

The protection of children's rights under the European Charter for Regional or Minority Languages (ECRML)



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The protection of children's rights under the European Charter for Regional or Minority Languages (ECRML)

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*La protection des droits de l'enfant
dans le cadre de la Charte européenne des langues
régionales ou minoritaires CELRM)*

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INTRODUCTION

The European Charter for Regional or Minority Languages (ECRML, also referred to as the Charter) has been designed as an international convention to promote the use of regional and minority languages (RMLs henceforth) in various domains of public life. Bearing in mind that providing for the use of RMLs among the younger generation is the key factor for the protection of these languages in the long run, children can be considered an inherent target of the Charter's provisions.

The aim of this study is to present the right of children to use their language as part of the provisions of the Charter itself and the way it is evaluated within the Charter's monitoring system. The relevant provisions of the ECRML are compared to those contained in the United Nations Convention on the Rights of the Child (UNCRC henceforth). Where appropriate, references are also made to guidelines adopted by the Committee of Ministers of the Council of Europe, i.e. *Guidelines of the Committee of Ministers of the Council of Europe on child-friendly justice*¹, and *Guidelines on child-friendly health care*².

"The Charter is a convention designed on the one hand to protect and promote regional and minority languages as a threatened aspect of Europe's cultural heritage and on the other hand to enable speakers of a regional or minority language to use it in private and public life"³. Bearing both these perspectives in mind, the present study zooms in on children as the speakers of those languages which are protected and promoted within the scope of the Charter.

At this point a certain reservation has to be made as to the use of the phrase *the right of the child to use their language* that will be used throughout this study. The Charter refrains from defining the language "subjectively in such a way as to consecrate an individual right"⁴, neither does it intend to "stipulate the rights of ethnic and/or cultural minority groups"⁵. The main objective of the Charter is "to protect and promote regional or minority languages as such"⁶ primarily in their cultural function⁷. Therefore, whenever the study refers to *the right of the child to use their language* it is with the meaning of enabling children as speakers of the RML to use it in a variety of domains, as it has been already stipulated above.

For the sake of terminological clarity, the definition of the child adopted in this study is in line with the UNCRC, whereas the language is defined along the requirements set out in the ECRML. Consequently, this study deals with the right of the child, i.e. any person under the age of 18⁸, to use their regional or minority language, i.e. the language traditionally present either on a given territory or considered to be a non-territorial one⁹.

1. Council of Europe, *Guidelines of the Committee of Ministers on child-friendly justice* (2010).
2. Council of Europe, *Guidelines on child-friendly health care* (2011).
3. Council of Europe, *European Charter for Regional or Minority Languages. About the Charter*.

4. Council of Europe, *European Charter for Regional or Minority Languages. Explanatory Report*, para. 17.
5. *Ibid.*
6. *Ibid.*
7. See also the explanation provided by Woehrling: Jean-Marie Woehrling (2005), *The European Charter for Regional or Minority Languages. A critical commentary*. Strasbourg: Council of Europe Publishing, p. 54).
8. *United Nations Convention on the Rights of the Child*.
9. The Charter specifies more features of what is considered within its scope as an RML. For a more detailed description of definitions applied see *European Charter for Regional or Minority Languages. Explanatory Report*, paragraph 17-21, 31-37. See also: Jean-Marie Woehrling, *op. cit.*, pp. 53-71.

It is important at this juncture to point to the specific situation of children of RML background. Because of the traditional presence of the RML together with the dominant official language/s of the state, children with an RML background can be multi- or bilingual in both the RML and the official language/s of the state. However, there are also cases where the RML has to be learnt as a second language at school, as it is no longer acquired either at home or in the immediate environment. In other words, it is important to remember that the RML does not have to be the child's language of primary socialisation¹⁰, nor is it necessarily the language that the child is most proficient in. At the other end of the scale there is the case of children for whom the RML is the only language of socialisation and as a consequence, the right to use it outside home is essential for their ability to be integrated in society at large, just as much for their need to be able to speak the majority language. The most pertinent example here is the situation of Roma children. Facilitating the use of RMLs is not to the detriment of the official language/s of the ratifying state as "the Charter does not conceive the relationship between official languages and regional or minority languages in terms of competition or antagonism. Rather, it deliberately adopts an intercultural and multilingual approach in which each category of language has its proper place"¹¹. To sum up, the needs of children in terms of their right to use their RML will be different in each case depending on their proficiency in this language as well as the kinds of social domains¹² where their RML has been used thus far, which, in turn, is obviously determined by the specific situation of each RML community.

10. Multilingual children usually have more than one language of primary socialisation. It is also worth pointing here to the fact that such notions as *mother tongue* or *first language (L1)* have been challenged within contemporary sociolinguistics as they can no longer be clearly defined in multilingual contexts (cf. David Crystal (2004), "After the revolution", in: Crystal, D. *The language revolution*. Cambridge: Polity Press, pp. 92-122, p.103; Jean-Claude Beacco (2005), *Languages and language repertoires. Plurilingualism as a way of life in Europe*. Strasbourg: Council of Europe, Language Policy Division, DG IV, p. 10. See also the 5-dimension language profile of a multilingual child in: Guus Extra & Kutlay Yagmur (2002), *Language diversity in multicultural Europe: Comparative perspectives on immigrant minority languages at home and at school*. Paris: MOST Programme/UNESCO, pp. 31-32.

11. Compare also the Preamble to the Charter: "Stressing the value of interculturalism and multilingualism and considering that the protection and encouragement of regional or minority languages should not be to the detriment of the official languages and the need to learn them" (Council of Europe, *European Charter for Regional or Minority Languages, European Charter for Regional or Minority Languages. Text of the Charter*.

12. Examples of social domains are: home, school, the media, etc.

Treating the situation of each RML differently is a characteristic of the Charter's structure as well as the long-standing approach of the Committee of Experts (COMEX henceforth) in evaluating progress made in the promotion and protection of RMLs in particular state parties. The core of the Charter, i.e. the list of undertakings, is contained in two parts of the convention (Part II and III).

Part II of the ECRML (Article 7) is composed of a list of general obligations, which covers all the domains of language use in public life and has to be accepted by the ratifying party in its entirety. It can be summarised in 8 fundamental principles:

- ▶ 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
- ▶ The promotion by states of mutual understanding between all the countries' linguistic communities¹³

All these objectives are elaborated on in Part III, which contains more specific obligations, as well as the choice of the level of commitment for each of them.

Part III is designed as a 'menu' from which the ratifying party makes a choice of commitments, so that the scope of protection can be best suited to each RML covered by the Charter¹⁴. Consequently, when evaluating the fulfilment of a particular obligation, the COMEX also arrives at its conclusions bearing in mind the specific situation of each of the RMLs in a particular territory.

13. Council of Europe, *European Charter for Regional or Minority Languages. About the Charter*.

14. There are obviously certain requirements with regard to this choice. For details, refer to Council of Europe, *European Charter for Regional or Minority Languages. Explanatory Report*, para. 39-47.

Catering for children's linguistic needs is essential for the successful long-term promotion and protection of a language and sometimes its intergenerational transmission. But even if some RMLs can no longer be acquired at home, making allowances for children in the provision of the language in other domains establishes the basis for the future use and development of an RML, which lies at the core of the Charter.

CHARTER PROVISIONS

The structure of the Charter is based on a list of domains where the use of the RML should be promoted in order to ensure its functioning in a particular community. The presentation below will follow the structure of Part III of the ECRML with appropriate references to Part II, as the latter is in fact contained in the former. Moreover, it seems useful to introduce an additional filter and grade the particular articles of the Charter according to their relevance with regard to children's rights. References will also be made to the particular articles of the UN Convention on the Rights of the Child wherever it seems relevant to highlight the points of intersection as well as some differences regarding the assumptions contained in the Charter.

Directly relevant to children

This section deals with those undertakings of the Charter which have children as their main target. Article 8 on Education comprises a variety of provisions, all of which can even be considered almost exclusively relevant to children's rights, apart from undertakings referring to University, vocational and adult education as well as teacher training.

Education (Art. 8)

Education is the domain of public use of the language that is of explicit relevance to children's rights as well as an essential aspect of the preservation and promotion of RMLs from the Charter's perspective. Obligations related to the teaching of or in an RML as well as knowledge about the RML and its tradition and culture are contained both in Part II (Art. 7.1.f, 7.3) and in a separate Article 8 of Part III.

Art. 7.1.f of Part II sets out a general principle: "the provision of appropriate forms and means for the teaching and study of regional or minority languages at all appropriate stages" (ECRML). The same article also contains an important call for the promotion of respect, tolerance and "mutual understanding between all the linguistic groups of the country" (Art. 7.3), which is envisaged as one of the objectives of education and the task of the mass media. Part II also contains an undertaking regarding transnational exchanges (Art. 7.1.i), which indirectly applies to RML education as states sometimes cooperate with regard to teacher training, student and teacher exchanges, provision of teaching materials, etc.

In contrast to the very general character of Part II objectives, Art. 8 in Part III is composed of detailed undertakings and therefore allows the ratifying party to choose the level of commitment with regard to RML education. To best suit the situation of a particular RML, the choice can be made both in terms of the stage of education (from pre-school up to secondary and vocational training¹⁵) and its intensity, i.e. the right for children:

- ▶ to be taught in the RML (either the whole curriculum or only certain subjects);
- ▶ to have the possibility to learn the RML as a subject (teaching of this language);
- ▶ to have the possibility to learn about the history, traditions and culture reflected in the RML;
- ▶ to have the possibility to learn the RML outside the traditional area (increasingly important due to the high mobility of people at present).

Since the language used in education is a significant factor in the child's development and the learning process as a whole, it seems useful at this point to list the benefits of RML education for both the child and the RML community. From the point of view of the child's development, having the possibility to use the RML at school is:

- ▶ the essential condition for successful literacy (especially Roma children) or an important facilitator in the process of becoming literate (the closer the written form is to the way children actually speak, the easier it is for them to learn how to read and write, e.g. children whose RML may be labelled as a dialect and perceived as a lower kind of language¹⁶);

15. The undertakings contained in Art. 8 also cover university education and certain provisions for teacher training, but these are irrelevant to the present study.

16. Once Scots had been granted the status of a separate language rather than a dialect of English it became possible to use the language that children actually speak as a medium of instruction in reading and writing. Teachers who decided to do it reported much better results in literacy skills among children; *Scots and Literacy. Teachers' perspective*.

- ▶ the essential basis for the self-confidence of the child, stemming from the fact that the child's language is recognised and valued at school and consequently facilitating intellectual development in other areas of education (other subjects) and reducing drop-out rates¹⁷;
- ▶ fostering the contact with the child's family roots and identity; very often also the only way to stay in contact with some family members, e.g. grandparents or even great-grandparents.

The presence of the RML in education is also important for the whole RML community as it:

- ▶ supports the process of intergenerational transmission of the RML language;
- ▶ establishes the background for the language to be used in all other domains of social life in the long run (media, administration, court, public services, etc.).

The principles listed above seem to coincide with what is envisaged in the UNCRC as objectives of education in Art. 29 (UNCRC), i.e. the development of the child's to his/her full potential (Art. 29.1(a)), respect of the child's cultural identity, language and values (Art. 29.1(c)) as well as "the preparation of the child for responsible life in a free society, in the spirit of understanding [...]"(Art. 29.1(d)), which is formulated in Charter terms as the promotion of respect and "mutual understanding between all the linguistic groups of the country" (see Charter: Art. 7.3 above).

Indirectly relevant to children

This section is devoted to those articles of the Charter that are not explicitly relevant to children, as they are not the central target of the obligations, but which still deal with domains of language use whose scope covers the RML provision for children.

Judicial Authorities (Art. 9)

The importance of making it possible for children to utilise their right to justice was highlighted by the Council of Europe with the adoption in 2010 of the *Guidelines of the Committee of Ministers of the Council of Europe on child-friendly justice*. The focus is on providing a "child-friendly environment and child-friendly language" (III. Fundamental principles: D. 5) in courts and in the police service in order to enable children to understand their position and therefore be able to pursue their rights. Therefore language is understood here mainly as a particular way of communicating which has to be adjusted to "children's age and level of understanding", a phrase repeated several times throughout the Guidelines.

17. cf. Art. 28(e) of UNCRC: "Take measures to encourage regular attendance at schools and the reduction of drop-out rates" (*United Nations Convention on the Rights of the Child*).

At this point the Charter can be seen as providing the basis for the creation of a child-friendly environment in the judicial field through facilitating the use of an RML in cases where this language is the most comfortable¹⁸ mode of communication for the child. Here language stands for a particular language variety rather than an approach in communication.

The *Guidelines on child-friendly justice* refer to language in this particular sense in the section devoted to combating discrimination (III. Fundamental principles: D.1. Protection from discrimination), where it is listed alongside culture, race and national minority background as one of the grounds upon which children must not be discriminated against.

At this point the Charter goes further, beyond a mere lack of discrimination, as it requires positive action to promote the use of an RML in the judicial field.

Art. 9 of the Charter is devoted to the use of the RML in criminal and civil proceedings as well as those concerning administrative matters. Obligations deal with both the oral and written form (documents, evidence) and similarly to all the other articles contained in Part III it is possible to choose between undertakings that differ in the level of commitment.

The obligations in this article that can be seen as relevant to children refer to the right of the child to provide evidence in their language in civil and/or criminal proceedings and to be informed in their language on all the matters concerning the court case as well as the rights of the child involved (Art. 9.1, Art. 9.2, ECRML). Where necessary, the costs of interpretation and/or translation are to be covered. There is also a paragraph in this article which deals with the availability in the RML of the main national statutory texts (Art. 9.3). From the children's rights perspective this undertaking can be interpreted as covering the production in the RML of child-friendly versions of texts which are relevant to children and their rights.

The right of the child to use their RML in judicial proceedings is essential because of the obvious need to be able to express oneself in court in the language one knows best or feels most comfortable with. Moreover, it is also a significant factor in establishing rapport with the child in a stressful situation of a court case, which is the condition for the accuracy of evidence as well as the willingness of the child to provide information.

For the same reasons Art. 40 of the UNCRC (dealing with cases of the penal law infringement) refers to the right of the child: "to have the free assistance of an interpreter if the child cannot understand or speak the language used" (Art. 40.2(vi), UNCRC). Here, the Charter goes even further as the right for free translation and/or interpretation in RML is not limited

18. The most comfortable in the sense of emotional comfort or the language that the child is most proficient in.

by the condition of the child (or any RML speaker) being unable to use the language of the court case¹⁹.

In other words, the Charter requires the RML to be used if it is the preferred mode of communication, irrespective of whether the child is competent in the official language. In this way, the Charter's provisions can be seen as those catering for the most comfortable mode of communication, which is so important for the creation of what is called in the *Guidelines on child-friendly justice* a child-friendly environment in the judicial proceedings.

All the Charter provisions for the use of the RML by the child in court described in this section are in line with Art. 12 of the UNCRC, i.e. the right of the child to be heard, which according to the UN General Comment: "applies to all relevant judicial proceedings affecting the child, without limitation, including, for example, separation of parents, custody, care and adoption, children in conflict with the law, child victims of physical or psychological violence, sexual abuse or other crimes [...]"²⁰.

Media (Art. 11)

The obligations concerning the use of an RML in the media are contained in Art. 11 of the ECRML, Part III. It is also one of the aspects intended in Art. 7.1.d Part II, which calls for: "the facilitation and/or encouragement of the use of regional or minority languages, in speech and writing, in public and private life" (ECRML). With regard to the media this very general principle is elaborated in detail in Art. 11, Part III. The 'menu' allows for the choice of the level of commitment with regard to the public and/or private broadcasters as well as the particular kinds of media and programmes that the provision of RML is supposed to cover. In a nutshell, the choice comprises the obligation on the state to provide the following kinds of media in the RML that are also relevant to children:

- ▶ TV and radio programmes;
- ▶ Newspapers or newspaper articles;
- ▶ Video and music productions (audio and audiovisual productions);
- ▶ Modern media, e.g. websites, Internet access to the 3 items mentioned above, digital platforms.

19. The need of translation and interpretation in the proceedings with the relevant authorities is also mentioned in Council of Europe, *Guidelines of the Committee of Ministers on child-friendly justice*, op. cit., Part IV. A. General elements of child-friendly justice: 1.k); In this way it is linked to the right of information, which can be interpreted as a requirement only in the case where the child does not know the official language.

20. *United Nations General Comment No. 12 by the Committee on the Rights of the Child. Right of the child to be heard* (2009), para. 32.

The presence of the RML in the media is important both for the child and the RML community or even the society at large. From the perspective of children's rights the provision of RML media:

- ▶ facilitates the development of children's proficiency in the language;
- ▶ facilitates children's intellectual and emotional development by combining entertainment with the use of their language (the idea of 'edutainment'²¹);
- ▶ facilitates children's active participation in the social life of the community as active creators (young reporters, editors, etc.) of the content provided by the media targeting children and youth²²;
- ▶ fulfils their right to free expression²³.

Fostering the direct contribution of children and youth in the media production provides benefits to the RML community and society at large by:

- ▶ establishing the basis for media productions in the RML in the long run, i.e. future journalists, producers who are competent in the language and already 'pre-trained' in the field (cf. the obligation to support the training of journalist, Art. 11.1.g of the Charter);
- ▶ establishing the basis for active participation in civil society (active citizens involved in decision-making);
- ▶ contributing to a reduction in the disparity in access to media between rural and urban areas.

The Charter undertakings related to RML media described above are in line with the principles of Art. 17 of the UNCRC, where the provision of media content aimed at children is supposed to be encouraged by the state party, also with regard to the particular linguistic needs of the child with a minority background (see Art. 17(d)). The Charter simply allows for a more specific choice of the particular kinds of media and, more importantly, also makes a distinction between encouraging as opposed to ensuring the provision of the RML in private or/and public media.

Moreover, the child's right to free expression contained in Art. 13 of the UNCRC seems to be directly connected with the opportunity to use the RML for this purpose. In this way, the provisions of the Charter under Art. 11 presented in this section

21. 'Edutainment' is the idea of combining education with entertainment; the concept can be found in the European Commission, *High Level Group on Multilingualism Report* 2007.

22. Compare with the idea of participation and active citizenship as priorities in the *European Union Youth Strategy 2010-2018..*

23. cf. Art. 13 of the *United Nations Convention on the Rights of the Child*.

seem to complement those formulated in Art. 13 of the UNCRC, i.e.:

[Art. 13.1] “The child shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of the child’s choice” (UNCRC).

Finally, participation or active citizenship is another important aspect of children’s rights that the obligations contained in both the Charter and the UNCRC may facilitate. Art. 12 of the UNCRC, which deals with the right of the child to be heard, makes clear references to the importance of getting children and the youth involved in active citizenship and the decision making²⁴. Administration and judicial proceedings are the obvious domains where this process is of immediate relevance. However, the media, although not explicitly mentioned in this context neither by the UNCRC nor the Charter, seem to serve as a perfect ground for the process of facilitating participation if children and the youth are provided with an opportunity to be active contributors in media production. Moreover, the inclusion of ‘the children’s voice’ in decision making with regard to the media can also be interpreted as securing the interests of children and youth as speakers of the RML within the bodies responsible for freedom and pluralism of the media, which is contained in Art. 11.3 of the Charter.

Cultural Activities (Art. 12)

Undertakings contained in Art. 12 of the Charter provide the ratifying party with a wide range of possible choices related to activities, facilities and institutions as well as types of expression related to the promotion of culture as reflected in a particular RML. In other words, the scope of this article covers the use of the RML in cultural activity both from the institutional point of view as well as that of particular forms of cultural expression that can be supported by the state. The support and promotion can be aimed at cultural institutions established by RML organisations but certain undertakings also regard the way governmental cultural institutions make allowances for the promotion of RMLs and their culture.

From the point of view of children’s rights this article of the Charter can be interpreted as giving children the right to have access to:

- ▶ Cultural facilities that focus on promoting the RML and culture (e.g. libraries, cultural centres, museums, theatres, etc.);

24. See also the *United Nations General Comment No. 12 by the Committee on the Rights of the Child to be heard. Right of the child to be heard*, especially paras. 12-13.

- ▶ Cultural activities and events with the same objective (e.g. festivals, contests, courses in drama and performing arts, poetry and prose, etc.);
- ▶ Literary texts and audio-visual productions, also with the use of translation and subtitles;
- ▶ Direct participation of children and youth in the organisation of the activities mentioned above (cf. Art. 12.1.f).

Providing the child with the possibility to use their RML in the context of cultural activity is important from the point of the child’s development because it:

- ▶ facilitates the development of the proficiency in the RML;
- ▶ facilitates children’s intellectual and emotional development by combining entertainment with the use of the RML (the idea of ‘edutainment’);
- ▶ facilitates children and youth’s contribution to the cultural life of the community as active participants, e.g. young actors, singers, performers, writers;
- ▶ as a consequence it facilitates the development of children’s creativity and self-esteem.

This, in turn, creates significant benefits for the RML community and its culture through:

- ▶ establishing the basis for the development of the RML culture in the long run, i.e. future artists and organisers of cultural events that are competent in the RML;
- ▶ facilitating the provision of cultural events for all the other members of the RML community, not only children;
- ▶ fostering intergenerational transmission of culture and tradition related to the RML.

The undertakings of the Charter related to fostering children’s access to cultural activity are in line with Art. 31.2 of the UNCRC concerned with the child’s right to “[...] participate fully in cultural and artistic life and [...] the provision of appropriate and equal opportunities for cultural, artistic, recreational and leisure activity” (UNCRC).

Moreover, as it has already been pointed out with regard to the media, active participation of children with the RML background as contributors rather than only addressees of cultural activity is an important factor in fostering their participation in the public life, not only of the RML community but also of society at large. This is the point where again, the potential for children’s rights that is contained in Art. 12 of the Charter on culture coincides with the objective of Art. 12 of the UNCRC, i.e. enhancing children’s participation²⁵.

25. See also the *United Nations General Comment No. 12 by the Committee on the Rights of the Child to be heard. Right of the child to be heard*, especially paras. 12-13.

Following this line of interpretation, children's involvement in the decision making can be seen as contained in the Charter undertakings regarding bodies responsible for organising or supporting cultural activities. Art. 12.1.d of the Charter obliges such bodies to make allowances for the RML and its culture in their undertakings. Art. 12.1.f. obliges the state party: "to encourage direct participation by representatives of the users of a given regional or minority language in providing facilities and planning cultural activities" (ECRML). It is possible to envisage a situation where representatives of children as speakers of the RML are consulted and involved in the work of such bodies. However, from the point of view of the Charter it is possible only to monitor the provisions for the RML established in such a consultation process and report on the needs of children with regard to the use of their RML in cultural activities, not the mechanisms for children's participation as such.

Administration (Art. 10)

Article 10 of the Charter devoted to administration and public services allows the state party to choose from a variety of obligations that differ in the level of RML provision. The choice is related to the particular levels of administration (state, regional or local) as well as the form of the services provided in the RML (written and/or oral). It is also possible to limit the service in the RML only to contacts with the authorities or extend it so that the authorities themselves use the RML in their daily proceedings (e.g. production of documents, the use of the RML in assemblies etc.). However, only two undertakings from this article seem to be relevant to children from the point of view of the Charter.

One of the obligations that is of relevance to children is the right to use the family name in the RML (Art. 10.5, ECRML). This undertaking also coincides with Art. 8 of the UNCRC, which makes a clear connection between the right of the child to preserve their identity and the name. From the point of view of the Charter the possibility to use the name in the RML is an important emblem of the child's identity but may also be of special significance from a very formal point of view if there happen to be major linguistic differences between the RML and the official language/s of the state. In this way this article of the Charter prevents the differences in script or grammatical peculiarities (e.g. marking gender with a different ending of the surname²⁶) from impeding the production of the necessary documents (birth certificates, IDs etc.) and helps to avoid problems in identifying children as belonging to the same family (gender differences reflected in the name).

26. For instance in the case of Slavic languages.

The other undertaking that can be interpreted in line with children's rights deals with the possibility for the public services to be provided in the RML (Art. 10.3). This can be relevant in the case of the existence of the position of Ombudsman for Children's Rights. However, the possibility for the child to use the RML when contacting the Ombudsman will be determined by the level of commitment that the state party chose with regard to the use of the RML in public services.

On the other hand, it is useful at this point to come back to conclusions on the issue of children's involvement in decision making covered above with regard to cultural activities and the media. Once appropriate mechanisms are in place, children's representatives can also be consulted in administrative proceedings, as is envisaged in Art. 12 of the UNCRC as: "Typical administrative proceedings include, for example, decisions about children's education, health, environment, living conditions, or protection"²⁷. However, with regard to children's participation in administrative proceedings the Charter's monitoring can only focus on the actual use of the RML in the consultation process and provisions for the use of the RML in other domains that emerge from it.

Economic and Social Life (Art. 13)

This article of the Charter deals with regulations regarding the use of the RML in economic and social life. On the one hand, the aim is to prohibit regulations that would restrict the use of the RML in business, banking and public services (also those provided by private companies). On the other hand, the intention is to encourage measures that promote the use of the RML in such domains²⁸.

The undertaking that can be interpreted as probably most relevant to children puts an obligation on the state: "to ensure that social care facilities such as hospitals, retirement homes and hostels offer the possibility of receiving and treating in their own language persons using a regional or minority language who are in need of care on grounds of ill-health, old age or for other reasons" (Art. 13.2.c; ECRML). The right for the child to be able to communicate in the RML would apply to hospitals (communicating with doctors and nurses), children's homes and facilities for children with special needs.

The right of the child to be informed and communicate with staff in the provision of health care services is the basic assumption behind the Council of Europe *Guidelines on child-friendly health care* adopted by the Committee of Ministers in 2011. Just as in the *Guidelines on child-friendly justice*, the issue of

27. *United Nations General Comment No. 12 by the Committee on the Rights of the Child to be heard. Right of the child to be heard*, para. 18.

28. Cf. Jean-Marie Woehrling, *op.cit.*, p.224.

language appears in the context of antidiscrimination in the section on fundamental children's rights (Part III. Principles of the child-friendly health care approach: A.9). The main focus of the document is on participation mechanisms that would enable children to get more involved in decision-making related to their health and medical treatment. Consequently, it can be assumed that the use of a language that the child feels most comfortable with or is most proficient in, forms the basis for facilitating children's participation in the health care context.

With regard to the Charter, as it has been stated already in this study, the actual possibility for the child to use their preferred RML will be determined by the choice of the undertakings made in the ratification instrument of a particular state party.

Transfrontier Exchanges (Art. 14)

The intention of the article on cross-border exchanges is to foster cooperation between states with the aim of facilitating the promotion of the RMLs covered by the Charter "[...] in such a way as to foster contacts between the users of the same language in the States concerned in the fields of culture, education, information, vocational training and permanent education" (Art. 14.a; ECRML). Consequently, this undertaking is relevant to children as long as the cross-border cooperation seeks to facilitate the possibility for the child to use their RML in education and cultural activities, i.e. in the domains already covered in the previous sections of the present study.

MONITORING CHILDREN'S ISSUES IN THE ECRML

Introduction

The aim of this part of the study is to find references to children as RML speakers in the Evaluation Reports and in this way present the approach that the COMEX has so far applied to children's issues when evaluating the progress in the protection and promotion of RMLs in particular states. For this purpose a sample of Evaluation Reports has been analysed with regard to the occurrence of RML provisions for children across all the articles of the Charter.

The structure of the presentation below is again based on the gradation of relevance of particular articles of the Charter with regard to children's right to use their RML. It has been envisaged that Art. 8 on Education, as explicitly targeting children, should yield the highest number of references and therefore it should be possible to demonstrate a structured approach of the COMEX in the evaluation process. For articles of the Charter indirectly relevant to children's issues, the aim of the analysis was simply to establish under which of them RML activities targeted at children are actually mentioned in the Evaluation Reports.

Directly relevant to children

Education (Art. 8)

As this article is directly relevant to children, the treatment of children's issues displays the coherent and structured approach of the COMEX in its evaluation. It is therefore possible to discern the following requirements for fulfilment which are highlighted by the COMEX:

- ▶ **structured policy**, i.e. :
 - **compliance** with the undertakings chosen (the amount of teaching in/of the RML actually available);
 - **sustainability** of the provision of RML education, i.e.:
 - i. availability of teachers on all the levels chosen;
 - ii. basic and further training of teachers (this often related to trans-frontier cooperation, Art. 14 of the Charter);

iii. availability of teaching materials (cf. Art. 14);

iv. need for reliable statistics on RML education²⁹.

The urgency for the structured policy is further highlighted in the evaluation reports with the use of boxes, which are intended for the most pertinent issues arising in the particular monitoring cycle³⁰

▶ integration of the teaching of the language, history and culture

In this way teaching in the RML is not only about developing children's proficiency in the language but also their cultural competence³¹.

For instance, in the case of the South Sami in Sweden, vocational courses in reindeer herding and handcrafting through the medium of the Sami language perform an important function from the point of view of the transmission of the language as well as traditional skills and therefore the Sami heritage³². This is also in line with the UNCRC approach to the objectives of education in Art. 29 (cf. sec. 2.1.1 of this study).

▶ innovative measures to the teaching in/of the RML

This is a guideline suggested whenever problems arise in providing RML teaching within the standard/existent system of education, i.e.:

i. where the numbers of pupils are low (Inari and Skolt Saami³³, South Sami³⁴);

29. *ECRML (2011) 4*, 4th Evaluation Report of the Committee of Experts of the European Charter for Regional of Minority Languages, Application of the Charter in Sweden, para. 114.

30. *Idem*, p. 18.

31. *Idem*, para. 115 (on RML education in Sweden in general), paras. 166, 182 (on South Sami).

32. *Idem*, para. 182.

33. *ECRML (2012) 1*, 4th Evaluation Report of the Committee of Experts of the European Charter for Regional of Minority Languages, Application of the Charter in Finland, paras. 10, 26.

34. *ECRML (2011) 4*, *op. cit.*, paras. 182-183.

- ii. there exist a number of varieties of the RML used (Roma³⁵) and/or disputes over standardisation arise (Roma³⁶);
- iii. lack of teachers due to problems with the basic training and/or employment procedures (Roma³⁷);
- iv. lack of literacy skills in the RML among adults who therefore cannot become professional teachers of the language (South Sami in Sweden³⁸).

The urgency of such measures can be marked by use of the box. In such cases applying innovative measures is perceived as the only way to provide RML education³⁹.

► **matching the measures of RML education to the actual sociolinguistic situation**

In other words, the fulfilment of the undertaking is evaluated separately for each RML, taking the particularities of the situation of the language in a given territory into consideration⁴⁰. Consequently, as the situation of RML education changes, so can the conclusion of the COMEX (South Sami in Sweden⁴¹).

Indirectly relevant to children

Judicial Authorities (Art. 9)

References to children's issues have been made with regard to Art. 9.3 concerning the **availability in the RML of the main national statutory texts**. A mention has been made in the fourth Evaluation Report of the COMEX of the ECRML on the application of the Charter in Sweden, on the translation of the UNCRC and its children friendly version into Sami, Finnish and Meänkieli⁴².

35. *Idem*, para. 126.

36. *ECRML (2012) 4*, 2nd Evaluation Report of the Committee of Experts, of the European Charter for Regional of Minority Languages, Application of the Charter in Montenegro, para. 185.

37. *ECRML (2011) 4*, *op. cit.*, para. 127.

38. *Idem*, para. 194.

39. *Idem*, p. 20.

40. "In its first evaluation report, the Committee of Experts concluded that the undertaking was **fulfilled** because the **Sami school system appeared to meet the needs of the language**" (*ECRML (2011) 4*, *op. cit.*, para. 168; underline: A.O.P.).

41. "In the light of this alarming decline [in Sami-medium education], the **Committee of Experts must revise its previous conclusion** and concludes that the undertaking is only partly fulfilled" (*ECRML (2011) 4*, *op. cit.*, para. 175; underline: A.O.P.).

42. *ECRML (2011) 4*, *op. cit.*, paras.: 230, 329, 428 (in Sami, Finnish, Meänkieli).

Media (Art. 11)

In the case of the media undertakings, the evaluation reports make references to children's TV⁴³ and radio programmes, audio and audiovisual productions (CDs⁴⁴, interactive games⁴⁵, videos, etc.) as well as magazines targeted at the youth⁴⁶. There is also a reference made to the participation of children and youth in the production of programmes⁴⁷.

The importance of the provision of RML media for children is also reflected in calling for action when there is lack of children's TV or radio programmes, which are seen as an inherent element of the successful maintenance and promotion of the RML itself⁴⁸.

Children and youth can also perform a very important function as intermediaries in the use of the new information technology for the benefit of the RML media. In this respect, the COMEX has made an explicit reference to children and youth as an asset to the development of the whole RML community: "These new communication channels are in particular used by young people. They are also much used by young speakers of regional or minority languages because of their flexibility, informality and economical use, but also because it is in many cases difficult to use regional or minority languages in the traditional media for a number of reasons"⁴⁹.

The article on media has yielded a lot of examples of references to children's issues, including a situation where the fulfilment of a particular undertaking in the evaluation report has been determined by the provision of children's programmes: "In its previous evaluation round, the Committee of Experts considered this undertaking partly fulfilled given the lack of children's programmes in the Sámi language which hampers its maintenance and promotion"⁵⁰.

43. *ECRML (2010) 4*, 3rd Evaluation Report of the Committee of Experts of the European Charter for Regional of Minority Languages, Application of the Charter in the United Kingdom, para. 190 (in Welsh), para. 273 (in Scottish Gaelic).

44. *ECRML (2011) 4*, *op. cit.*, paras. 251, 355 (in Sami, Finnish).

45. *ECRML (2010) 4*, *op. cit.*, para. 284 (in Scottish Gaelic).

46. *ECRML (2007) 1*, 1st Evaluation Report of the Committee of Experts of the European Charter for Regional of Minority Languages, Application of the Charter in Slovakia, para. 167.

47. *ECRML (2008) 4*, 3rd Evaluation Report of the Committee of Experts of the European Charter for Regional of Minority Languages, Application of the Charter in Germany, para. 164 (in Upper-Sorbian).

48. *ECRML (2004) 7*, 2nd Evaluation Report of the Committee of Experts of the European Charter for Regional of Minority Languages, Application of the Charter in Finland, para. 141 (in Sami); *ECRML (2010) 3*, 4th Evaluation Report of the Committee of Experts of the European Charter for Regional of Minority Languages, Application of the Charter in Norway, para. 69 (in Kven).

49. *ECRML (2007) 3*, 3rd Evaluation Report of the Committee of Experts of the European Charter for Regional of Minority Languages, Application of the Charter in Norway, para. 60.

50. *ECRML (2007) 7*, 3rd Evaluation Report of the Committee of Experts of the European Charter for Regional of Minority Languages, Application of the Charter in Finland, para. 242.

Cultural Activities (Art. 12)

When assessing the fulfilment of the undertakings related to culture, the evaluation reports mention events, activities, facilities and institutions devoted to the promotion of the RML culture among children. They very often involve drama classes (in Scottish Gaelic, UK⁵¹; in Yiddish, Poland⁵²), reading groups for children (in Sami, Norway⁵³) or events organised by cultural institutions targeting children and youth (e.g. for Swedish speaking children in Finland⁵⁴, Irish Gaelic in UK⁵⁵).

Administration (Art. 10)

References have been made to deficiencies with regard to the possibility to validly submit documents in the RML (e.g. problems with documents in Frisian, in Germany⁵⁶). Another issue mentioned under this article with regard to children are problems with name registration (e.g. names of children in the traditional Scottish Gaelic form⁵⁷).

Economic Life (Art. 13)

With regard to the RML use in social care facilities, references have been made to: children's homes "prepared to receive and treat persons in minority languages"⁵⁸, child welfare services (Sami in Norway⁵⁹), institutions offering holidays for children (Danish in Germany⁶⁰). Deficiencies in the possibility to communicate in the RML with health care staff have also been pointed out (e.g. children's specialists lacking the necessary language skills in Sami, Finland⁶¹).

Transfrontier Exchanges (Art. 14)

Cross border cooperation with regard to culture and education for children mentioned in the reports occurs both in Part III, with regard to Art. 14 (Transnational exchanges) and in Part II, under Art. 7.1.i. In the reports under scrutiny references have been made with regard to: school exchanges (e.g. to the to the Gaeltacht areas to promote Irish Gaelic⁶²), cultural youth projects (e.g. between Spain and Portugal to promote the use of Galician⁶³), support for youth organisations that foster contacts between speakers of the RML across borders (e.g. the Frisian youth organisation in the Netherlands⁶⁴), cooperation between ministries of education in the field of education and youth (e.g. between Slovakia and Hungary, the Czech Republic⁶⁵).

Need for Resolute Action (Art. 7.1.c)

The sample of evaluation reports covered in this analysis also yielded results under article on the need for resolute action to promote RMLs, even though it was not originally envisaged (cf. sec. 2). A reference has been made to plans on projects to promote the RML targeted at youth (e.g. with regard to Yiddish in Finland⁶⁶). There is also an example where the evaluation report points to structural problems in funding that youth organisations encounter ("the Finnish-speakers competing for funding with mainstream youth organisations"⁶⁷). On the one hand, it is a reflection of the information obtained in the monitoring cycle. On the other hand, however, it is an expression of the COMEX concern with youth issues as an important part of a comprehensive policy to promote the RML in a particular state.

Children's issues in the monitoring process

The gradation of relevance of particular articles of the Charter proves to be reflected in the treatment of children's issues displayed in the evaluation reports. Art. 8 on education is the only one with children as its main target group. Therefore, it is also the one which is characterised by a consistent approach to children's issues in the evaluation of the undertakings. Other articles, which apply to children indirectly,

51. ECRML (2010) 4, *op. cit.*, para. 296.

52. ECRML (2011) 5, 1st Evaluation Report of the Committee of Experts of the European Charter for Regional of Minority Languages, Application of the Charter in Poland, para. 620.

53. ECRML (2001) 6, 1st Evaluation Report of the Committee of Experts of the European Charter for Regional of Minority Languages, Application of the Charter in Norway, para. 90.

54. ECRML (2007) 7, *op. cit.*, para. 149.

55. ECRML (2007) 2, 2nd Evaluation Report of the Committee of Experts of the European Charter for Regional of Minority Languages, Application of the Charter in the United Kingdom, para. 505.

56. ECRML (2008) 4, *op. cit.*, para. 292.

57. ECRML (2004) 1, 1st Evaluation Report of the Committee of Experts of the European Charter for Regional of Minority Languages, Application of the Charter in the United Kingdom, para. 38.

58. ECRML (2009) 8, 2nd Evaluation Report of the Committee of Experts of the European Charter for Regional or Minority Languages, Application of the Charter in Slovakia, para. 171.

59. ECRML (2003) 2, 2nd Evaluation Report of the Committee of Experts of the European Charter for Regional of Minority Languages, Application of the Charter in Norway, para. 150.

60. ECRML (2006) 1, 2nd Evaluation Report of the Committee of Experts of the European Charter for Regional of Minority Languages, Application of the Charter in Germany, para. 86.

61. ECRML (2007) 7, *op. cit.*, para. 279.

62. ECRML (2007) 2, *op. cit.*, para. 523.

63. ECRML (2008) 5, 2nd Evaluation Report of the Committee of Experts of the European Charter for Regional of Minority Languages, Application of the Charter in Spain, para. 1199.

64. ECRML (2008) 3, 3rd Evaluation Report of the Committee of Experts of the European Charter for Regional of Minority Languages, Application of the Charter in the Netherlands, para. 149.

65. ECRML (2007) 1, *op. cit.*, para. 73.

66. ECRML (2007) 7, *op. cit.*, para. 48.

67. ECRML (2009) 3, 3rd Evaluation Report of the Committee of Experts of the European Charter for Regional or Minority Languages, Application of the Charter in Sweden, para. 28.

necessarily suffer from a patchy and irregular treatment of children's needs with regard to RML use. The media, cultural activities and the use of the RML in administration, public services and economic life as well as transfrontier exchanges aimed at children appear in the reports as instances that do not reflect any coherent pattern. The most important reason is the fact that these articles do not make separate allowances for children. Yet another reason lies in the formulation of some of the undertakings, where the decision-making is put into the hands of adults, as is for instance the case in Art. 8.1.a.iii, where the provision of RML teaching is clearly determined by the wish of parents, i.e. "to those pupils whose families so request" (e.g. Art. 8.1.a.iii; *ECRML*)⁶⁸.

This, coupled with a lack of established practice in the Charter monitoring process for obtaining information from the representatives of children as speakers of RML, contribute to a haphazard occurrence of references to RML provisions aimed at children or even a lack of such examples in some evaluation reports. In other words, the extent to which children's issues are covered in an evaluation report is determined by the established monitoring practice, which is based

68. Undertakings containing the same or similar formulation refer to all stages of education, i.e. Art. 8.1.b.iv, Art. 8.1.c.iv, Art. 8.1.d.iv (Council of Europe, *ECRML*, *op.cit.*).

on the involvement of three major actors: the Council of Europe, the State authorities and the NGOs or other representatives of the speakers⁶⁹. Therefore, the occurrence of RML provisions targeted at children in the evaluation report is normally the reflection of the information obtained from the governmental reports, materials sent by NGOs or during the on-the-spot visits.

As most articles of the Charter do not make separate allowances for children (except for Art. 8 on education), the decision of the COMEX on the fulfilment of the undertaking, i.e. its final evaluation, has to involve a variety of factors. As it has been mentioned before, each RML case is analysed by the COMEX in its own right with such features taken into account as: the sociolinguistic condition of the language, sustainability of the provisions for RML use (also determined by the undertakings chosen by the state party) and most importantly the wishes of the speakers. This obviously opens the door for the involvement of the representatives of children as speakers of the RML. They have been consulted before during the on-the-spot visits so the only element missing is establishing a more structured practice of involving such bodies in the Charter monitoring process.

69. Council of Europe, *European Charter for Regional or Minority Languages. Giving minority languages a say.*

CONCLUSION

The aim of this study was to show to what extent the right of the child to use their language is covered by the Charter. When it comes to the content of the convention, there is a gradation of relevance with regard to children's issues, i.e. Art. 8 (Education) of the Charter is directly relevant, as it has the child as the explicit target of the majority of the undertakings⁷⁰. All the remaining articles can be seen as indirectly relevant, as they target all the speakers of the RML, among them children.

Consequently, children's issues are also present in the evaluation reports on the implementation of the undertakings contained in the Charter. Due to the gradation of relevance among the articles of the ECRML, references to provisions for children as users of the RML are made in a systematic and structured manner with regard to Art. 8., whereas for all the remaining articles, the coverage is necessarily irregular. On the one hand, this is caused by the very nature of the Charter, whose main aim is to promote the language, and therefore its implementation has to be assessed on the basis of provisions for all the speakers of the RML. On the other hand, references to children in the evaluation reports are determined by the established monitoring practice of the Charter, i.e. they are a reflection of the information obtained from the governmental reports, materials sent by NGOs or during the on-the-spot visits.

As the present study has shown, with regard to children's right to use their language, the Charter principles do coincide with those contained in the UNCRC, although there is obviously a necessary difference of priority between the two conventions. The Charter focuses on the language and therefore does not "establish any individual or collective rights for the speakers of regional or minority languages"⁷¹. In contrast, the UNCRC puts emphasis on recognizing the child as a subject of rights⁷² and therefore the establishment of mechanisms which enable the child to use his/her right to be heard (Art. 12, UNCRC). As a consequence of the Charter's focus on the language, its menu character allows the state party to choose a particular set of undertakings, so that ideally the level of commitment made by the ratifying party is best suited to the particular situation of the RML in question.

From the point of view of children's rights, however, this means that the extent to which the child has the possibility to use the RML in all the domains covered by the ECRML eventually depends on the selection of the undertakings chosen by the state party.

Despite the aforementioned difference of focus, the issue of the participation of children highlighted in Art. 12 of the UNCRC, is also contained in the Charter. Facilitating children's contributions, especially in the field of media and cultural activity, is of utmost importance, not only from the point of view of 'the right of the child to be heard' but also for the benefit of the whole RML community, as it paves the way for the continued presence of the RML in all the domains of public life in the long run.

Participation in the sense of the Charter is also important for the monitoring process itself. The Charter process aims at providing the ground for continuous dialogue between the parties involved (central authorities, NGOs and the Council of Europe) and the underlying idea is to put the speakers of the RMLs in "a central position in the implementation process" (ECRML). Consequently the representatives of children as speakers of the RML can be involved in the monitoring, i.e. as sources of information for the state party periodical reports and during the on-the-spot visits. They have been consulted before during the on-the-spot visits so the only element missing is establishing a more structured practice of involving such bodies in the Charter monitoring process.

However, it has to be remembered that 'the right to be heard' is not an obligation within the Charter, which deals with the use of the language. Therefore what can be monitored is whether, in the case where children's participation mechanisms exist (Ombudsman, children's representation institutions), their activity also involves the use of the RML, what children's needs are as related to the RML use in education, the media, cultural activity etc., in the same way as representatives of RML speakers are always consulted on their wishes regarding the promotion of the language.

As it has been stated before in this study, providing for the right of the child to use their language, which is contained both in the Charter and the UNCRC, is not only to the benefit of children but also the whole RML community. In the long run, contribution of children in the activities related to the RML use clearly establishes the basis for the development of the use of that language in the public sphere and at the same time fosters active citizenship, which is so important also for the society at large.

70. The other two important targets under Art.8 are university students and teachers.

71. Council of Europe, *European Charter for Regional or Minority Languages. Explanatory Report*.

72. *United Nations General Comment No. 12 by the Committee on the Rights of the Child to be heard. Right of the child to be heard*, para. 18.

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