

III.

INTERNATIONAL LAW IN THE CZECH REPUBLIC

MONITORING INTERNATIONAL OBLIGATIONS: THE CZECH REPUBLIC UNDER THE SURVEILLANCE OF THE COUNCIL OF EUROPE LANGUAGE CHARTER

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Abstract: When conducted in a proper manner, the monitoring of minority issues can serve as a first step in the chain of conflict-prevention measures. In addition to the special position of the European Court of Human Rights, there are specialized mechanisms based on the Framework Convention for the Protection of National Minorities or the European Charter for Regional or Minority Languages. The implementation of the provisions of the Charter is monitored by the Committee of Ministers of the Council of Europe through a Committee of Experts for the Charter. The Czech Republic signed the Charter on 9 November 2000 and ratified it on 15 November 2006. Practical experience has shown that the monitoring mechanism of the Charter neither supports any separatism nor is aimed at “punishing” any States, but merely supports internal processes aimed exclusively at the promotion of regional and minority languages.

Resumé:

Provádí-li se monitoring menšinových problémů řádným způsobem, může sloužit jako první krok série opatření předcházejících vnitrostátním i mezinárodním konfliktům. Vedle zvláštního postavení Evropského soudu pro lidská práva existují i specializované mechanismy pro tuto činnost založené Rámcovou úmluvou o ochraně národnostních menšin nebo Evropskou chartou regionálních a menšinových jazyků. Provádění ustanovení této Charty je kontrolováno Výborem ministrů Rady Evropy za pomoci jejího Výboru expertů. Česká republika je aktivní součástí tohoto procesu: Charta jí byla podepsána 9. listopadu 2000 a ratifikována 15. listopadu 2006. Praktické zkušenosti ukázaly, že kontrolní mechanismus Charty podporuje vnitřní procesy zaměřené na podporu regionálních a menšinových jazyků; neposkytuje ani prostor pro separatismus, ani není zaměřen na “potrestání” jakýchkoli států.

Keywords: regional or minority languages; language charter, monitoring.

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1. Introduction

Problems involving minorities have unfortunately not ceased to be a source of serious concern in current European politics, although it would be both desirable and beneficial if such problems receded: In addition to the current situations in Kosovo, Ingushetia or Dagestan, there are a number of other situations such as the disputes between Hungary and Slovakia concerning the consequences stemming from the 1920 Treaty of Trianon, disputes which were accompanied by corresponding legislative steps, or even the repeated occurrence of damage to Polish topographic signs in Moravia-Silesia,¹ that also belong in the category of situations with a dangerous potential towards future escalation, albeit with a different degree of explosiveness.

One would expect that given this state of affairs, every forum likely to contribute to a de-escalation of inter-national tensions would be most welcome – especially international monitoring structures established on the basis of the relevant international treaties, structures which can assist in initiating a fruitful dialogue not only between the State concerned and the international bodies involved in such monitoring but also, much more importantly, can also serve to facilitate and support dialogue between various groups within such State; such structures could assume the role of an informal arbitrator and offer a variety of best practices and solutions which have proved to be effective in other countries. Conducted properly, monitoring the implementation of the obligations assumed by States Parties to such treaties could serve as the first step in the chain of conflict-prevention measures.

The reality, however, is different: Some States seem to have developed a certain amount of “fatigue” with or even an “allergy” with respect to such monitoring mechanisms, while other States complain about the perceived intent of monitoring bodies to “punish” or even “grill” member states as being the only, and the paramount, purpose and desire of such mechanisms, and the very modest expenses connected with the existence and functioning of such international mechanisms frequently end up being classified as a “luxury”. Others prefer to avoid the perceived “activism” of these structures by not becoming States Parties to the corresponding treaties, despite the fact that some of such countries are in fact obligated to do so.²

There are several mechanisms for monitoring the implementation of international obligations aimed at the protection of national identities: In addition to the special role and status of the European Court of Human Rights, there are also specialized mechanisms based on the Framework Convention for the Protection of National Minorities or the European Charter for Regional or Minority Languages. Because of the recent ratification of the latter instrument by the Czech Republic, this contribution focuses on the role and instruments of the European Charter for Regional or Minority Languages. Its main characteristics are its treaty-based, short-

¹ As described in, for example, iDnes, 14. 1. 2010, www.CT24.cz, 1. 2. 2010.

² Such as, e.g. the Russian Federation with regard to the European Charter for Regional or Minority Languages, Parliamentary Assembly, Opinion No. 193 (1996) on Russia's request for membership of the Council of Europe.

period mechanism, and rules that are exact, quantifiable and easy to monitor. What is seen as a great advantage by some, however, is concurrently viewed as an obstacle by others.

2. Main Features of the Charter

The European Charter for Regional or Minority Languages is a regional international treaty assembling twenty four States Parties, with another nine States having signed but not yet ratified it.³ The history behind the drafting of the Charter goes back to the 1980s: Recommendation No. 928 of the Council of Europe Parliamentary Assembly, adopted on 7 October 1981, called for specific measures to promote the local use of minority languages.⁴ As a result of the preparatory activities that were undertaken, the Standing Conference of Local and Regional Authorities in Europe (CLRAE) set up a group of experts to produce a preliminary draft. The draft prepared by the group was approved by the CLRAE in October 1987 and by the Parliamentary Assembly in October 1988. In response to the CLRAE resolution, the Committee of Ministers decided to set up the Ad Hoc Committee of Experts on Regional or Minority Languages in Europe (CAHLR), which completed its preparatory work on the draft in 1992. The draft text was adopted by the Committee of Ministers in 1992, opened for ratification the same year and it entered into force on 1 March 1998 after being ratified by five States.⁵

The main aim of the Charter is a cultural one. Intentionally, the text attempts to avoid any problems that could be connected with the concept of national minorities. The explanation for this fact lies in the period during which the Charter was prepared: Designed in the late 1980s and tailored to the situation of Western Europe, it could not have concentrated on “national minorities” the existence of which was in fact taboo in several Member States of the Council of Europe⁶ prior to 1989. The Charter was supposed to make it possible for positive measures to be taken even in those States which do not recognise any minority concepts within their national politics, such as France:⁷ The Charter aimed to address not minorities, but languages that are traditionally spoken on the territories of States Parties, or the lesser used official languages, without affecting the particular status of the people who speak them. Consequently, the expression “national minorities” cannot be found in the text of the Charter; it therefore uses the term “regional or minority languages”.

³ See http://www.coe.int/t/dg4/education/minlang/Default_en.asp.

⁴ For more on the history behind the drafting of the Charter, see J.-M. Woehrling, *The European Charter for Regional or Minority Languages: A Critical commentary*, 2005, 23 ff.

⁵ European Treaty Series No. 148.

⁶ P. Blair, Key Principles of the European Charter for Regional or Minority Languages, in: *K problematice ratifikace Evropské charty regionálních či menšinových jazyků* [On the Issues connected with Ratification of the European Charter for Regional or Minority Languages], Praha 2005, p. 8.

⁷ France has signed the Charter but has not yet ratified it.

This focus on languages constitutes the greatest difference in comparison with the Framework Convention for the Protection of National Minorities.⁸ Whereas the Framework Convention confirms or even creates new rights of minority groups (Article 3), the Charter lays down obligations on the States to facilitate or encourage the use of language rights.⁹ In contrast with the Framework Convention, none of the provisions of the Charter can be considered self-executing: They are formulated solely as obligations of the States Parties to the Charter.

The Charter protects “regional or minority languages”: These are languages that are traditionally used by nationals of that State who form a group numerically smaller than the rest of the State’s population and which are different from the official language of that State (Article 1, subparagraph a). The Charter differentiates between “territorial languages” as languages which are used within a given territory of a State, and “non-territorial languages” – those which cannot be identified with a particular area thereof (Article 1, subparagraph c). Article 1, subparagraph a) excludes the languages of migrants and dialects of the official languages from its scope of application; however, an official language which is “less widely used” on the whole or part of the territory of the State can be protected under its provisions (Article 3, para. 1). By protecting the traditional use of such languages, by combining this with the nationality (in the sense of citizenship) of the speakers and an express exclusion of migrant languages, the Charter does not exceed the limits of the traditional *Capotortian* understanding of national minorities.¹⁰

Apart from the special limits connected with the implementation of particular provisions of the Charter, the general limitations in the treaty prohibit States Parties from limiting or derogating from any rights guaranteed by the European Convention on Human Rights (Article 4, para. 1)¹¹ and do not affect any more favorable provisions which may exist in the national law of a State Party or are provided for by the relevant bilateral or multilateral international agreements (Article 4, para. 2).¹² Furthermore, the States Parties are prohibited from interpreting the Charter as implying any right to engage in any activity or perform any action in contravention of the purposes of the Charter of the United Nations or other obligations under international law, including the principle of sovereignty and territorial integrity of States (Article 5); it is important to underline this obligation, especially in view of the concerns some

⁸ European Treaty Series No. 157. For the Czech Republic, it entered into force on 1 March 1998, No. 96/1998 Coll.

⁹ J.-M. Woehrling, *The European Charter for Regional or Minority Languages: A Critical Commentary*, Council of Europe Publishing, Strasbourg, 2005, p. 33.

¹⁰ F. Capotorti, Minorities. in: R. Bernhardt, (ed.), *Encyclopedia of Public International Law*. Vol. III. Amsterdam u.a., Elsevier, 1997, pp. 410-424.

¹¹ Especially Article 14 ECHR and Article 1 of the 1st Protocol to ECHR.

¹² E.g. in bilateral Treaties on Good Neighbourly Relations or in the provisions of the Framework Convention for the Protection of National Minorities.

governments may have that supporting minority identity and languages¹³ could potentially end up strengthening tendencies towards separatism.

As all other international treaties concluded within the framework of the Council of Europe, neither the Charter nor the Framework Convention provide for specific instruments for punishing violations of their rules: The pressure believed to be necessary to encourage States Parties to abide by their treaty obligations is accomplished by means of a dialogue between the monitoring mechanism and the authorities, by political measures at the Council of Ministers, and by the publishing of reports about the implementation of the provisions of the respective treaty. Theoretically, in the event of a serious violation of either instrument within the meaning of Article 3 of the Statute of the Council of Europe, the mechanism of Article 8 of the Statute could be applied. Additionally, the general rules of State responsibility for violation of international law are applicable in cases where such treaties are infringed.

3. Structure of the Charter

The main body of the obligations under the Charter is divided into two categories of provisions:

A general Part II sets down objectives and common principles for all minority and regional languages of a State Party to the Charter; these rules are applicable to all such languages spoken either within the territories in which the languages are used (territorial languages) or anywhere in the country in the case of non-territorial languages. The States Parties are obliged to base their policies, legislation and practice on the recognition of such languages as an expression of cultural wealth, to provide for resolute action to promote them, to facilitate and encourage their use in speech and writing, in private and public life, to provide appropriate forms and means for their teaching and study at all appropriate stages, and to promote their study and research at universities or equivalent institutions. Despite the very general wording of these obligations, they possess a real legal core – an obligation to take positive action in the sense of these provisions. Thus, obligations under the Charter would be deemed unfulfilled if a State cannot show that it has taken any concrete, monitorable action. If only formal, e.g. legislative, steps have been introduced, without any implementation measures, the pertinent obligation would be deemed to have been “formally fulfilled” only and the authorities would most probably be invited to supply additional information in the next monitoring cycle. An important limitation on these obligations in relation to the territorial languages consists of the specific situation of the languages concerned (Article 7, para. 1), which has to be taken into account by the States Parties. Interestingly, special limits concern the support for non-territorial languages: The measures for the support of these languages have to be determined in a flexible way, bearing in mind the needs and wishes, and respecting the traditions and characteristics, of the groups which use the languages concerned.

¹³ See, e.g. S. Trifunovska, *The Case of the Baltic States*, in: *Minority Language Protection in Europe: Into a New Decade*, Council of Europe Publishing, Strasbourg, 2010, p. 76.

Part III contains obligations that the States have undertaken to fulfill with regard to languages in specific territories – the geographical areas in which the said language is the mode of expression of a number of people justifying the adoption of various protective and promotional measures provided for in the Charter (Article 1b). The escape clause expressed as the “number of people justifying the adoption of the various protective and promotional measures” was chosen deliberately by the authors of the Charter to avoid establishing a fixed percentage of speakers necessary for the adoption of protective measures; the States Parties have retained a great amount of discretion here.¹⁴ According to Article 3 of the Charter, States Parties shall specify in the instrument of ratification each regional or minority language or less widely used official language to which they are ready to apply, on its territory [on the territory of such language] or part thereof, a minimum of thirty-five paragraphs or subparagraphs chosen from this specific part. The majority of the stipulated provisions offer several protection options of varying degrees of stringency; however, some of these paragraphs or subparagraphs are not formulated as alternatives but may be accepted cumulatively (typically, Article 9, para. 1, subparagraphs iii and iv).

This “à la carte” approach follows the model of the European Social Charter of 1961,¹⁵ which in its Article 20 obliges its States Parties to declare themselves bound by a selection of provisions from those suggested by the Charter. One of the reasons for this specific drafting technique was the necessity to adapt the text of the Charter to the enormous diversity in the language situations in various European countries.¹⁶ This selection can be extended “at any subsequent time”,¹⁷ in contrast thereto, a reduction of already-adopted obligations is not possible (Article 4, para. 2). Theoretically, such a reduction could be achieved only by a complete withdrawal from the treaty pursuant to its Article 22 and a subsequent new ratification with modified obligations.

The scope of obligations that States can select under Part III covers all significant areas of public use of a language: It starts from education in regional and minority languages (Article 8) in all stages of education in the territories specified in the document of ratification; the State can choose between guaranteeing, for example, complete pre-school education or only a “substantial part” of this education in a regional or minority language within a specified territory, applying the appropriate

¹⁴ European Charter for Regional or Minority Languages: Explanatory Report, Council of Europe Publishing, 1999, p. 12.

¹⁵ European Treaty Series No. 35.

¹⁶ Blair said in 2005: “If you try to devise a solution which will apply to all so-called minority languages, either you will have the problem that it will be too demanding for the small languages. If you start from the position of the small languages and you do what you can do for them, it will be quite inadequate for the situation of the languages which have a lot of speakers and have a relatively strong basic situation.” P. Blair, Key Principles of the European Charter for Regional or Minority Languages, in: *K problematice ratifikace Evropské charty regionálních či menšinových jazyků* [On the Issues connected with Ratification of the European Charter for Regional or Minority Languages], Praha 2005, p. 9.

¹⁷ One example of this was the recent inclusion of Cypriot Maronite Arabic as one of the languages covered by the Charter in Cyprus.

measures to those pupils whose families so request or – if the public authorities have no direct competence in the field of pre-school education – favouring and/or encouraging the application of these measures. The limits on these obligations consist of the situation of each of the languages, as well as of the proviso that such commitments should be “without prejudice to the teaching of the official language of the State” (Article 8, para. 1).

Article 9 provides for the use of minority and regional languages by judicial authorities. The territorial scope of these obligations is limited to those judicial districts in which the number of residents using the regional or minority language justifies the measures and which were identified by the States Parties in their document of ratification. In criminal proceedings, the States can choose between the obligation to provide the proceedings in the regional or minority language, or guaranteeing that the accused has the right to use their language in such proceedings and/or stipulating that documents in the minority languages shall not be considered inadmissible because they are formulated in a regional or minority language, without any extra financial burden for the persons concerned. Similar obligations deal with civil and administrative proceedings. Some problems connected with the interpretation and implementation of these provisions are caused by the fact that many States, especially the post-communist ones, link the right to use a minority language in proceedings to the fact that the person concerned does not understand or speak the language used in court (see also Article 6, para. 2, ECHR or Article 14, para. 3, IPPCR in relation to criminal proceedings); the Charter does not acknowledge this limitation and requires States Parties to implement this provision without regard to the extent of knowledge of the official or State language on the part of the persons concerned. The limits on the implementation of these obligations consist of – as in the case of education – the actual situation of each language, but cumulatively with the – rather vague – proviso that the judge does not consider them as hampering the proper administration of justice. In practice, these provisions are deemed to have been fulfilled only from a formal point of view in cases where only legal provisions for the use of the regional or minority language have been enacted but the courts do not invite or at least inform the parties of the possibility to participate in the proceedings in their regional or minority language.

Article 10 deals with the use of regional and minority languages in communication with administrative authorities and public services: The territorial scope of this provision extends to administrative districts (para. 1) and territories of local and regional authorities (para. 2) in which the number of residents “justifies the measures” for the promotion of regional and minority languages: The bulk of this article’s provisions again consist of alternatives of differing intensity concerning the use of regional or minority languages by the employees of those structures, guaranteeing the right to submit documents and receive a reply in these languages, and the use of the regional or minority language in debates in the assemblies of the relevant States. Additionally, two special provisions can be found in this article: Article 10, para. 2,

subparagraph g, guarantees the use or adoption of traditional and correct forms of place names in these languages. Furthermore, Article 10, para. 5, secures the use or adoption of family names in the regional or minority languages at the request of those concerned. The limits on all these rights consist of the situation of each language, combined with the proviso concerning the proportionality of the measures: The Parties should adopt these measures “as far as this is reasonably possible”.

Article 11 is devoted to the use of minority and regional languages in the media. Its territorial scope is identical to that of the previous provisions, limited by the “extent that the public authorities are competent or have power in this field”. These provisions range from securing TV or radio channels to encouraging programs in these languages, and further from supporting the creation or maintenance of at least one newspaper to encouraging the publication of articles in these languages. Special provisions guarantee freedom of reception of broadcasts from neighboring countries and the creation of independent bodies for guaranteeing these rights. The specific limits on implementation again consist of the situation of each language, coupled with the principle of the independence and autonomy of the media. In practice, ever more attention is given to electronic media which have not been foreseen in the Charter; consequently, undertakings that are deemed to have been “fulfilled” now also include undertakings which do not exactly fit into the scope of the provisions of the Charter but which fulfill its purpose, even if they do so by technical means other than those identified in the text of the treaty.

Cultural activities and facilities in the regional and minority languages are protected by Article 12 of the Charter; here, the territorial scope consists of the “territories where the languages are used”, and this may be extended to “territories other than those”, “if the number of users justifies it”, but is limited by the proviso that the public authorities be competent or play a role in this field. Article 13 protects the regional and minority languages in economic and social life, primarily within the territories in which the languages are used (para. 2): The provisions to be selected by States Parties range from including provisions in their legal order which allow the use of these languages in payment orders to guaranteeing that social care facilities such as hospitals, retirement homes and hotels offer the possibility of treatment in these languages or to making safety instructions or information about the rights of consumers available in regional or minority languages.

4. Monitoring the Implementation of the Charter

The implementation of the provisions of the Charter is monitored by the Committee of Ministers of the Council of Europe through a Committee of Experts of the Charter¹⁸ elected in accordance with Article 17: It should be composed of one member per State Party, appointed by the Committee of Ministers from a list of

¹⁸ See V. Crnić-Grotić, *The Committee of Experts of the European Charter for Regional or Minority Languages*, European Yearbook of Minority Issues, 4(2004/05), 541 ff.

individuals of the “highest integrity and recognized competence in matters dealt with in the Charter” who have been nominated by the State Party concerned.

At its first meeting on 29 June 1998, the Committee of Experts adopted an outline for the periodical reports referred to in Article 15 of the Charter.¹⁹ According to this outline, the Parties shall present periodically to the Secretary General of the Council of Europe a report on their policy pursued in accordance with Part II of the Charter and on measures taken in application of those provisions of Part III which they have accepted. The first report shall be presented within the year following the entry into force of the Charter with respect to the State Party concerned, the other reports at three-yearly intervals after the first report. In practice, the Committee frequently encounters the problem of delays in the presentation of the reports, as well as complaints about the short three year period; it has to be kept in mind, however, that there are no regular follow-up meetings with the authorities comparable to the mechanism under the Framework Convention, and that the reporting mechanism remains the only legally-based liaison instrument with the NGOs and the authorities of the State concerned.

An important and treaty-based role in the monitoring process has been given to NGOs in the Charter: According to its Article 16, para. 2, the bodies and associations “legally established in a Party” (meaning not outside the State Party and not illegal) may draw the attention of the committee of experts to matters relating to the undertakings and statements of the relevant Party as concerns both Part II and Part II of the Charter. This information constitutes, together with the State report and any data obtained during an on the spot visit of the Country concerned, one of the main sources for the drafting of the report of the Committee of Experts for the Committee of Ministers. This report, which includes the proposals of the Committee of Experts to the Committee of Ministers and the comments of the States concerned, may (but does not have to) be made public by the Committee of Ministers; the decision on publication is approved – and can be blocked – by a consensus of all Member States of the Council of Europe. As the last step of the monitoring procedure, the Committee of Ministers makes its own Recommendations to the States Parties, recommendations which usually are – but need not be – based on the proposals of the Committee of Experts. In practice, these Recommendations are also subject to approval by the consensus²⁰ of all member States of the Council of Europe.²¹ The whole cycle is repeated every three years, which helps maintain continuous dialogue contact with the NGOs and the authorities.²²

¹⁹ Amended on 10 November 1998.

²⁰ See Article 9, para. 4, of the Rules of Procedure for Meetings of Ministers’ Deputies (4th revised edition: 2005) adopted by the Committee of Ministers at its Sixteenth Session (4-5 July 1955).

²¹ Woehrling, J.-M., *supra* note 9, p. 255.

²² As concerns the results of the monitoring process, see Crnić-Grotić, V., *The Work of the Committee of Experts of the European Charter for Regional or Minority Languages (June 2006 and June 2007)*, European Yearbook of Minority Issues, 6(2006/07), p. 387 ff.

5. The Czech Republic as a State Party to the Charter

The Czech Republic signed the Charter on 9 November 2000 and ratified it on 15 November 2006.²³ The relatively long period between signing and ratification of the Charter has been explained by references to the ongoing legislative process of harmonizing domestic legislation²⁴ with the provisions of the Charter, especially in the areas of education law and administrative law. A dialogue also took place between the speakers of minority languages²⁵ and local, regional and central authorities. Specific proposals concerning bilingual signs were submitted by Polish-language speakers. The Charter entered into force with regard to the Czech Republic on 1 March 2007.²⁶

The main legal act which made ratification of the Charter possible was the 1991 Charter of Fundamental Rights and Freedoms²⁷ which forms a part of the constitutional order of the Czech Republic.²⁸ It comprises not only a general (Article 3) and special (Article 24) prohibition of discrimination but also includes a catalogue of positive measures directed at the protection of minority languages in education and communication with authorities, as well as the right of citizens belonging to national minorities to participate in the conduct of public affairs (Article 25). Moreover, the Charter of Fundamental Rights and Freedoms has introduced the right of persons “not understanding the language of juridical proceedings to an interpreter” (Article 37).

The Charter was – together with the Framework Convention for the Protection of National Minorities – an impetus for several legislative steps concerning language rights: In 2000, the Act on the Status of Municipalities and Regions and of the Capital City of Prague was enacted and introduced the system of minority boards.²⁹ A new Registry Act³⁰ was adopted in 2000, allowing the registration of first names and family names in the form used by those belonging to national minorities. In 2001, special legislation concerning the Rights of National Minorities was adopted.³¹ In 2004, a new Education Act³² stipulating rules for minority education entered into

²³ No. 15/2007 Coll. International Treaties CR.

²⁴ M. Jirasová, Stav ratifikačního procesu Charty v ČR a vyvstávající otázky [State of the Ratification Process of the Charter in the Czech Republic and Ensuing Issues], in : *K problematice ratifikace Evropské charty regionálních či menšinových jazyků* [On the Issues connected with Ratification of the European Charter for Regional or Minority Languages], Praha 2005, p. 46.

²⁵ H. Frištenská, A. Sulitka, *Průvodce právy příslušníků národnostních menšin v České Republice* [Guide to Rights of Members of National Minorities in the Czech Republic], 1995.

²⁶ O. Klípa, *Evropská charta regionálních či menšinových jazyků v České republice* [European Charter for Regional or Minority Languages in the Czech Republic], in *Mezinárodní politika 6* [International Politics No. 6] (2008), pp. 17-20.

²⁷ Constitutional Act No 23/1991 Coll.

²⁸ Article 3 of the Constitution of the Czech Republic, Act No. 1/1993 Coll.

²⁹ No. 128/2000 Coll. as amended.

³⁰ No. 301/2000 Coll. as amended.

³¹ No. 273/2001 Coll. as amended.

³² No. 561/2004 Coll. as amended.

force. The new Code of Administrative Procedure³³ provides for rules for the use of minority languages in communication with administrative authorities.

The Initial Periodical Report on the Implementation of the Charter³⁴ was presented by the Czech Republic to the Secretary General of the Council of Europe on 1 March 2008, proclaiming Slovak, Polish, German and Romani as minority languages protected under Part II of the Charter;³⁵ none of these languages have been reported as non-territorial; however, German and Romani have de facto met this definition. Neither did the Report define the geographical areas of each regional or minority language in terms of the Charter: Slovak was considered to be a regional language used in the whole country; in respect of Polish, the undertakings under Part III were reported to have been applied in Frýdek-Místek and Karviná.

On 2 June 2008, the Committee of Experts of the Charter submitted Comments and Questions to the Government of the Czech Republic regarding the Initial Periodical Report,³⁶ inviting the Government to give additional information on some aspects of the report. The questionnaire requested an explanation of the historical presence of the languages spoken in the Czech Republic, information on the existence of other traditionally spoken minority languages, information regarding the territories where these languages are spoken and on the existence of specific measures aimed at the promotion of minority and regional languages. Concerning Part II of the Charter, data were required on the promotion of all designated languages in all areas of public life, especially the education system. The questions were not confined to general information only but called for information on the exact numbers of pupils, on how the transportation of such pupils to the relevant schools is organized, on the status of minority languages in curricula, teaching materials, or teachers training. Special emphasis was accorded to the promotion of the German and Romani languages. As concerns Part III of the Charter, the questions sought precise data on numbers of pupils in minority schools and classes, on textbooks and the language training of administrative officials.

The Czech government responded to these questions in detail on 5 December 2008.³⁷ Concerning the Part II languages, information was provided on, *inter alia*, the background with regard to the less extensive use of German and Romani in social and economic life, which seems to be limited to the provision of information on elections in the respective minority languages. Extensive additional material was provided in

³³ No. 150/2002 Coll. as amended.

³⁴ MIN-LANG/PR (2008) 4, available at http://www.coe.int/t/dg4/education/minlang/Report/default_en.asp.

³⁵ According to the last census in the Czech Republic (2001), 50 738 respondents declared Polish, 41 328 German, 208 723 Slovak and 23 211 declared Romani as their mother tongue; moreover thousands of speakers declared being bilingual.

³⁶ MIN-LANG/PR (2008) 4, Addendum 1. http://www.coe.int/t/dg4/education/minlang/Report/default_en.asp.

³⁷ MIN-LANG/PR (2008) 4, Addendum 2. http://www.coe.int/t/dg4/education/minlang/Report/default_en.asp.

respect of the Part III languages, especially the Polish language school system and Polish language broadcasting. On the basis of these materials, the first on the spot visit could be prepared and was carried out in December 2008: Several meetings of the committee's working group were held in Ostrava and Prague with representatives of the speakers of the relevant languages and the authorities and further significant additional information was collected at such meetings.

The report of the Committee of Experts which was prepared from these sources was adopted by the Committee on 23 April 2009.³⁸ The document is divided into three chapters: The first chapter gives background information on the situation of minority and regional languages in the Czech Republic. The second part analyses, in separate sections for each language covered by the Charter, the situation of these languages with regard to the obligations under Part II and Part III. All chapters on the areas covered by the Charter (education, judicial and administrative authorities, public services, media, cultural activities, economic and social life and facilitation of transfrontier exchanges) state which undertakings have been assumed in the fields covered by the Charter and report in detail about the legal acts existing in these areas and on their implementation in practice.

The last chapter of the Report encompasses the findings of the Committee of Experts: It came to the conclusion that the Czech government has demonstrated a serious commitment to developing the status of minority languages; especially the situation of Polish was found to be very good. Certain shortcomings were seen in the lack of a structured language policy for German and Romani, in the scant presence of Romani at schools and in the media and in the patchy education of German as a mother tongue.³⁹

The main structural issue was found in the system of the committees of national minorities, a system which influences several areas of the activities of speakers of minority or regional languages, including the installation of bilingual topographic signs: In its Instrument of Ratification of 15 November 2006, the Czech Republic declared, *inter alia*, an undertaking to apply Article 10, para. 2, subparagraph g, of the Charter to the Polish language in the Moravian-Silesian Region, in the territory of the districts of Frýdek-Místek and Karviná. According to this provision, in respect of the local and regional authorities on whose territory the number of residents who are users of regional or minority languages is such as to justify the measures, the States Parties undertake to allow and/or encourage the use or adoption, if necessary, in conjunction with the name of the official language(s), of traditional and correct forms of place-names in regional or minority languages.

In the Czech Republic, the use of traditional place names, signs and inscriptions in municipalities is regulated by Article 29, para. 2, of the Municipalities Act:⁴⁰ In

³⁸ ECRML (2009) 7, 9 December 2009.

³⁹ The report is available in Czech, English and French at <http://www.coe.int/t/dg4/education/minlang/Report/EvaluationReports>.

⁴⁰ No. 128/2000 Coll., as amended.

municipalities where in the latest census at least 10% of the inhabitants reported that they belonged to a national minority, the minority language is used side by side with the Czech language as concerns the name of the municipality, its parts, streets and other public areas, and on the name boards of government and local government authorities, if the minority's representatives submit such a request to the local national minorities committee (Article 17, para. 3) and the committee resolves to recommend it. This committee can be established in municipalities in which at least 10% of citizens living in the geographical area of the municipality consider themselves to be speakers of regional or minority languages (Article 117); similar rules but with a threshold of 5% can be found as concerns the establishment of committees on the regional level.⁴¹ In practice, these provisions are interpreted in a flexible manner: According to the Government Resolution of 7 June 2006, municipalities and regions may establish a committee below the given threshold or not establish one at all.

This flexibility in the rules for establishing such committees and for their composition can be both advantageous and disadvantageous to the interests of speakers of minority languages: A typical case is one where blockage of a measure can be easily achieved if the committee includes a sufficient number of speakers of other languages. Thus, in some municipalities the committees did not propose a recommendation to introduce bilingual topographic signs because Polish speakers were not in the majority at the committee and the representatives of the other minorities were not prepared to support the recommendation. In one municipality (Třinec), 17.7% of the population is Polish, but despite a motion on bilingual signs having been tabled three times, the Polish representatives were outvoted each time.⁴² Another municipality refused to implement the recommendation of the local committee for national minorities, arguing that the decision was ultimately one for the municipality alone (see Article 84, paragraph 2r, of the Act on Municipalities).

In reaction to this structural problem, the Report of the Committee of Experts encouraged the Czech authorities to remove the legislative and administrative obstacles to the use of Polish place names on topographical signs in the area where Polish is used. This recommendation is also reflected in the Recommendation of the Committee of Ministers of 9 December 2009:⁴³ In this document, the Council of Ministers recommended that the Czech Republic take practical steps to promote awareness and tolerance vis-à-vis the regional and minority languages and improve legislation concerning the composition and powers of committees for national minorities, including the use of Polish place names in topographical signs. Moreover, the Czech Republic was advised to adopt a structured policy for the protection and promotion of Romani and German, to take measures to make available teaching in or of Slovak, Romani and German, as well as to encourage that the speaking of Romani at school is not prohibited or discouraged.

⁴¹ Act on the Regions, No. 129/2000 Coll. as amended, Section 78, para. 2.

⁴² Report on the Situation of National Minorities in the Czech Republic in 2007, Prague 2007, 107.

⁴³ RecChL(2009)7.

6. Conclusion

The case of the Czech Republic has also shown that the monitoring mechanism of the Charter neither supports separatism nor is aimed at “punishing” any States, but supports internal processes aimed exclusively at the promotion of regional and minority languages: In response to the ratification of the Charter by the Czech Republic in 2007, 13 municipalities have introduced bilingual place names, signs and inscriptions,⁴⁴ thus, the 2009 Recommendation of the Committee of Ministers only intensified an ongoing discussion on how to modify the provisions of the Act on Municipalities concerning the composition and powers of committees for national minorities.

The Charter would naturally be in a stronger position if additional Council of Europe Member States joined its system. Pressure to ratify the Charter has also been exerted by the Parliamentary Assembly of the Council of Europe, which from the mid-1990s systematically required new Member States to commit themselves to acceding to the Charter.⁴⁵ In its resolution on the “Progress of the Assembly’s Monitoring Procedure”,⁴⁶ the Assembly urged – so far without success – Greece, Ireland, Latvia and Lithuania to sign and ratify the Charter, and Iceland, Italy and Malta to ratify it.⁴⁷ Recent efforts are directed particularly at the Russian Federation: The Joint Program between the Council of Europe and the European Union titled “Minorities in Russia: Developing Culture, Language, Media and Civil Society”⁴⁸ supports the requisite legal framework and assists in the preparation of the ratification of the Charter. It provides assistance to the various public authorities that would be involved in the future ratification and implementation of the Charter and increases awareness of its advantages, including among civil society and NGOs. In the course of a territorially limited preliminary application of the Charter, three simulations of the implementation of the Charter in selected regions of the Russian Federation have been performed the results of which can serve as a source of information for the preparation of a draft document of ratification.

The accession of the Russian Federation and other Member States of the Council of Europe to the Charter mechanism would strengthen its role as a specific instrument of conflict prevention. However, even without these partners, the system of the Charter can benefit from its experience and knowledge in this field as well as from the cooperation with other bodies of the Council of Europe, such as the mechanism of the Framework Convention. The fact that the Charter features exact, quantifiable rules makes at least the first reports on its implementation somewhat voluminous but also makes it possible to easily compare the situations existing in

⁴⁴ Report on the Situation of National Minorities in the Czech Republic in 2007, Prague 2007, 4.

⁴⁵ S. Parayre, *The 10th Anniversary of the European Charter for Regional or Minority Languages*, *Europäisches Journal für Minderheitenfragen*, No. 2, 2008, p. 127.

⁴⁶ Resolution 1548 /2007, 18 April 2007.

⁴⁷ S. Trifunovska, *supra* note 13, 67 ff.

⁴⁸ See: <http://www.jp.coe.int/CEAD/JP/Default.asp?TransID=174>.

various countries. Concerns that the activity of these bodies “adds fuel to the fire” have not proved justified; on the contrary, it has been shown in several instances that fewer conflicts occur in regions where the speakers of regional and minority languages see their languages being promoted by the majority and consequently feel really at home.