 28 languages of New Caledonia, ten languages of other territories in the Pacific Ocean and about ten languages of French Guiana;
- four kinds of Creole of the French Antilles and Réunion island;
- Arabic, Armenian, Berber, Romani and Yiddish.

3. In documents of the “Délégation générale à la Langue française et aux Langues de France” (DGLFLF), which is a service of the French Ministry for Culture, other languages are added (for example, Ladino). Also, certain regional languages are at times divided into their dialects which are then referred to as “regional languages” in their own right.

Some of these elements show the political nature of the discussion which does not in every respect take the treaty itself into account. Most notably, it appears that some of the aforementioned forms of expression constitute dialects of French (or even extinct French dialects) or migrant languages and are not therefore “regional or minority languages” in conformity with Article 1.a of the ECRML.

Furthermore, the ECRML concerns “the historical regional or minority languages of Europe”, as stipulated in the treaty’s preamble, so that languages originating from other continents would probably not be covered by the treaty either. By way of comparison, the ECRML does not apply in the British and Dutch overseas territories. The French discussion has until now not covered the distinction between “European” and “non-European” languages.

Finally, applying the ECRML only to the oral/dialectal forms of a regional language in a situation where the written/standard form of that language has a traditional presence on the relevant territory as well would not be in conformity with the treaty’s letter and spirit. As a result of its traditional presence, the standard form would qualify as (part of) a “regional or minority language” in accordance with the definition contained in Article 1.a of the ECRML and, pursuant to Article 2.1, be automatically covered by the ECRML as well. In other words: the ECRML would apply holistically to the regional language “as a whole” (dialects and standard form) rather than only to parts of it.

These considerations relativise the suggested number of 75 regional languages. Concerns that the ECRML’s application would become “unaffordable” and “unmanageable” as a result of this impressive linguistic diversity are consequently, to a certain degree, unfounded.

## 2.2 Compliance of legislation with the ECRML

In the last twenty years, French constitutional law<sup>351</sup> has developed a very strong constitutional position regarding the French language which severely blocks the recognition of rights for other languages or the speakers of other languages:

- French is the official language of the “republic” (constitution, Article 2): the principle that the French language has a monopoly within all public authorities and public services (including private persons executing a delegation of public service); a right to practise another language other than French cannot be recognised in “public life”;

- the French constitution and especially the principle of “unicity” of the French people is interpreted as forbidding to recognise collective rights of a linguistic group (decision of 15 June 1999 on the ratification of the ECRML); there is no other people on the French territory other than the French people (decision of 9 May 1999 on the statute of Corsica); therefore, no minority legally exists within the French republic and no minority rights can be granted;

- the principles of equality and of non-discrimination are opposed to the recognition of positive action in favour of regional languages or in favour of speakers of these languages; they are also opposed to making the use or the learning of a regional language compulsory;

- the Law on the French language of 4 August 1994 develops these principle by creating an obligation of the use of French in several fields: education and public financed research; labour relation; consumer protection and advertising; public sphere and public media. Nevertheless, translations are legal; some limited exceptions are foreseen for regional languages; private activity is free.

The recent debate on a draft law on the promotion of regional languages has shown that these principles and rules are obstacles to the granting of a legal statute with effective rights to citizens or real obligations to public authorities in the field of the use and development of regional languages.

With regard to education, the French law does not recognise a right for parents to get teaching, whether private or public, in a regional or minority language. The Law on the French language (loi Toubon, Article 11)<sup>352</sup> requires French to be the language of education, and if exceptions are authorised for the teaching of regional languages, at least half of the curriculum must be in French (Conseil d’Etat, 29 novembre 2002, Diwan; No. 248192-248204). The law gives the “possibility” to organise teaching of or in regional languages (Code de l’éducation, Article L 312-

<sup>351</sup> See also the comparative analysis of national legislation and the provisions of the ECRML in Volume 2 of this Handbook.

<sup>352</sup> See Article 11. - I. - La langue de l’enseignement, des examens et concours, ainsi que des thèses et mémoires dans les établissements publics et privés d’enseignement est le français, sauf exceptions justifiées par les nécessités de l’enseignement des langues et cultures régionales ou étrangères ou lorsque les enseignants sont des professeurs associés ou invités étrangers. Les écoles étrangères ou spécialement ouvertes pour accueillir des élèves de nationalité étrangère, ainsi que les établissements dispensant un enseignement à caractère international, ne sont pas soumis à cette obligation. II. - Il est inséré, après le deuxième alinéa de l’article 1er de la loi no 89-486 du 10 juillet 1989 d’orientation sur l’éducation, un alinéa ainsi rédigé: « La maîtrise de la langue française et la connaissance de deux autres langues font partie des objectifs fondamentaux de l’enseignement. »



10)<sup>353</sup>. However, the decision to make use of this possibility and the modalities of this teaching are a matter of discretion of the education authorities (Cour administrative de Bordeaux, 23 février 2010 Association Ikas-Bi c/Recteur de l'Académie de Bordeaux, 07BX01674).

So far, none of the provisions of Article 8 of the ECRML have been fulfilled in France. However, one can recognise a partial fulfilment at the level of kindergartens and primary schools. In practice, at this level, there are presently three forms of courses for some regional languages in France:

- in public schools, depending on the local situation (political pressure, position of local authorities, strength of parents' organisations, etc.), there are two kinds of curricula:
  - + "initiation" to a regional language (one to three hours per week).
  - + "enseignement bilingue paritaire" (half of the courses are given in a regional language); this kind of curriculum remains an exception but has developed recently at the level of primary schools; the "parity" is not really applied at secondary level where regional languages are taught rather like a foreign language.
- in private schools (mostly with religious obedience) under public convention (which means public subvention) in similar conditions to those in public schools.
- in so called "classes associatives", which are schools created specifically with the aim of promoting regional languages and where sometimes more than half of the courses are taught in the regional language concerned (immersion). These schools have differentiated means of funding, partially public but generally with the strong financial and practical involvement of the parents.

Mostly, these three forms of instruction do not cover the whole range of demand of parents even if the conditions of education in regional languages are rather discouraging. In many regions, parents are complaining that they cannot find bilingual courses (French/regional language) for their children. Less than 10% of the potentially interested families (namely families where a regional language is still spoken to a certain degree) have access to bilingual education. Education completely in a regional language does not exist.

At secondary level, teaching of regional languages is in a worse situation. These languages represent a substantial part of the curriculum in only exceptional circumstances.

For all levels of education and for France as a whole, only 60 000 students can follow a curriculum for which a regional language constitutes a substantial part of the curriculum.

Since a revision of the French Constitution in 1992 adding a mention of the role of French as the official language of the Republic,<sup>354</sup> French has been a compulsory language in justice and administration.

The following attenuations can be mentioned:

- in criminal cases, a person who has not enough command of French can ask for interpretation.

<sup>353</sup> Un enseignement de langues et cultures régionales peut être dispensé tout au long de la scolarité selon des modalités définies par voie de convention entre l'Etat et les collectivités territoriales où ces langues sont en usage. Le Conseil supérieur de l'éducation est consulté, conformément aux attributions qui lui sont conférées par l'article L. 231-1, sur les moyens de favoriser l'étude des langues et cultures régionales dans les régions où ces langues sont en usage.

<sup>354</sup> See Constitution of 4 October 1958, Article 2 : « La langue de la République est le français. »

- public authorities can, if they find it appropriate, give translation of their decisions or documents in other languages; for instance, a local authority can publish a bilingual version of the deliberations of its assembly; if such an initiative is legal, it is also not organised and not encouraged in any way. In practice, such initiatives are seldom and considered as a costly extravagance. Nevertheless, in this framework, regional and local authorities have the right to use a regional or minority language besides French. In practice, there exists no form of encouragement to do so and nowhere is it in fact done.

- civil servants are never obliged to communicate with citizens in regional languages. They can, if they want, communicate in a regional language with citizens who have manifested the wish to use this language. Within the service, communication is in French. Communication in a regional language between civil servants who are willing to use it is not looked down on but is discouraged.

- The command of a regional language cannot be a criterion for the employment of civil servants, but public administrations can organise training in this language.

With regard to the media, public authorities have two ways to influence them in order to consider regional and minority languages:

- Directly concerning the public broadcast societies: public programmes of local public radio and television programmes are asked to take regional languages into account, but in practice there is no sanction nor instigation to respect this orientation, so that programmes in those languages in the concerned regions last only a few minutes a day and are totally marginal;

This question is regulated by the "loi No. 86-1067 du 30 septembre 1986 relative à la liberté de communication". Several provisions of this law request taking regional languages into account in public broadcasting (Articles 28, 33, 42, 43-11 and 44), but these provisions do not find effective application. Official reports on public television and radio programmes contain impressive lists of programmes involving regional languages, but in practice these programmes represent fewer than 100 hours per year, per language. Radio programmes are often on frequencies difficult to receive (medium wave).

- Indirectly, by fixing general rules concerning private radio and television, especially in distributing frequencies and fixing general rules concerning the content of programmes; there are at present no legal obligations for private providers to take regional languages into consideration; in practice, regional languages are totally absent from private television and marginal on private radio. Some programmes with regional languages can be found on the Internet.

Concerning the reception of television broadcasts from abroad, there is no legal obstacle. However, the situation is becoming worse because most providers of television services via cable, the Internet or ADSL do not include foreign television programmes in languages similar to French regional languages in their schedules.

Concerning newspapers, in the past, legal restrictions existed for the use of some regional languages (especially in Alsace-Moselle); these restrictions have been abolished. However, while some subsidies to regional newspapers are provided, they are provided under the condition that the newspapers are in French (décret No. 96-410 du 10 mai 1996). These subsidies are not accessible to newspapers in regional languages. Courts have confirmed the legality of this discrimination (Conseil d'Etat, 30 juillet 1997, No. 181151, association culture et bilinguisme d'Alsace et de Moselle).

In the field of culture, there are no legal restrictions in French law against regional languages. Owing to their weakness, regional languages have a very marginal position in the French cultural landscape. Some financial support is provided by local or regional authorities to activities in regional languages, but not on a scale corresponding to Article 12 of the ECRML. Measures



like fostering access in other languages to works produced in regional languages are almost totally absent. Bodies responsible for cultural activities do not have staff with a good knowledge of regional languages. Most of the other commitments of Article 12 are not fulfilled.

There are no general provisions forbidding regional languages in economic and social life, but there are many obstacles, limitations and restrictions, including:

- the use of the concept of discrimination: the French anti-discrimination authority (Halde) considers that requiring knowledge of a regional language in a job offer is an illegal discrimination against candidates not native to the region. In the same spirit, public supervision authorities of *crèches* (child homes) consider that those homes operating in a regional language are discriminatory towards parents who do not speak this language.

- the rules governing public services: these utilities have the legal obligation to use the official language; this also concerns social or economic public services such as post, railway and social care. In public services such as hospitals or rest homes, the rule is the use of French. Treating ill or elderly people in their language is not a right but is tolerated.

- the rules concerning the mandatory use of French: In economic life, accountancy and book-keeping has to be carried out in French (Article L 123-22 code commerce). Labour engagement has to be written in French (Article L 121-1 code travail). Consumer information and advertising has also to be written in French (Loi No. 94-665 du 4 août 1994 relative à l'emploi de la langue française, Article 2 -5). There is no legal exception for regional languages.

There are some agreements concerning cultural and educational tranfrontier co-operation. No legal obstacles to the development of cross-border co-operation between local authorities in the field of regional culture and languages exists.

Ratification of the ECRML by France would need a dramatic change in present constitutional case law or in the constitution itself.<sup>355</sup>

The view of the French constitutional court that only the principles and objectives contained in Part II constitute obstacles to ratification, while the practical measures foreseen in Part III have already been implemented, is radically inexact in reality and legally incoherent.

To allow the implementation of Part III, the present legal situation of regional languages would need such a general and fundamental change that it is currently impossible to advise on the undertakings which would be best adapted for each language. Only after having changed the general legal framework would it become possible to begin a consultation of representatives of the different languages with a view to defining what undertakings would be best adapted for the situation of each language. Such an enquiry has not been realised yet and representatives of the regional languages are still at the stage of asking for very minimal guarantees which should be general for all regional languages.

#### Appendix: Declaration of France (1999)<sup>356</sup>

##### Declaration contained in the full powers handed to the Secretary General at the time of signature of the instrument, on 7 May 1999

France intends to make the following declaration in its instrument of ratification of the European Charter for Regional or Minority Languages:

<sup>355</sup> See Council of Europe (ed.): The European Charter for Regional or Minority Languages and the French dilemma: Diversity v. unity – Which language(s) for the Republic?, Strasbourg 2004.

<sup>356</sup> See <http://conventions.coe.int/treaty/Commun/ListeDeclarations.asp?NT=148&CM=1&DF=&CL=ENG&VL=1>

1. In so far as the aim of the Charter is not to recognise or protect minorities but to promote the European language heritage, and as the use of the term “groups” of speakers does not grant collective rights to speakers of regional or minority languages, the French Government interprets this instrument in a manner compatible with the Preamble to the Constitution, which ensures the equality of all citizens before the law and recognises only the French people, composed of all citizens, without distinction as to origin, race or religion.

2. The French Government interprets Article 7-1, paragraph d, and Articles 9 and 10 as posing a general principle which is not in conflict with Article 2 of the Constitution, pursuant to which the use of French is mandatory on all public-law corporations and private individuals in the exercise of a public service function, as well as on individuals in their relations with public administrations and services.

3. The French Government interprets Article 7-1, paragraph f, and Article 8 to mean that they preserve the optional nature of the teaching and study of regional or minority languages, as well as of the history and culture which is reflected by them, and that the purpose of this teaching is not to remove from pupils enrolled in schools on the national territory the rights and obligations applicable to all those attending establishments providing the public education service or associated therewith.

4. The French Government interprets Article 9-3 as not opposing the possible use only of the official French version, which is legally authoritative, of statutory texts made available in the regional or minority languages, by public-law corporations and private individuals in the exercise of a public service function, as well as by individuals in their relations with public administrations and services.

The preceding statement concerns Article(s): 1, 10, 7, 8, 9.

##### Declaration contained in the full powers handed to the Secretary General at the time of signature of the instrument, on 7 May 1999

France will specify in its instrument of ratification of the European Charter for Regional or Minority Languages, pursuant to Article 3-1 thereof, the regional or minority languages to which the measures to be selected in accordance with Article 2.2 shall apply. In conformity with Article 2.2, France intends to undertake to apply some or all of the following paragraphs or sub-paragraphs of Part III of the Charter:

**Article 8**  
Sub-paragraphs 1.a.iii, 1.b.iv, 1.c.iv, 1.d.iv, 1.e.i, 1.e.ii, 1.f.ii, 1.g, 1.h, 1.i  
Paragraph 2

**Article 9**  
Paragraph 3

**Article 10**  
Sub-paragraphs 2.c, 2.d, 2.g

**Article 11**  
Sub-paragraphs 1.a.iii, 1.b.ii, 1.c.ii, 1.d, 1.e.ii, 1.f.ii, 1.g  
Paragraph 2  
Paragraph 3

**Article 12**  
Sub-paragraphs 1.a, 1.b, 1.c, 1.d, 1.e, 1.g  
Paragraph 2  
Paragraph 3



**Article 13**

Sub-paragraphs 1.b, 1.c, 1.d  
Sub-paragraphs 2.b, 2.e

**Article 14**

Paragraph a  
Paragraph b

The preceding statement concerns Article(s): 10, 11, 12, 13, 14, 2, 3, 8, 9.

**3. Greece**

Greece has not signed the European Charter for Regional or Minority Languages (ECRML). However, it signed the Framework Convention for the Protection of National Minorities in 1997, but has not yet ratified it.

**3.1 Presentation of the regional or minority language situation**

According to the definition in Article 1.a of the ECRML, the concept “‘regional or minority languages’ means languages that are i. 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 ii. different from the official language(s) of that State. It does not include either dialects of the official language(s) of the State or the languages of migrants”.

In Greece, five traditionally used languages comply with that definition:<sup>357</sup>

- **Albanian** has had a presence in Greece since the eleventh century, with large waves of migration between 1350 and 1450. Albanian is present in several regions of Greece because members of the Albanian national minority are distributed widely throughout the country. Several areas of Albanian presence include many villages in the region of Attica, the majority of villages in peripheral unit of Karistos in the region of Evia, Corinth, the island of Andros, Argolis, Achaia, Messinia, Piraeus, Boeotia, and Fthiotida.
- **Bulgarian**, spoken by the Pomak national minority, is present primarily in the peripheral units of Xanthi and Rhodope. There is a small number of Pomaks in the region of Attica. Members of the Pomak national minority began settling in Greece in the eighth century. It is estimated that there are about 30 000 members of the Pomak national minority currently residing in Greece.
- **Macedonian** speakers are found in high concentrations in the peripheral units of Florina, Kastoria, and Kozani. Additionally, they have settled in the departments of Pella, Imathia, Kilkis, Thessaloniki, and Serres. Macedonian first had a presence in Greece in the sixth century.
- **Turkish** speakers have settled in the peripheral units of Rhodope, Xanthi, Evros, and Thrace. There are also a significant number of Turkish speakers in the basin of Attica, Thessaloniki, and other regions. The presence of Turkish speakers in Greece began during the second half of the eleventh century, with greater waves of migration occurring during the fifteenth century and throughout the period of the Ottoman Empire. Estimates place the number of Muslim Turkish speakers at about 120 000.
- **Vlach** speakers, who once resided mainly in the mountainous or semi-mountainous areas of Greece, have recently left these areas to settle in cities and plains. Vlachs can be found in the peripheral units of Drama, Serres, Kilkis, Thessaloniki, Pella, as well as many others, particularly in northern Greece. There was a great influx of Vlachs in the thirteenth and fourteenth century into Greece, with most historically Vlach settlements in place by the 1700s.

<sup>357</sup> European Commission: The Euromosaic study, [http://ec.europa.eu/education/languages/euromosaic/doc4681\\_en.htm](http://ec.europa.eu/education/languages/euromosaic/doc4681_en.htm)



### 3.2 Compliance of legislation with the ECRML

Greece recognises only the Muslims in Western Thrace as a minority in conformity with the 1923 Treaty of Lausanne. This selective approach is neither compatible with Article 2.1 of the ECRML according to which the treaty would cover all regional or minority languages spoken within the territory of the State, nor with Article 7.1.a requiring “the recognition of the [namely *all*]<sup>358</sup> regional or minority languages as an expression of cultural wealth”.

Considering the policies, legislation and practice prevailing in Greece in the field of regional or minority languages, it appears that the country is currently not ready to ratify the ECRML.

<sup>358</sup> Brackets added

## 4. Turkey

Turkey has not signed the European Charter for Regional or Minority Languages (ECRML). Furthermore, it has neither ratified, nor signed the Framework Convention for the Protection of National Minorities.

### 4.1 Presentation of the regional or minority language situation

According to the definition in Article 1.a of the ECRML, the concept “regional or minority languages’ means languages that are i. 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 ii. different from the official language(s) of that State. It does not include either dialects of the official language(s) of the State or the languages of migrants”.

With regard to Turkey, there is no up-to-date information available on the ethnic groups and their languages, and academic resources are available only to a limited extent. On the basis of existing sources, it appears that a number of languages<sup>359</sup> comply with the definition in Article 1.a of the ECRML, including Abaza, Abkhazian, Adyghe, Albanian, Arabic, Armenian, Azeri, Balkan Gagauz Turkish, Bulgarian, Crimean Tatar, Dimli, Domari, Estonian,<sup>360</sup> Georgian, German,<sup>361</sup> Greek, Hértevin, Kabardian, Kazakh, Kirmanjki, Kumyk, Kurdish, Kyrgyz, Ladino, Laz, Osetin, Polish,<sup>362</sup> Pontic, Romani, Syriac, Tatar, Turkmen, Turoyo, Ubykh, Uyghur, Uzbek and Zaza.

### 4.2 Compliance of legislation with the ECRML

In its 2010 Progress Report, the European Commission stated that Turkey had made progress on cultural rights, especially by further relaxing the use of Kurdish in private TV and radio broadcasts.

In general, “[h]owever, Turkey’s approach to minority rights remains restrictive. (...) The situation of the Greek minority has not changed. It continues to encounter problems with education (...) Full respect for and protection of language, culture and fundamental rights, in accordance with European standards, have yet to be fully achieved. Turkey needs to make further efforts to enhance tolerance or promote inclusiveness vis-à-vis minorities. (...) In practice, children whose mother tongue is not Turkish cannot learn their mother tongue in either private or public schools. No measures have been taken to facilitate access to public services for non-speakers of Turkish. While interpretation during the investigation phase and court hearing is possible under the current legislation for suspects, victims or witnesses, it is not consistently applied in practice. (...) Legislation on the use of languages other than Turkish is open to restrictive interpretations and implementation is inconsistent”.<sup>363</sup>

Considering the policies, legislation and practice prevailing in Turkey in the field of regional or minority languages, it appears that the country is currently not ready to ratify the ECRML.

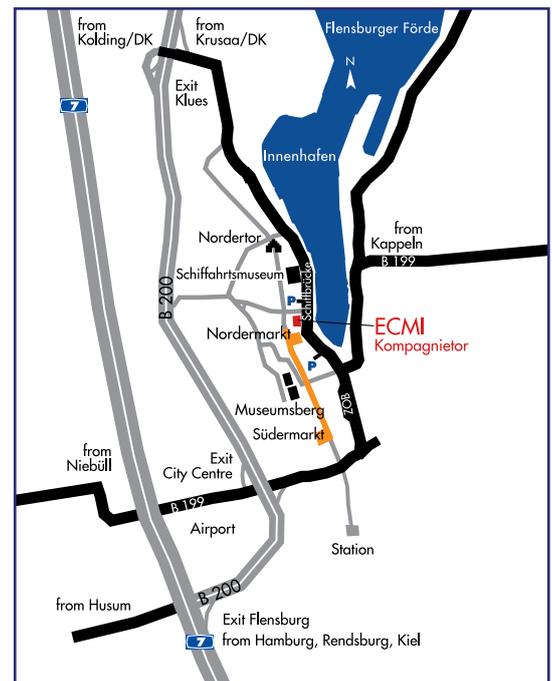
<sup>359</sup> See, *inter alia*, Rainer Hofmann: Minderheitenschutz in Europa. Völker- und staatsrechtliche Lage im Überblick, Berlin 1995; Christian Rumpf: Die rechtliche Stellung der Minderheiten in der Türkei, In: Jochen Abraham Frowein/ Rainer Hofmann/Stefan Oeter (eds.): Das Minderheitenrecht europäischer Staaten, Teil I, 1993, p. 448 ff. (458); Guus Extra/Durk Gorter (eds.): The other languages of Europe, Multilingual Matters, 2001, p. 420; [http://www.ethnologue.org/show\\_country.asp?name=TR](http://www.ethnologue.org/show_country.asp?name=TR)

<sup>360</sup> See In Karacaören/Estonka near Kars. See U. Johansen: Die Esten in Anatolien, in: P. A. Andrews (ed.): Ethnic Groups in Turkey, Wiesbaden 1989, p. 538 ff.

<sup>361</sup> In 1891, Germans from Georgia founded Paşaçorî/Petrowka near Kars. See Christian Rumpf: Die rechtliche Stellung der Minderheiten in der Türkei, In: Jochen Abraham Frowein/Rainer Hofmann/Stefan Oeter (eds.): Das Minderheitenrecht europäischer Staaten, Teil I, 1993, p. 448 ff. (458); Guus Extra/Durk Gorter (eds.): The other languages of Europe, Multilingual Matters, 2001, p. 420.

<sup>362</sup> The Polish minority is concentrated in the village of Polonezköy/Adampol.

<sup>363</sup> See European Commission: Turkey 2010 Progress Report, Brussels 2010, pp. 32-34.



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