

EUROPEAN LEGAL FRAMEWORK OF LANGUAGE RIGHTS IN EDUCATION (2012)

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Introduction.

The teaching of minority languages and the teaching in minority languages of the school curriculum to members of the national minority are vital to the protection of minority rights for a number of reasons.

First, as is well-known, the optimum medium for teaching a child is his or her mother tongue.² Education based on the mother tongue ‘significantly increases the chances of educational success and can even give better results’, while the schooling of children who belong to a national minority in a language they do not know well, or not at all, ‘seriously jeopardises their chances of academic success’.³

Second, next to the family, education is ‘the single most important agency for cultural reproduction, socialization and identity formation’,⁴ and thus an invaluable means for the maintenance of one’s identity. One of the most important aspects of education capable of protecting and promoting separate identity of minorities is the choice of the language (s) of instruction.⁵

Third, the realisation of the basic human right of minorities to use their language is greatly dependent on the ability of national minorities to actually know their language⁶ and can only be fully realised if members of those minorities acquire a proper knowledge of their mother tongue during the educational process.⁷

Fourth, the teaching of the minority language to persons who are not members of the minority can be a useful tool in improving understanding between the majority and the minorities.

Finally, education is crucial for the survival of minority languages which make up cultural heritage of Europe.⁸

Taking the particular importance of education in and of minority languages for their speakers, the article looks at the relevance of the European instruments for the protection of minority language rights in education. First, the language rights potential of the European Convention on Human Rights (ECHR) is assessed. Second, the implications of the Framework Convention for the Protection of National Minorities (FCNM) as a rights instrument are analysed together with the monitoring activities of the Advisory Committee (ACFC). Finally, the European Charter for Regional and Minority Languages and the work of its Committee of Experts are looked upon as an instrument adding additional value to the previous two documents.

The European Convention on Human Rights

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² See among others, *The Use of Vernacular Languages in Education* UNESCO, Paris, 1953, at pp.11-15; UNESCO Education Position Paper 2003: *Education in a Multilingual World*, Paris, pp.12-18.

³ PACE Recommendation 1740 (2006) of 10 April 2006 *The Place of the Mother Tongue in School Education*, paras.6,7

⁴ Williams, C.H. (1992) *The Cultural Rights of Minorities: Recognition and Implementation*, cited in Henrard, K. (2000) *Education and Multiculturalism: the Contribution of Minority Rights?* International Journal on Minority and Group Rights, Vol. 7, pp. 393-410, at p.394

⁵ Henrard, K. (2001), *The Interrelationship between Individual Human Rights, Minority Rights and the Right to Self-Determination and its Importance for the Adequate Protection of Linguistic Minorities*, The Global Review of Ethnopolitics Vol.1, No.1, pp. 41-61, at p.50

⁶ The OSCE Report on the Linguistic Rights of Persons Belonging to National Minorities, The Hague: OSCE, 1999, at IV (C) 1

⁷ The OSCE Hague Recommendations Regarding the Education Rights of National Minorities (The Hague Recommendations), 1 October 1996, para.1

⁸ Woehrling, J.-M. (2005) *The European Charter for Regional or Minority Languages: a Critical Commentary*, Council of Europe Publishing, at p.143

The ECHR does not include specific provisions on language rights or minority rights as such, but rights to equal treatment and non-discrimination may reflect many minority concerns, including language concerns in education.

Education is expressly dealt with in Article 2 of Protocol 1 which says that ‘no one shall be denied the right to education’ and that ‘the State shall respect the right of parents to ensure such education and teaching in conformity with their own religious and philosophical convictions’. It mentions two aspects of the right to education: the actual right to receive education which is guaranteed to everybody, and the right of parents to have their wishes respected with regard to the kind of education that their children shall receive.

The first case in which the European Court of Human Rights interpreted the scope of the right to mother-tongue education, under Article 2 of Protocol 1, in addition to considering the principle of non-discrimination under Article 14 of the Convention was the so-called *Belgian Linguistic* case⁹ decided in 1968.

The case was brought before the Court by French-speaking persons who lived in a Dutch unilingual area of Belgium. They wanted their children to be educated in French in local schools, and contested the Belgian regulation regarding language in education, which was based on the division of the country into four linguistic regions and entailed that public education in the applicants’ linguistic region could only be given in Dutch. The legislation was to protect the linguistic homogeneity of the region; it was in the public interest to ensure that all schools dependent on the state and existing in a unilingual region conduct their teaching in the language of the region. However, there was no barrier to the organisation of private French-language education in the Dutch unilingual region.¹⁰

With regard to the compatibility of the Belgian regulations on language in education with the ECHR, the Court held that the principle of territoriality as a basis of this regulation is not in itself a violation of the ECHR.¹¹ As to the issue of whether there was a right to education in one’s mother tongue was answered in the negative by both the Commission and the European Court of Human Rights.¹² In this way the Court ‘averred that otherwise anyone would be free to claim any language of instruction in the territory of any of the State Parties’.¹³

The Court also held that Article 2 does not require Contracting Parties to establish at their own expense, or to subsidize, education of any particular type or at any particular level.¹⁴ Adopting ‘a minimalist stance’¹⁵ the Court ruled that the right to education is confined to the right of access to

⁹ *Case Relating to Certain Aspects of the Laws on the Use of Languages in Education in Belgium* (merits), Series A, No.6 (1968)

¹⁰ See more details on the nature of this regulation in Alen, A., Peeters, P. (1999) *The Columberg Report on the Belgian Linguistic Legislation: A Storm in a Teacup*, European Public Law, Vol.5, Issue 2, pp. 155-167, at pp.156-8, 162-3

¹¹ See Berman, N. (1992) *Nationalism Legal and Linguistic: the Teachings of European Jurisprudence*, International Law and Politics, Vol. 24, pp. 1515-1578, at pp.1526-1537. The author gives a very detailed account of the both sides’ arguments and the Court’s position on the issue. See also, Reeber, Ch. (1972) *Linguistic Minorities and the Right to an Effective Education: Comment*, California Western International Law Journal, 1972-1973, pp.112-133, at pp.123-5, Alen, A., Peeters, P. (1999) *The Columberg Report on the Belgian Linguistic Legislation: A Storm in a Teacup*, European Public Law, Vol.5, Issue 2, pp. 155-167, at p.163. The authors also analyse subsequent case law where the principle of territoriality was addressed and upheld by the Court. Reference is given to *Mathieu-Mohin and Clerfayt v Belgium* Judgment of 2 March 1987. For more references to case law see footnote 123 in Williams, K., Rainey, B. (2002) *Language, Education and the European Convention on Human Rights in the 21st Century*, Legal Studies, Vol.22, No.4, at p. 650.

¹² *Case Relating to Certain Aspects of the Laws on the Use of Languages in Education in Belgium* (merits), Series A, No.6 (1968), at pp.31, 35

¹³ Wilson, D.(2003). *Report: A Critical Evaluation of the First Results of the Monitoring of the Framework Convention on the Issue of Minority Rights in, to and through Education 1998-2003* in *Filling the Frame. Five years of Monitoring the Framework Convention for the Protection of National Minorities*. Proceedings of the conference held in Strasbourg, 30-31 October 2003, at p.9

¹⁴ See also on this point De Varennes, F., (1997) *Ethnic Conflicts and Language in Eastern European and Central Asian States: Can Human Rights Help to Prevent Them?*, International Journal on Group and Minority Rights, at p.73; Dupuy, P. M. (1995) *Premier Protocol Additionel: Article 2*, in Pettiti, L. E. et al. (eds.), *La Convention Européenne des Droits de l’Homme: Commentaire Article par Article*, Paris, Economica, at p.1008; Hillgruber, C., Jestaedt, M. (1994) *The European Convention on Human Rights and the Protection of National Minorities*, Cologne, Verlag Wissenschaft und Politik, at p. 25.

¹⁵ Gilbert, G. (1992) *The Legal Protection Accorded to Minority Groups in Europe*, Netherlands Yearbook of International Law, Vol. XXIII, at p. 89

educational establishments existing at a given time and the right to obtain, in conformity with the rules in force in each State, the official recognition of studies which have been completed.

With regard to the language of instruction, the Court noted that Article 2 does not specify the language in which education must be conducted in order for the right to education to be respected.¹⁶ The parents' claim that to refuse their children mother tongue state education violated their right to respect their 'philosophical convictions' was likewise rejected. The Court ruled that respect for the religious and philosophical convictions of parents does not require a State to give effect to parents' linguistic preferences.

The right to respect for one's private and family life, guaranteed by Article 8 of the ECHR, and which was also invoked by the applicants, was also found by the Court not to contain a right to be educated in the language of one's parents by the public authorities or with their aid.¹⁷

The Court found that there had been discrimination only on one ground:¹⁸ where the children did not have access to French-language schools in six communes on the periphery of Brussels because their parents lived in the Dutch unilingual area whereas Dutch-speaking children resident in both the Dutch and the French unilingual regions had access to Dutch-language schools in these communes.

Thus, the *Belgian Linguistic case* revealed the willingness of the Court to leave freedom to the state in determining the languages of instruction in public schools.¹⁹

As one might expect, given the sensitiveness of language matters, the ruling in the *Belgian Linguistic case* provoked varied reactions.²⁰ Most scholars concluded that 'neither Article 2 of the First Protocol nor Article 8 of the Convention meet the special needs of the members of a linguistic minority with respect to education',²¹ 'even as an incidental part of non-discrimination',²² the State has the absolute right to decide on the official language of instruction in public schools²³ and criticised the Court's ruling for its failure to provide for 'difference aware' equality,²⁴ and prohibit the assimilation of minorities,²⁵ for 'downplaying the individual right to education',²⁶ etc. Others,

¹⁶ In this case the Court specified that Article 2 did not contain precise provisions with regard to language like Articles 5(2) and 6(3)(a) and (e) of the Convention.

¹⁷ See more on Article 2 of Protocol 1 as an aspect of the right to family life in Opsahl, T. (1973) *The Convention and the Right to Respect for Family Life* in Robertson, A.H. (ed.) *Privacy and Human Rights*, Manchester University Press, at pp.227-8, 230-31

¹⁸ Interestingly, the Commission and the Court ruled differently with regard to what was discriminatory in the case. For example, the Commission found that to withdraw subsidies in unilingual areas amounted to discrimination based on language under Article 14, read in conjunction with Article 2 of Protocol 1: Report of the Commission, Series B, p 3 15, para. 412. In contrast, the Court found that there was no violation in this area: (1980) 1 EHRR 252 at 300. Another point that was found discriminatory by the Commission was the refusal to recognize studies completed in schools not in conformity with the language on education laws. See more on the point Cullen, H. (1993) *Education Rights or Minority Rights?* International Journal of Law, Policy and the Family, Vol.7, No.2, pp.143-177, at p.155; Williams, K., Rainey B. (2002) *Language, Education and the European Convention on Human Rights in the 21st Century*, Legal Studies, Vol. 22, No.4, at pp.634-5

¹⁹ Merrills, J. G., Robertson, A. H. (2001) *Human Rights in Europe: A Study of the European Convention on Human Rights*, Manchester: Manchester University Press, 4th edn., at p. 247, Williams, K. and Rainey, B. (2002) *Language, Education and the European Convention on Human Rights in the 21st Century*, Legal Studies, Vol.22, No. 4, at p.637.

²⁰ Williams, K., Rainey B. (2002) *Language, Education and the European Convention on Human Rights in the 21st Century*, Legal Studies, Vol. 22, No.4, at p.637

²¹ Connelly, A. (1993) *The European Convention on Human Rights and the Protection of Linguistic Minorities*, Irish Journal of European Law, Vol.2 at p.287

²² Gilbert, G. (1992) *The Legal Protection Accorded to Minority Groups in Europe*, Netherlands Yearbook of International Law, Vol. XXIII, at p.88

²³ Wilson, D. (2003) *Report: A Critical Evaluation of the First Results of the Monitoring of the Framework Convention on the Issue of Minority Rights in, to and through Education 1998-2003 in Filling the Frame. Five Years of Monitoring the Framework Convention for the Protection of National Minorities*. Proceedings of the conference held in Strasbourg, 30-31 October 2003, at p.9

²⁴ Dunbar R. (2001) *Minority Language Rights in International Law*, International and Comparative Law Quarterly, Vol. 50, No. 1, pp.90-120, at p.101

²⁵ See, for example, Gilbert, G. (1992) *The Legal Protection Accorded to Minority Groups in Europe*, Netherlands Yearbook of International Law, Vol. XXIII, at pp.88-9; Cullen, H. (1993) *Education Rights or Minority Rights?* International Journal of Law, Policy and the Family, Vol. 7, No.2, pp.143-177, at pp. 157-58

²⁶ Williams, K., Rainey B. (2002) *Language, Education and the European Convention on Human Rights in the 21st Century*, Legal Studies, Vol.22, No.4, at p. 637; see also Cullen, H. (1993) *Education Rights or Minority Rights?* International Journal of Law, Policy and the Family, Vol. 7, No.2, pp.143-177, at p. 171

however, argued that the principles laid down by the court 'are not necessarily as universally relevant' because of a particular regional situation in Belgium.²⁷

The latter argumentation seems quite plausible in light of a more recent 2001 judgment in *Cyprus v. Turkey*.²⁸ It is undoubtedly 'the most remarkable ruling on the implied linguistic dimension of general fundamental rights'²⁹ where the Court gave greater consideration to the right to a *specific* form of education

In *Cyprus v. Turkey* the linguistic policies of the Northern Cypriot authorities in the area of public education were found to constitute a violation of Article 2 of Protocol No.1 in respect of Greek Cypriots living in northern Cyprus 'in so far as no appropriate secondary-school facilities were available to them'.³⁰ It should be recalled that the northern Cyprus government provided primary education in Greek language. However, children of Greek-Cypriot parents wishing to pursue a secondary education in the Greek language were obliged to transfer to schools in the south, though children could continue their education at a Turkish or English-language school in the north

On the one hand, the Court confirmed that Article 2 of Protocol No. 1 is devoid of a linguistic component.³¹ On the other hand, it said that there is a linguistic component for secondary education because the government of Northern Cyprus provided primary education in Greek, and therefore to stop offering it after primary school "negated" the right to education.³²

The logic adopted by the European Court, as Duncan notes, is indeed unconventional and 'appears to be a significant development from the 'Belgian Linguistics rule', even considering the peculiarities of the Cyprian context. After having concluded that, "in the strict sense ... there is no violation of the right to education", the Court nevertheless found a violation.'³³

What this could mean from a practical point of view is that not only are the arguments of the Court applicable to the specific situation in Northern Cyprus, but may also be 'of relevance wherever there exists a slow decline in inter-communal relations between the state and the minority, and pre-existing domestic rights are withdrawn'.³⁴ However, as de Varennes points out, the impact of the judgment would be more significant 'if the European Court had stated more clearly ... that in light of the circumstances, the restrictions on public education in the Greek language in Northern Cyprus were unreasonable and unjustified because they were so blatantly inappropriate, and therefore discriminatory'.³⁵

Finally, the Court quite recently had a chance to interpret the content and scope of the right to education, pursuant to Article 2 of Protocol 1 with respect to the obligations of State Parties in the provision of education to children of ethnic and/or linguistic minorities in *Oršuš v Croatia*.³⁶ This case concerned, *inter alia*, the state-enforced segregation of Roma children within the education system on the basis of ethnic/ linguistic differences.

The applicants were 14 Croatian nationals of Roma origin who were placed in separate classes due to their inadequate knowledge of the Croatian language (the principle language of instruction). The Court observed that any difference in treatment of the applicants had been based on their language

²⁷ Gilbert, G. (1992) *The Legal Protection Accorded to Minority Groups in Europe*, Netherlands Yearbook of International Law, Vol. XXIII, at p. 90; De Varennes, F. (2004) *The Right to Education and Minority Language*, available at: http://www.eumap.org/journal/features/2004/minority_education/adminlang.

²⁸ *Cyprus v. Turkey*, Judgment of 10 May 2001 (Grand Chamber).

²⁹ Mancini, S., de Witte, B. (2008) *Language Rights as Cultural Rights: A European Perspective* in Francioni, F., Scheinin, M. (eds.), *Cultural Human Rights*, Martinus Nijhoff Publishers, at p. 272

³⁰ *Cyprus v. Turkey*, Judgment of 10 May 2001 (Grand Chamber), at para.280

³¹ *Ibid*, at para.277

³² European Court of Human Rights, *Cyprus v. Turkey*, Judgement of 10 May 2001 (Grand Chamber), at para.278

³³ Wilson, D.(2003). *Report: A Critical Evaluation of the First Results of the Monitoring of the Framework Convention on the Issue of Minority Rights in, to and through Education 1998-2003* in *Filling the Frame. Five years of monitoring the Framework Convention for the Protection of National Minorities*. Proceedings of the conference held in Strasbourg, 30-31 October 2003, at p.10

³⁴ Gilbert, G. (2002) *The Burgeoning Minority Rights Jurisprudence of the European Court of Human Rights*, Human Rights Quarterly, Vol. 24, No.3, pp. 736-780, at pp. 761-2

³⁵ De Varennes, F. (2004) *The Right to Education and Minority Language*, available at: http://www.eumap.org/journal/features/2004/minority_education/adminlang

³⁶ *Oršuš and Others v. Croatia*, Application No. 15766/03, Judgment of 17 July 2008

skills. It then considered that in the sphere of education States could not be prohibited from setting up separate classes or different types of school for children with difficulties, or implementing special educational programmes to respond to special needs. The Court found it satisfying that the authorities had addressed that sensitive and important issue. The placement of the applicants in separate classes had therefore been a positive measure designed to assist them in acquiring knowledge necessary for them to follow the school curriculum. The Court concluded that the initial placement of the applicants in separate classes had been based on their insufficient knowledge of the Croatian language and not on their race or ethnic origin. Accordingly, there had been no violation of Article 14 in conjunction with Article 2 of Protocol No.1. So, the Court ruled that while states may not segregate students on language grounds in a discriminatory manner, they might need to adopt measures of temporary nature which result in placing students in separate classes based upon language capabilities in order to teach the national language(s) and(or) prepare students for full integration into the educational system.³⁷ However, as some commentators of this case pointed out, care should be taken when resorting to this method of treating minority language speakers:

given the danger and stigma that may attach when a state acts to segregate a group, given the vulnerability and special needs of children and having regard to the importance of education, a state that acts in this manner may do so only if it acts within a very narrow margin of appreciation in order to ensure that it segregates only on the basis of valid linguistic needs and does so in a manner that ensures that students will be fully integrated on an appropriate and timely basis.³⁸

To conclude, a long time has passed since the *Belgian Linguistic case* was decided stating that equality and non-discrimination did not guarantee education in the language of one's choice.³⁹ Since then very few cases have involved the use of languages in education regardless the fact that language issues in education,⁴⁰ as *Cyprus v. Turkey* and *Oršuš v Croatia* demonstrate, remain highly sensitive in many bilingual or multilingual states. A general right to equal treatment⁴¹ is still missing from the Convention and as a result may not be used as the basis for language claims in education. Nevertheless, it should be remembered that the Convention was drafted to set out the basis of the fundamental rights 'below which no state should be permitted to fall, not an outline of the perfect position in relation to rights; states can, and possibly should, rise above the ECHR position and grant linguistic rights in education'⁴² especially in the light of the other two documents, discussed below, which are directly related to the use of minority languages in education.

3.2.2. The Framework Convention for the Protection of National Minorities

³⁷ See also Article 2(b) of the UNESCO Convention against Discrimination in Education. It recognises differences of language as a valid reason for educational segregation. However, it does so only in those situations where participation in linguistically segregated instruction is optional, is conducted with full parental consent, and the educational standards are appropriate. Consequently, state-enforced linguistic segregation that does not meet these criteria can not be permissible.

³⁸ Hughes, P. (2009) Written comments on *Oršuš and Others v. Croatia* submitted to the ECtHR by the International Centre for the Legal Protection of Human Rights, 5 March, para.42

³⁹ The survey by Williams and Rainey shows that with regard to the right to education, most of the case law before the European Court since the *Belgian Linguistic Case* has primarily concerned the interpretation of the concept of parents' 'religious and philosophical convictions' under the second sentence of Article 2 of Protocol 1 of the ECHR. With regard to the first sentence of Article 2 of Protocol 1, 'case law since the *Belgian Linguistic Case* has not seen the Court willing to push the right to education much beyond the issue of access to education'. See Williams, K., Rainey B. (2002) *Language, Education and the European Convention on Human Rights in the 21st Century*, Legal Studies, Vol.22, No.4, at p.642. See also Wilson, D.(2004). *Report: A Critical Evaluation of the First Results of the Monitoring of the Framework Convention on the Issue of Minority Rights in, to and through Education 1998-2003* in *Filling the Frame. Five Years of Monitoring the Framework Convention for the Protection of National Minorities*. Proceedings of the conference held in Strasbourg, 30-31 October 2003, at p.9

⁴⁰ This is in spite of the fact that the number of cases involving minority issues is constantly growing. See for example, Spiliopoulou Åkermark, S. (2002) *The Limits of Pluralism – Recent Jurisprudence of the European Court of Human Rights with Regard to Minorities: Does the Prohibition of Discrimination Add Anything?*, Journal of Ethnopolitics and Minority Issues in Europe, Issue 3

⁴¹ Mancini, S., de Witte, B. (2008) *Language Rights as Cultural Rights: A European Perspective* in Francioni, F., Scheinin, M. (eds.) *Cultural Human Rights*, Martinus Nijhoff Publishers, at p. 272

⁴² Williams, K., Rainey B. (2002) *Language, Education and the European Convention on Human Rights in the 21st Century*, Legal Studies, Vol.22, No.4, at p.650

The FCNM is relevant to linguistic minorities not only in guaranteeing the right of persons belonging to minorities to good quality, free primary education as well as general and equal access to secondary education, but also in setting standards as to how such education should be shaped in terms of form and content, in order to facilitate the development of the abilities and personality of the child, and accommodate the linguistic aspirations of pupils and their parents.⁴³

As a matter of fact, the provisions of the FCNM on minority education represent a fresh chapter in a complex history of instruments and principles in European and international law.⁴⁴ Nowhere else is this issue given such space as in the Framework Convention, with three provisions (Articles 12-14), as well as explicit references to education in the general provisions concerning equality and intercultural dialogue (Article 6).

What is more, as the above discussion has shown, while educational language rights of national minorities have not been of particular significance for the case law emanating from the European Court of Human Rights, the case is rather different as regards the practice of the Advisory Committee,⁴⁵ which devoted its first thematic work to education and resulted in the adoption of the Commentary on Education in March 2006.⁴⁶

The right to learn and be taught in one's mother tongue is recognised by Article 14:

1. The Parties undertake to recognise that every person belonging to a national minority has the right to learn his or her minority language.
2. In areas inhabited by persons belonging to national minorities traditionally or in substantial numbers, if there is sufficient demand, the Parties shall endeavour to ensure, as far as possible and within the framework of their education systems, that persons belonging to those minorities have adequate opportunities for being taught the minority language or for receiving instruction in this language.
3. Paragraph 2 of this article shall be implemented without prejudice to the learning of the official language or the teaching in this language.

Article 14 (1) refers explicitly to 'the right' of national minorities to learn their minority language as 'one of the principal means by which such individuals can assert and preserve their identity'.⁴⁷ State Parties are expected to recognise this right in their legal and educational systems, 'even if this does not automatically entail an economic responsibility for the provision of such education in all circumstances'.⁴⁸

⁴³ *Rights To Education Project*, available at <http://www.right-to-education.org/node/586>

⁴⁴ See more on the issue in Thornberry, P. (1991) *International Law and the Rights of Minorities*, Clarendon Press, Oxford, Ch.2

⁴⁵ Hofmann, R. (2008) *Implementation of the FCNM: Substantive Challenges* in Verstichel, A., Alen, A., De Witte, B. and Lemmens, P. (eds.) *The Framework Convention for the Protection of National Minorities A Useful Pan-European Instrument?*, Intersentia, at p. 175

⁴⁶ *Commentary on Education under the Framework Convention for the Protection of National Minorities* prepared by A. Spiliopoulou Åkermark, ACFC/25DOC(2006)002. See also the critical article-by-article overview of the 1st cycle opinions of the Advisory Committee with regard to educational rights of linguistic minorities in Wilson, D. (2003) *Report: A Critical Evaluation of the First Results of the Monitoring of the Framework Convention on the Issue of Minority Rights in, to and through Education 1998-2003* in *Filling the Frame. Five years of Monitoring the Framework Convention for the Protection of National Minorities*. Proceedings of the conference held in Strasbourg, 30-31 October 2003

⁴⁷ Explanatory Report, para.74, in line with the OSCE 1996 *Hague Recommendations Regarding the Education Rights of National Minorities* which also stress the right of persons belonging to national minorities to maintain their identity, which can only be fully realised if they acquire a proper knowledge of their mother tongue during the education process. The Advisory Committee in its opinions has always maintained this line, emphasizing that schools with instruction of and in a minority language contribute by their very existence to preserving the distinct identity of national minorities and that is why decisions to close such schools should be carefully thought over. See, for example, ACFC Opinion on Austria, para. 63; ACFC Opinion on Estonia, para.44; ACFC Opinion on Germany, paras. 59-61 ACFC Opinion on Lithuania, para. 73; ACFC Second Opinion on Norway, para. 134; ACFC Second Opinion on the Czech Republic, para. 158; ACFC Second Opinion on Italy, para.108

⁴⁸ *Commentary on Education under the Framework Convention for the Protection of National Minorities* prepared by A. Spiliopoulou Åkermark, ACFC/25DOC(2006)002, at p.24. However, the Advisory Committee has always welcomed the existing state funding support to educational institutions with or of minority language teaching and where this support is insufficient or non-existent encouraged states to adopt a more active position. See ACFC Second Opinion on Albania, para.175; ACFC Opinion on Armenia, para.73; ACFC Second Opinion on Azerbaijan, para. 145; ACFC Opinion on Bosnia and Herzegovina, para.96; ACFC

At the same time, Article 14(3) holds that the teaching of minority languages should be carried out without prejudice to the learning of the official language or teaching in this language.⁴⁹ Thus, the acquisition of the majority or official language must be an integral part of a state's non-discriminatory educational policy.⁵⁰ It is indispensable that minorities learn the state language, otherwise lack of knowledge or insufficient knowledge of the official language could lead to their exclusion from educational opportunities at later stages and eventually isolated from the rest of the community.⁵¹

At the same time, as the Advisory Committee has noted in several opinions, teaching of the official language should be pursued in a manner which leaves adequate scope for the use of minority languages in education⁵² and 'does not discourage pupils from opting for minority language teaching'.⁵³ A proper balance must be struck between the teaching in or of a minority language and official language teaching.⁵⁴ One way of reaching such a balance is through the means of bilingual education⁵⁵ which proves to be important for both minority and majority groups.⁵⁶

Whereas Article 14(3) is 'the least controversial segment'⁵⁷ of Article 14, Article 14(2) has posed a lot of questions. It is conditioned by a number of clauses which, if interpreted in a restrictive manner could reduce its effectiveness.⁵⁸ These clauses seem to imply that the degree of the use of a minority language as a medium of instruction will vary according to the particular context of each situation: note should be taken of the extent of demand for such instruction, the degree of use of the medium of instruction and the state's ability to respond to the language demands of minority language speakers. The mere presence of a small group of individuals does not automatically give rise to a right to receive instruction in a minority language in a public school⁵⁹.

Given the numerous conditions set by Article 14 (2), the Advisory Committee has, in its monitoring practice, dedicated much attention to clarifying their scope in the examination of country reports. The following conclusions can be drawn from analysis of the Advisory Committee's opinions.

Second Opinion on Cyprus, para.114; ACFC Second Opinion on the Czech Republic, para. 160; ACFC Second Opinion on Hungary, paras. 104,106; ACFC Opinion on Norway, paras.131-2; ACFC Opinion on Poland, para.82; ACFC Opinion on Spain, para.141; ACFC Second Opinion on the UK, para.224.

⁴⁹ The same idea is advocated by a number of international and regional instruments, including the UN Declaration on the Rights of Persons Belonging to Linguistic Minorities, the UNESCO Convention against Discrimination in Education, Article 5; the Hague Recommendations Regarding the Education Rights of National Minorities and Explanatory Note, no.12,13; Document of the Copenhagen Meeting of the Conference on the Human Dimension of the OSCE, 2nd Conference, Copenhagen, 1990. See also Advisory ACFC Second Opinion on Switzerland, para.136

⁵⁰ Ammoun, Ch. (1957) *Study of Discrimination in Education*, United Nations, New York, at p. 90. See more on the point, De Varennes, F.(2001) *The Linguistic Rights of Minorities in Europe* in Trifunovska, S. and de Varennes, F. (eds.) *Minority Rights in Europe: European Minorities and Languages*, TMC Asser Press, at pp.21-22

⁵¹ Illustrative in this respect are the results of achievement tests conducted in California regarding the successes and failures of Mexican American children in Anglo-American schools. The tests showed considerable disparity between Mexican American and their Anglo-American counterparts. The major cause of that was recognized to be the language barrier. Reeber, Ch. (1972) *Linguistic Minorities and the Right to an Effective Education: Comment*, California Western International Law Journal, 1972-1973, pp.112-133, at p.121

See also ACFC Second Opinion on Azerbaijan, para.148; ACFC Second Opinion on the Czech Republic, paras.138-9; ACFC Second Opinion on Moldova, para.122

⁵² See, for example, ACFC Opinion on Lithuania, para.72.

⁵³ ACFC Opinion on Serbia and Montenegro, para.97. See also ACFC Opinion on Estonia, para.54 and ACFC Second Opinion on Estonia, paras. 146-9; ACFC Opinion on Ukraine (discussed in detail below), ACFC Opinion on Moldova, para. 83 ACFC Opinion on Serbia and Montenegro, para. 97; ACFC Opinion on Azerbaijan, paras.63,69; ACFC Second Opinion on Azerbaijan, para.128

⁵⁴ ACFC Opinion on Moldova, para. 118, see also ACFC Opinion on Russia, para.100, ACFC Opinion on Finland, para.46

⁵⁵ See, for example, ACFC Opinion on Austria, paras. 61-65; ACFC Second Opinion on Austria paras. 165-69, 171; ACFC Opinion on Estonia, para. 51, ACFC Opinion on Switzerland, paras. 72; ACFC Second Opinion on Switzerland, para.162. See also *Commentary on Education under the Framework Convention for the Protection of National Minorities* prepared by A. Spiliopoulou Åkermark, ACFC/25DOC(2006)002, at p.25

⁵⁶ Reeber, Ch. (1972) *Linguistic Minorities and the Right to an Effective Education: Comment*, California Western International Law Journal, 1972-1973, pp.112-133, at pp.130-131

⁵⁷ De Varennes, F., Thornberry, P. (2005) *Article 14* in Weller, M. (ed.) *The Rights of Minorities in Europe: A Commentary on the European Framework Convention for the Protection of National Minorities*, at p.423

⁵⁸ *Ibid*, at p.419

⁵⁹ See on the point de Varennes, F. (2004) *The Right to Education and Minority Language*, available at: http://www.eumap.org/journal/features/2004/minority_education/edminlang

First, the instruction *of or in* the minority language under Article 14 (2) has been suggested by the Advisory Committee as *alternatives which are not mutually exclusive*.⁶⁰

Second, regarding the qualification ‘if there is sufficient demand’, ‘the Advisory Committee has encouraged governments to take a ‘*proactive approach*’ even when the expressed demand appears low’.⁶¹ It has also remarked that it would be desirable to clearly indicate ‘demand’ thresholds which will enable national minorities to require authorities to introduce education in and of minority languages⁶² without, at the same time, imposing additional restrictions on the rights contained in Article 14. What can then constitute a restriction? The Advisory Committee in its Opinion on Norway indicated that:

The existing regulations envisage bilingual basic education, as a maximum, for minorities other than Sami and Kven-Finnish (in the designated regions) only until they have acquired a sufficiently good knowledge of Norwegian to be able to follow the ordinary teaching programme. Bearing in mind that the guarantees of Article 14 are not conditioned upon lack of knowledge of the state language, the Advisory Committee considers that the authorities should examine to what extent there is demand amongst the national minorities, and in the regions not covered by the said guarantees, to receive instruction in or of their language and, depending on the results, improve the current legal and practical situation if necessary.⁶³

Another practice envisaged by Norwegian legislation, namely that the right to receive instruction in Finnish is given only to pupils “of Kven-Finnish descent” has been deemed as inadvisable by the Advisory Committee.⁶⁴ Similar requirements for the provision of minority language education exist in Sweden (that the language is used by the pupils in question in everyday life, that they have a basic knowledge of it);⁶⁵ in Finland where only those children who have Sami as their mother tongue in the population registry have been given access to Sami language pre-school education;⁶⁶ in Russia where there is a ‘residency registration requirement’;⁶⁷ in the Czech Republic the condition that classes or schools teaching minority languages, or using them as languages of instruction, may be set up only in areas where committees for national minorities have already been established is yet another undue restriction.⁶⁸

Third, when addressing the ‘sufficient numbers’ issue, the Advisory Committee welcomed low numerical thresholds in forming minority language classes⁶⁹ and called for the adoption of specific regulations that would allow for flexibility to accommodate the requests of minorities,⁷⁰ including those made by smaller groups.⁷¹ However, the Advisory Committee has deliberately refrained from giving exact figures. Nevertheless, a few examples will give indication on what may constitute the permissible threshold under the FCNM and what may not. The Advisory Committee found the numerical threshold of 4 to 5 pupils for Russian, Ukrainian, Bulgarian and Gagauzian children in Moldova as very low; 5 pupils in Slovenia, 5 pupils in rural and 8-10 pupils in urban areas in Ukraine, 15 pupils in Kosovo and Serbia (teaching can also be organised for a smaller group upon

⁶⁰ Explanatory Report, at para.77. Also ACFC Opinion on Sweden, para.60 and ACFC Opinion on Norway, para.59

⁶¹ *Commentary on Education under the Framework Convention for the Protection of National Minorities* prepared by A. Spiliopoulou Åkermark, ACFC/25DOC(2006)002, at p.24. See also ACFC Second Opinion on the UK, para.222; ACFC Opinion on Serbia, para.95; ACFC Second Opinion on the Russian Federation, para.250; ACFC Second Opinion on Moldova, paras.133-4

⁶² See ACFC Opinion on Croatia, para.51; ACFC Second Opinion on Croatia, paras.135-136; ACFC Opinion on Armenia, para.71; ACFC Opinion on Estonia, paras.51,52; ACFC Opinion on the Russian Federation, paras. 94,154. Clarity is also required with regard to the closure of minority language schools. ACFC Opinion on Poland, paras.80-1; ACFC Opinion on Lithuania, para.73

⁶³ ACFC Opinion on Norway, para.59

⁶⁴ ACFC Opinion on Norway, para.58

⁶⁵ ACFC Second Opinion on Sweden, para.148

⁶⁶ ACFC Second Opinion on Finland, para.136

⁶⁷ ACFC Opinion on Russia, para.91

⁶⁸ ACFC Second Opinion on Czech Republic, para.162. See also ACFC Second Opinion on Albania, paras.181-2

⁶⁹ *Commentary on Education under the Framework Convention for the Protection of National Minorities* prepared by A. Spiliopoulou Åkermark, ACFC/25DOC(2006)002, at p.26

⁷⁰ ACFC Opinion on Sweden, para.60; ACFC Opinion on Ukraine, para.63; ACFC Opinion on FORYM, para.90; ACFC Opinion on Slovak Republic, para.43; ACFC Second Opinion on Slovak Republic, paras.106, 109; ACFC Opinion on Serbia and Montenegro, para.99; ACFC Second Opinion on the Russian Federation, para.247

⁷¹ ACFC Opinion on Kosovo, para.98; ACFC Second Opinion on FORYM, paras.158,187; ACFC Second Opinion on Romania, para. 64; ACFC Second Opinion on Hungary, para.100; ACFC Opinion on Germany, para.61; ACFC Opinion on the Czech Republic, para. 66

approval by the Ministry of Education of Serbia); 5 pupils in Sweden (1 or more pupils as regards Sami, Meänkieli and Romani Chib); 7 pupils at primary level and 15 pupils at secondary level in Poland; 3 pupils (to study Finnish) in Norway, 8 or more pupils in Hungary as acceptable thresholds. The Advisory Committee welcomed the lowering of the threshold from 5 to 3 pupils for Sami language classes and from 30 to 5-7 pupils in rural areas in Armenia. More clarity was required by the Advisory Committee concerning the threshold set by Montenegro, namely ‘the minimum number of pupils should it be no less than 50% of the number of pupils required by law.’ The requirement of the presence of 20 pupils for the setting up of a minority language class in a Sorbian language school in Germany was deemed as too high for the purpose of Article 14 and the authorities were urged to apply the exemptions to the minimum threshold to secondary Sorbian schools and classes, which are at risk of closing down. Also the numerical threshold (an absolute or relative majority) imposed in Bosnia and Herzegovina was viewed as constituting an obstacle for receiving instruction in certain minority languages.⁷²

Fourth, the importance of having adequate resources is another theme that has frequently been highlighted. In this context, the Advisory Committee has often expressed concern about the lack of teachers and textbooks needed for proper bilingual or multilingual education,⁷³ something which may even be a factor in the decisions of some pupils not to opt for minority language teaching at all.⁷⁴

Fifth, emphasis has been placed on the continuity of minority language education at all levels, including at the pre- and post-primary stages.⁷⁵

Sixth, the situation of Roma children, which differs significantly from the situation of other minorities and the majority, has been of particular concern to the Advisory Committee. It has repeatedly drawn attention to the non-existence or discriminatory nature of Romani language instruction, coupled with absenteeism, low enrollment rates, high drop-out and exclusion rates among Roma children, low attainment levels, low levels of participation in higher education, under-representation among teaching staff,⁷⁶ intimidation and stigmatization of Roma children,⁷⁷ lack of sensitivity to Roma culture, and ‘special schools’ in which mainly Roma children have been placed. The Advisory Committee has called for measures to combat *de facto* segregation and the inclusion of Roma children in regular classes as the best way towards integration,⁷⁸ thereby ensuring that Roma children have access to quality education in an environment which is free from harassment and respects the Roma and their culture,⁷⁹ through, for example, the introduction of more systematic Romani language and culture teaching.⁸⁰

⁷² See Advisory Committee Opinions on Ukraine, para.63; Germany, para.60 and para.136 (2nd opinion), Kosovo, para.98; Sweden, paras.57-58; Serbia, para.94; Poland, para.79; Norway, para.132 (2nd opinion); Montenegro, para.89; Moldova, para.126 (2nd opinion); Hungary, para.107 (2nd opinion); Finland, para.134 (2nd opinion); Bosnia and Herzegovina; para.94; Armenia, para.113 (2nd opinion); Slovenia,135 (2nd opinion)

⁷³ See Advisory Committee Opinions on Armenia, paras.74,75; on Croatia, para.53 (1st opinion) and para.126 (2nd opinion); Estonia, para.117 (2nd opinion); Italy, paras. 59 (1st opinion) and 110 (2nd opinion); Moldova, para.74 (1st opinion) and para.117 (2nd opinion); Poland, para.74; Serbia and Montenegro, paras.87-88; Slovenia, para.62 and para.141 (2nd opinion); FORYM, paras. 77-78, 91(1st opinion) and para.184 (2nd opinion) ; Ukraine, para. 59; Kosovo, para.99; Slovak Republic, para.45; Norway, para.133 (2nd opinion); Finland, para.40 (1st opinion) and paras.120,135 (2nd opinion); Cyprus, paras.130 and 133 (2nd opinion); Bulgaria, paras.97, 99; Armenia, para.75; Azerbaijan, para.62 and paras.134-5 (2nd opinion); Austria, para.55; Hungary, para.39; Lithuania, para.63; Moldova, para.74; Montenegro, para.80 (2nd opinion); Romania, para.52; Russia, para.88; Sweden, para.133 (2nd opinion); the UK, para.212 (2nd opinion).

See also the analysis of Article 12 below

⁷⁴ ACFC Second Opinion on Croatia, para.125; ACFC Opinion on Hungary, para.39; ACFC Second Opinion on Moldova, para.118; ACFC Opinion on FORYM, para.74

⁷⁵ ACFC Opinion on Albania, para.61; ACFC Opinion on Romania, para.55; ACFC Opinion on UK, para.92; ACFC Opinion on the Russian Federation, para.97; ACFC Second Opinion on Moldova, para.127; ACFC Second Opinion on Germany, para.142; ACFC Second Opinion on Denmark, para.150; ACFC Second Opinion on Azerbaijan, paras.143-4, 146; ACFC Opinion on Austria, para.65; ACFC Second Opinion on Estonia, para.132

⁷⁶ ACFC Second Opinion on the UK, para.193, ACFC Opinion on Bulgaria, para.90

⁷⁷ ACFC Second Opinion on FORYM, para.166, ACFC Opinion on Kosovo, para.91; ACFC Second Opinion on Spain, para.126

⁷⁸ ACFC Second Opinion on Slovenia, paras.146-9,156

⁷⁹ ACFC Second Opinion on Sweden, para.124

⁸⁰ See Hofmann, R. (2008) *Implementation of the FCNM: Substantive Challenges* in Verstichel, A., Alen, A., De Witte, B. and Lemmens, P. (eds.) *The Framework Convention for the Protection of National Minorities A Useful Pan-european Instrument?*,

While the Advisory Committee has welcomed the creation of supportive/remedial, immersion classes, preparatory pre-school and catch-up classes (in cases of Moldova, Croatia, Cyprus, Czech Republic, Estonia, Slovenia, Kosovo, for instance) aimed at assisting the children to obtain basic knowledge of the state language (or sometimes, introducing instruction in minority languages), and other skills so that they can meet the demands of the educational system, it expressed concerns with regard to the creation of segregating special classes or schools for, often, Roma and Travellers' children, due to real or perceived language and cultural differences between minority and majority children (in Sweden, Bulgaria, Croatia, Czech Republic, Finland, Hungary, Poland, Serbia, Slovak Republic, Slovenia, UK, for example) and the so-called parallel school system in Kosovo for pupils belonging to certain minority communities and stressed that it is in the best long term interests of both majority and minority children to be educated together in an integrated environment, and that placing children in separate special classes should take place only when it is absolutely necessary and always on the basis of consistent, objective and comprehensive tests.⁸¹

Finally, although the clauses in Article 14(2) 'have been worded very flexibly, leaving parties a wide measure of discretion'⁸² the Advisory Committee has stressed that State Parties should actively pursue needs' assessments,⁸³ consult those concerned⁸⁴ and if necessary inform those concerned of their existing rights.

The Advisory Committee has noted in a number of opinions that there seems to persist a problem of low awareness of the existing right to minority language education among minority language speakers, and thus there is a need to inform them.⁸⁵ In the case of Lithuania, for example, the Advisory Committee found it disturbing that not only the parents but also the authorities themselves could not indicate precisely the number of pupils required for the creation and maintenance of minority language classes or schools.⁸⁶

By raising awareness among the minority groups of the existence of the right to education in and of their native languages, State parties could also ensure a participatory approach in the running of schools with minority language teaching,⁸⁷ in order to design quality minority language education schemes and adequately reflect the ethnic diversity of such schools.⁸⁸ Discussing the content of the right to education in a minority language, Dunbar draws particular attention to the role of the minority language community in the design and control of minority language education:

Intersentia, at p. 175. Reference is given to the corresponding opinions and a recent judgement of the European Court of Human Rights on educational rights of the Roma.

⁸¹ ACFC Opinions on Croatia, para.49; Finland, para.37; Hungary, para.41 and paras.90,95 (2nd opinion); Slovak Republic, para.39; Slovenia, para. 63 and para.153 (2nd opinion)) under effective supervision regarding the content and quality of the education they provide (ACFC Opinion on Kosovo, para.101).

See also ACFC Opinion on Kosovo, paras.85, 90; ACFC Opinion on Bulgaria, paras.88-9; ACFC Opinion on Croatia, para.49 and paras.129-130 (2nd opinion); ACFC Second Opinion on Cyprus, paras.115-6; ACFC Opinion on the Czech Republic, para.62 and paras.143-6 (2nd opinion); ACFC Opinion on Finland, para.37; ACFC Opinion on Hungary, para.41; ACFC Opinion on Poland, para. 76; ACFC Second Opinion on Romania, para.139; ACFC Opinion on Serbia, 89-90; ACFC Opinion on Slovak Republic, para.39; ACFC Opinion on Slovenia, para. 63; ACFC Second Opinion on FORYM, para.143; ACFC Opinion on Moldova, para.81 and para. 126 (2nd opinion)

⁸² Explanatory Report, at para.75

⁸³ See ACFC Opinion on Albania, para.65; ACFC Opinion on FORYM, para. 84; ACFC Opinion on the Russian Federation, paras.96-98,155; ACFC Second Opinion on the UK, para. 215; ACFC Second Opinion on Switzerland, para. 153; ACFC Second Opinion on Slovenia, para.164; ACFC Opinion on Slovak Republic, para.44; ACFC Opinion on Romania, paras. 63-4; ACFC Second Opinion on Romania, para.175; ACFC Opinion on Poland, para.84; ACFC Second Opinion on Norway, para.136; ACFC Opinion on Lithuania, para. 69; ACFC Second Opinion on Croatia, para. 141; ACFC Opinion on Bulgaria, para.100

⁸⁴ ACFC Opinion on Ukraine, para.66; ACFC Opinion on Switzerland, para.73; ACFC Second Opinion on Sweden, para.154; ACFC Opinion on Moldova, para.83; ACFC Opinion on Lithuania, para. 69; ACFC Opinion on Germany, para.62; ACFC Second Opinion on Germany, para.142; ACFC Second Opinion on Denmark, para.153; ACFC Opinion on Czech Republic, para.66; ACFC Opinion on Armenia, para.74

⁸⁵ ACFC Second Opinion on Sweden, paras.149,162; ACFC Opinion on Ukraine, para.63; ACFC Second Opinion on Romania, para.174; ACFC Second Opinion on the Russian Federation, paras.250 and 253; ACFC Second Opinion on Estonia, paras.139,140; ACFC Opinion on Bulgaria, para.101; ACFC Opinion on Albania, para.66

⁸⁶ ACFC Opinion on Lithuania, para.70

⁸⁷ ACFC Opinion on Kosovo, para.104; ACFC Second Opinion on Cyprus, para.119

⁸⁸ ACFC Opinion on Kosovo, para.104

This, [the role of the minority language community] indeed, is a major problem with many of the ‘positive’ rights relating to essential services of a broadly cultural nature, such as education ... The assumption behind these ‘positive’ obligations is that if the State is simply required to provide these services through the minority language, all problems will be resolved. However, linguists recognise that the content of curriculum ... , the incentive structures in the delivery of such services, including promotion and other rewards, and other similar design and implementation issues can have a profound effect on the success of such measures in protecting the language community.⁸⁹

As already mentioned, the linguistic guarantees of national minorities in education envisaged by Article 14 are reinforced by other provisions of the Framework Convention, namely Articles 12 and 13, a brief account of which is given below.

Article 12 addresses multicultural and intercultural education⁹⁰ and equal opportunities for access⁹¹ to education at all levels for persons belonging to national minorities. States are obliged to foster the knowledge of minority culture, history and religion. The Article also calls for the provision of teacher training, access to textbooks and facilitation of contacts among students and teachers of different communities. It reads:

1. The Parties shall, where appropriate, take measures in the fields of education and research to foster knowledge of the culture, history, language and religion of their national minorities and of the majority.
2. In this context the Parties shall *inter alia* provide adequate opportunities for teacher training and access to textbooks, and facilitate contacts among students and teachers of different communities.
3. The Parties undertake to promote equal opportunities for access to education at all levels for persons belonging to national minorities.

Several general comments need to be made regarding Article 12 and its interpretation by the monitoring bodies.

First, the content of Article 12 should be understood as including the education of both minorities and majorities.⁹² Thornberry explains, that ‘the Framework Convention’s account of intercultural education implies that the general population should be aware of minority presence, history, and culture; and equally that minorities should not retreat into psychological ghettos where they take no interest in fellow citizens’.⁹³

Second, the diversity of cultures and languages should be reflected in educational curricula⁹⁴ through a variety of possible school structures and teaching methods,⁹⁵ with full respect for human rights and without ideological manipulation or propaganda of racist and xenophobic ideas.⁹⁶

⁸⁹ Dunbar, R. (2001), *Minority Language Rights in International Law*, International and Comparative Law Quarterly, Vol. 50, No. 1, pp.90-120, at pp.111-2

⁹⁰ The terms ‘inter-culturalism’ and ‘multi-culturalism’ are inspired by the notions as used by Asbjørn Eide as reflected in many of his reports for the Working Group on Minorities of the UN Sub-Commission on the Promotion and Protection of Human Rights. According to the Commentary to UN Declaration on the Rights of Persons belonging to National or Ethnic, Religious or Linguistic Minorities, while *multicultural education* involves educational policies and practices which meet the separate educational needs of groups in society belonging to different cultural traditions, *intercultural education* involves educational policies and practices whereby persons belonging to different cultures, whether in a majority or minority position, learn to interact constructively with each other. See Eide, A. (2001) *Commentary to the UN Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities*, E/CN.4/Sub.2/AC.5/2001/2 (2001), paras. 64-70.

⁹¹ ‘Access’ comprises a variety of issues, including ‘physical access’ to educational facilities with mother tongue teaching. See ACFC Opinion on Kosovo, para.100; ACFC Opinion on FORYM, para.87

⁹² *Commentary on Education under the Framework Convention for the Protection of National Minorities* prepared by A. Spiliopoulou Åkermark, ACFC/25DOC(2006)002, at p.15

⁹³ See also Thornberry, P. (2005) *Article 12* in Weller, M. (ed.) *The Rights of Minorities in Europe: A Commentary on the European Framework Convention for the Protection of National Minorities*, at p.373

⁹⁴ Culture and history include the language component, the function of which is:

... to implicate not just the language education of members of national minorities, but also education about minority languages for the benefit of the majority populations and the whole society.

See also Thornberry, P. (2005) *Article 12* in Weller, M. (ed.) *The Rights of Minorities in Europe: A Commentary on the European Framework Convention for the Protection of National Minorities*, Oxford University Press, at p.378. See also ACFC Opinion on Bulgaria, para.84; ACFC Opinion on Croatia, para.49; ACFC Second Opinion on Cyprus, para.117; ACFC Second Opinion on

Third, with a view to promoting equal access of national minorities to education at all levels, State parties are expected to take a positive pro-active stance (both at a central and local levels) in advancing minority culture and language,⁹⁷ by ensuring adequate training of teachers and access to textbooks in the minority language ‘as the essential preconditions’ for good quality education.⁹⁸ The lack of minority language textbooks or qualified personnel able to teach in a minority language is not a valid excuse for not providing education in a minority language.⁹⁹ One of the ways of solving the problem of lack of qualified teachers and textbooks in a minority language is kin-state support.¹⁰⁰ However, it seems clear from the Advisory Committee’s practice that kin-state support shall rather complement but not replace entirely the local publication of textbooks, for example. The latter are able to more adequately reflect the experiences of local communities which is not always the case with imported literature.¹⁰¹ With regard to the lack of qualified staff, one of the ways of addressing the problem is to raise teachers’ awareness (and awareness of the society at large) of the minority languages and traditions, while ensuring the training of teachers for these languages, preferably among the minorities themselves.¹⁰² This is particularly important for minorities without kin state support.¹⁰³

Fourth, the provision on contacts, especially for the young, may form an important basis for positive relations between communities, as it encourages the growth of broad affiliations and personal relationships.¹⁰⁴

Denmark, paras.146, 148; ACFC Second Opinion on Estonia, para.114; ACFC Second Opinion on Finland, paras.114, 116; ACFC Opinion on Germany, para.55; ACFC Second Opinion on Germany, para.116; ACFC Opinion on Ireland, para.82; ACFC Second Opinion on Italy, para.115; ACFC Opinion on Lithuania, para.62; ACFC Second Opinion on Moldova, para.108; ACFC Second Opinion on Norway, para.127; ACFC Opinion on Poland, para.73; ACFC Opinion on Romania, para.52; ACFC Second Opinion on Romania, para.140; ACFC Second Opinion on the Russian Federation, paras.232,238; ACFC Opinion on Slovak Republic, para.41; ACFC Opinion on Spain, para.68; ACFC Second Opinion on Spain, para.137; ACFC Opinion on Sweden, para.52; ACFC Second Opinion on Sweden, para.119; ACFC Second Opinion on FORYM, para.146; ACFC Opinion on the UK, para.78; ACFC Opinion on Kosovo, paras.87-8

⁹⁵ Their choice is dependent on a whole range of considerations. See *Commentary on Education under the Framework Convention for the Protection of National Minorities* prepared by A. Spiliopoulou Åkermark, ACFC/25DOC(2006)002, at p.18.

The Advisory Committee has repeatedly invoked this article to speak out against practices of segregated education.

⁹⁶ See Committee of Ministers, Recommendation Rec.(2001)15 on *History Teaching in Twenty-first-Century Europe*, CoE, 771st meeting. See also ACFC Opinion on Azerbaijan, para.61; ACFC Opinion on Albania, para.57; ACFC Second Opinion on Austria, para.137; ACFC Opinion on Bosnia and Herzegovina, para.88; ACFC Opinion on Croatia, para.47; ACFC Second Opinion on Denmark, para.145; ACFC Second Opinion on Estonia, para.111; ACFC Opinion on Montenegro, para.77; ACFC Opinion on Slovak Republic, para.38; ACFC Opinion on Ukraine, para.58

⁹⁷ The Advisory Committee criticised the “laissez-faire” approach adopted by some regional authorities in the Russian Federation (ACFC Second Opinion on the Russian Federation, para.249) and encouraged it not to remain passive before undesirable developments and take measures to counteract them (ACFC Opinion on Hungary, para.43). See also ACFC Opinion on Bulgaria, para.101; ACFC Second Opinion on the Czech Republic, para.139; ACFC Opinion on Italy, para.53; ACFC Second Opinion on Slovenia, para. 157

⁹⁸ *Commentary on Education under the Framework Convention for the Protection of National minorities* prepared by A. Spiliopoulou Åkermark, ACFC/25DOC(2006)002, at p.18.

⁹⁹ ACFC Opinion on Norway, para.55; ACFC Opinion on Sweden, para.58; ACFC Second Opinion on Sweden, paras.134,147,150; ACFC Opinion on Ukraine, para. 68

¹⁰⁰ ACFC Second Opinion on Cyprus, para.134; ACFC Second Opinion on Switzerland, para. 152; ACFC Opinion on Lithuania, para.63; ACFC Opinion on Moldova, para.75; ACFC Second Opinion on the Russian Federation, para.217; ACFC Opinion on FORYM, para.76

¹⁰¹ ACFC Opinion on Kosovo, para.99; ACFC Second Opinion on Azerbaijan, para.133; ACFC Second Opinion on Albania, para.157; ACFC Second Opinion on Armenia, para.106; ACFC Second Opinion on Moldova, para.119, ACFC Second Opinion on Sweden, paras.135,137

¹⁰² ACFC Second Opinion on Slovenia, para.163; ACFC Second Opinion on Armenia, para.108; ACFC Opinion on the Czech Republic, para.63; ACFC Second Opinion on the Czech Republic, paras.134-5 and 152-3; ACFC Second Opinion on Germany, para.112; ACFC Second Opinion on Ireland, para.97; ACFC Opinion on Lithuania, para.65; ACFC Second Opinion on Moldova, para.120; ACFC Second Opinion on Slovenia, para.157; ACFC Second Opinion on FORYM, paras.163,170-1

¹⁰³ ACFC Second Opinion on Croatia, paras.144-5; ACFC Opinion on Armenia, para.76; ACFC Second Opinion on Italy, para.111

¹⁰⁴ ACFC Opinion on Bosnia and Herzegovina, para.85; ACFC Second Opinion on Croatia, para.132; ACFC Opinion on Estonia, para.46; ACFC Second Opinion on Estonia, para.124; ACFC Second Opinion on Norway, para.129; ACFC Opinion on Slovenia, para.62; ACFC Second Opinion on Spain, para.121; ACFC Opinion on Switzerland, para. 60; ACFC Second Opinion on FORYM, para.146; ACFC Opinion on Kosovo, para.86

Fifth, in order to guarantee access of national minorities to good quality education at all levels, as stipulated by Article 12(3), states should refrain from a uniform approach and instead be flexible in reacting adequately to the situation of particular communities and persons belonging to them.¹⁰⁵

The right of persons belonging to national minorities to establish and maintain their own educational institutions, for which they seek private as well as public assistance, is safeguarded by **Article 13**.

Setting up and managing private educational and training establishments is indeed an important alternative, or sort of ‘defence mechanism’¹⁰⁶ which national minorities can turn to if the public education system does not satisfy their needs.¹⁰⁷

On a few occasions, when the Advisory Committee has had a chance to review the implementation of the provisions under Article 13, it has referred to private minority educational and pedagogic institutions as a key source for minority language education¹⁰⁸ and in some cases the only forum for the teaching of minority languages.¹⁰⁹ It welcomed their creation¹¹⁰ and considered that in view of their importance, the establishment of such schools should be given clear legislative guarantees¹¹¹ at all stages of educational process, including at a primary level,¹¹² and may not be subject to undue restrictions.¹¹³

It should be noted, however, that the realisation of the rights under Article 13 is heavily dependent on the availability of financial resources.¹¹⁴ With regard to the latter, the Explanatory Report remains silent. As for the Advisory Committee, addressing the issue of funding of private minority language schools, it welcomed and encouraged the initiatives of the State parties to provide subsidies for such schools.¹¹⁵ At the same time, the Advisory Committee cautioned that where state support has been provided, authorities should not only ‘avoid measures which might threaten the financial sustainability of private education facilities which offer teaching in minority languages’¹¹⁶ but rather support further developments of initiatives in this sphere.¹¹⁷

Where, on the other hand, the financing of these institutions is secured by persons belonging to national minorities themselves, the Advisory Committee urged governments not to ‘limit the freedom of national minorities to seek resources to establish their own private institutions from domestic and international sources’,¹¹⁸ but ‘to ensure support for the establishment and operation of

¹⁰⁵ ACFC Opinion on Kosovo, para.98

¹⁰⁶ Thornberry, P. (2005) *Article 13* in Weller, M. (ed.) *The Rights of Minorities in Europe: A Commentary on the European Framework Convention for the Protection of National Minorities*, Oxford University Press, at p.395.

¹⁰⁷ Advisory Opinion on Minority Schools in Albania, (1935) Permanent Court of International Justice, series A/B, No.64,3, at pp.19/20.

¹⁰⁸ ACFC Second Opinion on Sweden, para.139

¹⁰⁹ ACFC Opinion on Estonia paras.49; ACFC Opinion on Italy, para.120; ACFC Opinion on Bulgaria, para.100; ACFC Opinion on Russia, para.90

¹¹⁰ ACFC Opinion on Montenegro, para.88; ACFC Opinion on Azerbaijan, para.64; ACFC Second Opinion on Austria, para.174

¹¹¹ ACFC Opinion on Serbia and Montenegro, para.93

¹¹² In its Opinion on the Former Yugoslav Republic of Macedonia the Advisory Committee has interpreted the prohibition to establish private primary schools as not compatible with Article 13 of the Framework Convention. ACFC Opinion on FORYM, para.86 and para. 174 of the 2nd opinion

¹¹³ ACFC Opinion on Bosnia and Herzegovina, para.92. The Advisory Committee also recommended a review of the impact of limitations on the establishment of private schools in minority languages on the basis of territoriality in some cantons of Switzerland (Advisory Committee Opinion on Switzerland, para.66)

¹¹⁴ On the debate surrounding the issue of the state funding in the sphere of education see Holt, S. and Packer J. (2007) *Protecting Linguistic Minorities - the Role of the OSCE* in Koenig, M., Guchteneire, Paul F. A. (eds.) *Democracy and Human Rights in Multicultural Societies*, Ashgate / UNESCO Publishing, pp.127-166, at pp.147-9

¹¹⁵ ACFC Second Opinion on Cyprus, para.125. Similar comments are given with regard to public subsidies in the following opinions: on Germany, paras.55-56, Estonia paras.49 (1st opinion) and 134 (2nd opinion), Austria paras.59-60 (1st opinion) and 151 (2nd opinion)

¹¹⁶ ACFC Second Opinion on the Russian Federation, para.242.

¹¹⁷ ACFC Opinion on Estonia, para.49; ACFC Opinion on Sweden, para.55 and ACFC Second Opinion on Sweden, para.139

¹¹⁸ ACFC Opinion on Bosnia and Herzegovina, para.91

such institutions based on clear and objective legal criteria',¹¹⁹ to ensure this support 'is coupled with adequate measures also in the public educational system'¹²⁰ and to ensure that 'budgetary restrictions do not affect minorities more than the population at large'.¹²¹

In any case, the line of state behaviour, encouraged by the Advisory Committee, is 'to maintain a dialogue' with the minority concerned in order 'to find an appropriate solution to the problem of funding its education system'.¹²²

The provisions of Article 13 complement the education principles in Articles 12 and 14, as well as the 'identity' and freedom from forced assimilation provisions of Articles 5 and 6, and the 'association' principles in Articles 7 and 8. Finally, the provision on financial obligations in the second paragraph of the article brings into play the equality and non-discrimination principles in Article 4.

As a conclusion, it is the importance of the Framework Convention as the first and as yet only legally binding multilateral document devoted to the protection of minority rights and the only one with special reference to education in and of minority languages should be stressed. The FCNM guarantees the right of persons belonging to minorities to good quality, free primary education as well as general and equal access to secondary education. It also sets standards on how such education should be shaped in terms of content as well as form in order to facilitate the development of the abilities and personality of the child, guarantee child safety and accommodate the linguistic, religious, philosophical aspirations of pupils and their parents. The provisions of the Framework Convention concerning education must also be kept in mind in all planning and action in the area of intercultural education, which has the aim of facilitating mutual understanding, contact and interaction among different groups living within a given society.

Although the right to education is a right *per se*, it is also instrumental as a precondition for the full enjoyment of many other rights, such as the right to participation, expression, association, etc. For that reason the importance of the place of the Framework Convention in the nexus of human rights provisions is crucial for guaranteeing of the full spectrum of human rights of persons belonging to national minorities.

The European Charter for Regional or Minority Languages

Designed with the aim of protecting and promoting regional and minority languages as part of Europe's cultural heritage, the Language Charter is intended to ensure that regional or minority languages are used in education. The importance of the education component of the Charter has been repeatedly emphasised:

The more aware speakers of the majority language are of their country's language diversity, and the more freely and fully information on this question circulates, the more easily mutual respect and an active, stimulating tolerance will take root. It is education above all which enables people to develop these qualities. It can institutionalise dialogue and transmit the knowledge which gives people a better understanding of linguistic and cultural diversity, helping them to see it, not as something to be feared, but as something which enriches.¹²³

¹¹⁹ ACFC Opinion on Azerbaijan, para.64 and para. 139 (2nd opinion), ACFC Second Opinion on Czech Republic, para. 156

¹²⁰ ACFC Second Opinion on Estonia, para.136

¹²¹ ACFC Second Opinion on Germany, para.129

¹²² ACFC Opinion on Germany, para.57

¹²³ Arquint, R. (1998) *Regional or Minority Languages and Education Problems in International Conference on the European Charter for Regional or Minority Languages*, International Conference, Council of Europe Publishing, pp.18-23, at p.19

In particular, under Article 8 of Part III, State Parties may undertake a variety of obligations in the field of education, ranging from making pre-school education in regional or minority languages available, to providing university and other higher education in these languages. These obligations are to be implemented:

a) *'within the territory in which such languages are used'*

This means that states must seek the level of usage of a minority language which best fits their demographic reality; the larger the number of speakers of a regional or minority language and the more linguistically homogenous the population in a region, the stronger the option that should be adopted to accommodate the linguistic and cultural needs of the population. In case the demographic situation of the territory changes, the Committee of Experts has warned about the possible negative repercussions it could have on the use of regional or minority languages in the community (due to the closing or merging of schools or the redistribution of the existing resources) and urged the authorities to ensure that such changes do not jeopardise the provision of minority language education.¹²⁴

b) *'according to the situation of each of these languages'*

This stipulation is made in order to cater for the great variety of language situations in the various European states and within each state,¹²⁵ and in order to enable the parties to make the choice of which option offered by the Charter (sub-paragraphs a-f) to accept for which language.¹²⁶

c) *'without prejudice to the teaching of the official language(s) of the State'*.

This implies that even when the number of a minority is large enough to require public education in the minority language, the state is still be obliged to provide teaching instruction in the official language. The state authorities must ensure that minority language speakers are not excluded from participating in the larger society, that any possible inequalities are avoided, and that restriction of access to resources and benefits available to the majority is prevented.¹²⁷

Article 8.1 provides a pattern of choices for education at different levels.

For pre-school education, the Article envisages the following options:

- i. 'making available' education in the relevant languages;
- ii. making available a 'substantial part' of the education in the relevant languages;
- iii. applying one of the measures in i and ii 'to those pupils whose families request and whose number is considered sufficient';
- iv. if the public authorities have no direct competence in the field, 'to favour and/or encourage the application of the measures in i to iii above'.

This general pattern is applied, with the necessary changes, to all other levels of education.¹²⁸

'To make available education' in the relevant regional or minority languages at all levels means that education in regional or minority languages must be available in the territories where these languages are used. The Language Charter does not require compulsory education in regional or minority languages for all pupils, only that it shall be made available so that all pupils can receive education in regional or minority languages if their parents should wish.¹²⁹ The Committee of Experts interpreted this undertaking as referring both to the teaching of the language, and to the teaching in the minority language, and stressed that these 'must be made available without condition to all who request it throughout the territory in which the language is used'.¹³⁰

¹²⁴ CE Report on Germany, para. 431(1st monitoring cycle) and para. 242 (2nd monitoring cycle), Hungary, para 56 (2nd monitoring cycle), Slovakia, para.186 (1st monitoring cycle). See also Recommendation RecChL (2006)1 of the Committee of Ministers to Germany, Recommendation 2

¹²⁵ Explanatory report, para.39

¹²⁶ Explanatory report, para.79

¹²⁷ Explanatory Report, paragraph 80. See also Committee of Experts Report on Slovakia, para. 59 (1st monitoring cycle).

¹²⁸ See detailed commentary for every level of education in Woehrling, J.-M. (2005) *The European Charter for Regional or Minority Languages: A Critical Commentary*, Council of Europe Publishing, pp.145-156

¹²⁹ CE Report on Spain, paras. 218,1035 (2nd monitoring cycle)

¹³⁰ CE Report on the UK, para.192 (1st monitoring cycle)

The ‘*substantial part*’ requirement means that in addition to the teaching *of* the minority language other subjects must be also taught *in* the minority language.¹³¹ The number of hours the minority language is taught must be compatible with the objective of the Charter, that is, it should be sufficient to ensure language maintenance and/or acquisition, and ‘not just to provide some basic notions of them’.¹³² Where possible, the authorities should also increase the volume of minority language teaching¹³³ and the share of subjects taught in the minority language.¹³⁴ As a matter of fact, the Committee of Experts criticised the limit of 50% set for mother-tongue teaching in a regional or minority language medium in Sweden¹³⁵ and considered that one lesson per week of minority language teaching in the Netherlands cannot be interpreted as a substantial part of education.¹³⁶ With regard to bilingual schools, the Committee of Experts stressed that the ratio of teaching in the state and minority languages should be adequate¹³⁷ in order to guarantee the bilingual language competence of minority language children.¹³⁸

The reference to *sufficient numbers* to realise a particular option ‘recognises that the public authorities cannot be required to take the measures concerned where the situation of the linguistic group makes it difficult to attain the minimum number of pupils required to form a class’,¹³⁹ but authorities should use their ‘discretion in a reasonable manner and in accordance with the spirit of the charter’.¹⁴⁰

However, ‘the normal quota required to constitute a class may be applied flexibly’.¹⁴¹ Similarly, the Committee of Experts considered that the adoption of the same numerical criteria for minority languages as for official languages does not lead to the best results and encouraged the authorities to adopt a flexible approach in implementing legal requirements.¹⁴² Where demand is growing the authorities are encouraged to take appropriate measures.¹⁴³ When the main difficulty is the lack of students, the possibility of decreasing the minimum number of pupils should be considered,¹⁴⁴ and when there is no demand at all the authorities should take a pro-active position in offering minority language education and in informing families of the possibilities which exist:

often in relation to regional or minority languages there is a need to make arrangements for the provision of education even where no demand has been made. The availability of an offering frequently stipulates a demand. In other words, if people know that it is there, they will ask for it.¹⁴⁵

Just as the Advisory Committee, the Committee of Experts under the ECRML has repeatedly pointed out the problem of the lack of awareness of the availability of minority language education on the part of minorities and lack of awareness of their obligations with regard to minority language education on the part of local self-governments and schools. The Committee of Experts has called for a more resolute and pro-active approach in solving these problems (for instance, through a public information campaign).¹⁴⁶

¹³¹ CE Report on Slovakia, para.382-4,462 (1st monitoring cycle)

¹³² CE Report on Spain, para.357(1st monitoring cycle) and Germany, para.117 (3rd monitoring cycle)

¹³³ CE Report on Austria, para.114(1st monitoring cycle) and para.103(2nd monitoring cycle)

¹³⁴ CE Report on Slovakia, para. 463 (1st monitoring cycle)

¹³⁵ CE Report on Sweden, paras. 66,178 (1st monitoring cycle)

¹³⁶ CE Report on the Netherlands, para. 61 (1st monitoring cycle), see also para.92 (3rd monitoring cycle)

¹³⁷ CE Report on Austria, para.120 (1st monitoring cycle)

¹³⁸ CE Report on Austria, para.113(2nd monitoring cycle), CE Report on Finland, paras.107-8 (3rd monitoring cycle)

¹³⁹ Explanatory Report, para.82

¹⁴⁰ Woehrling, J.-M. (2005) *The European Charter for Regional or Minority Languages: A Critical Commentary*, Council of Europe Publishing, at p.148

¹⁴¹ Explanatory Report, paragraph 82. See also CE Report on the UK, para. 421 (2nd monitoring cycle).

¹⁴² CE Report on Germany, para.432 (1st monitoring cycle)

¹⁴³ CE Report on Croatia, para. 79 (3rd monitoring cycle)

¹⁴⁴ CE Report on Finland, paras. 103,432 (2nd monitoring cycle)

¹⁴⁵ CE Report on Croatia, para. 75 (3rd monitoring cycle).

¹⁴⁶ CE Report on Croatia, paras. 71, 98 (3rd monitoring cycle), Sweden, paras.70, 181, 312(1st monitoring cycle) and paras.80-1, 227; Germany, para.146,192 (3rd monitoring cycle)

In short, what is required from the authorities is: to make the procedure of the application for minority language education transparent;¹⁴⁷ to specify the number of pupils that is considered sufficient in order to apply one of the measures under Article 8; and to create clear legal entitlements for families in all places where there are sufficient numbers for their children to receive education in or of minority languages.¹⁴⁸

For primary, secondary, technical and vocational education, point iii above is replaced with a reference to the teaching of the language(s) ‘*as an integral part of the curriculum*’,¹⁴⁹ which presupposes adopting ‘a structured approach with a view to ensuring that minority languages are systematically taught with regular school hours allocated to them’.¹⁵⁰

Changes are made to the basic scheme at secondary, technical and vocational education level, on the question of whose choice for language education should be respected; the choice of the pupils concerned is given as an alternative to parental choice, ‘where appropriate’.¹⁵¹

At university level, emphasis is placed on ‘providing facilities’ for language study. The Explanatory Report notes that in certain states where numbers may be insufficient to justify university education in a particular language, agreements on recognition of diplomas are a possible practice.¹⁵² The report does not label such arrangements as ‘good practice’, although that may be implied also on the basis of Committee of Experts evaluation reports.¹⁵³

For adult and continuing education courses should be offered mainly or wholly in the regional or minority languages under Article 8.f. Adult and continuing education may take different forms in different European countries (Sunday courses (schools) are offered in Armenia, minority language courses in Austria, evening school classes and residential courses in the UK), it is important, however, that it satisfies the needs of those concerned.¹⁵⁴

One recurring idea expressed by the Committee of Experts in their evaluation reports relates to the provision of minority language education at all levels: the continuity of minority language education at all stages of the educational process is vital for the maintenance of minority languages:

The Committee of Experts would like to recall the indispensable role played by education in language preservation and that continuity in education is of utmost importance if it is to be successful.¹⁵⁵

The Committee of Experts underlined the key role of minority language medium *pre-school* provision as often the first exposure to the minority language and ‘an essential feeder’ to minority language medium primary schools.¹⁵⁶ The Committee of Experts further observed that *secondary* education in regional or minority languages is a critical prerequisite for teacher-training for all levels¹⁵⁷ and that absence of *vocational* training ‘poses a serious problem which compounds secondary education: pupils who do not go to a secondary school will practically abandon the practice of the minority language in the context of their education’.¹⁵⁸ Furthermore, the lack of teaching in minority languages at *University* level ‘has adverse effects on the capability of the system to provide enough qualified teachers allowing the development of education’ in/of minority languages ‘at all appropriate levels. The Committee of Experts has thus concluded that ‘there

¹⁴⁷ CE Report on Croatia, para.52 (1st monitoring cycle)

¹⁴⁸ CE Report on Germany, para.475 (1st monitoring cycle)

¹⁴⁹ CE Report on Slovakia, para.382-4 (1st monitoring cycle), Hungary, para.68 (2nd monitoring cycle), Germany, para.476 (1st monitoring cycle) and paras.475,479,554 (3rd monitoring cycle). The Advisory Committee has also repeatedly invited state parties to fully integrate minority language teaching into regular school curriculum. See, for example, ACFC Opinion on Serbia and Montenegro, para. 97,98; ACFC Opinion on Lithuania, para.69, ACFC Opinion on Kosovo, para.104; ACFC Second Opinion on Cyprus, para.121

¹⁵⁰ CE Report on Germany, paras.402, 405, 473, 477, 680, 683(2nd monitoring cycle)

¹⁵¹ Explanatory Report, paragraph 83

¹⁵² Explanatory Report, paragraph 85

¹⁵³ See, for example, CE Report on Slovenia, paras.103-4,177, Hungary, para.41 (1st monitoring cycle)

¹⁵⁴ CE Report on Armenia, para.77, Austria, paras.133-4, the UK, para.35 (1st monitoring cycle)

¹⁵⁵ CE Report on Slovenia, para.96

¹⁵⁶ CE Report on the UK, para.291(2nd monitoring cycle)

¹⁵⁷ CE Report on Sweden, para.89(2nd monitoring cycle)

¹⁵⁸ CE Report on Hungary, para.66(2nd monitoring cycle)

appears to be a vicious circle which must be interrupted by rapidly taking the appropriate measures at all levels'.¹⁵⁹

Article 8.1.g envisages an option that stands alone, by which parties undertake 'to make arrangements to ensure the teaching of the history and the culture which is reflected by the regional or minority language'. The Explanatory Report comments that

These[regional or minority]languages are often related to a separate history and specific traditions. This history and regional or minority culture constitutes a component of Europe's heritage. It is accordingly desirable that non-speakers of the languages concerned should have access to it too'.¹⁶⁰

It is also viewed as an important part of the awareness-raising endeavour regarding the majority language speaking population, especially when prejudices vis-à-vis minority speakers remain strong.¹⁶¹

Thus, the teaching of the history and culture of the minority language concerns not only education for pupils using the regional or minority languages spoken in the relevant territory but also education for non-speakers about the specific history and traditions of those languages. This normally entails 'a strong structured commitment'¹⁶² to include elements of the history and culture which is reflected by the regional or minority languages in the national curriculum, or at least in the curriculum for majority language speaking pupils within the territories concerned.¹⁶³ This also requires states to ensure that the teaching of minority history and culture is systematic, when necessary through measures such as clear guidelines for the implementation of the relevant sections of school curricula, the inclusion of this aspect in the monitoring by supervisory bodies, as well as an increased attention to this issue in the context of teaching materials and mainstream teacher training.¹⁶⁴

The realisation of the commitments under Article 8.1 is dependent on the availability of qualified teachers,¹⁶⁵ and teaching materials.¹⁶⁶ It is also linked to the need for teacher training by Article 8.1.h. The Committee of Experts has invited the parties to intensify their efforts in teacher training oriented towards minority language education, by developing a stable, comprehensive scheme of teacher training institutions which provide education in minority languages with sufficient capacity to meet demands, as well as by upgrading the quality of such training,¹⁶⁷ creating incentives for students in teacher training to opt for minority languages, creating mechanisms which secure their

¹⁵⁹ CE on Slovakia, para.59(1st monitoring cycle)). See also CE Report on Germany, para.429 (1st monitoring cycle), the Netherlands, para. 64-5 (1st monitoring cycle) and para. 95 (2nd monitoring cycle), the UK, para. 110 (1st monitoring cycle)

¹⁶⁰ Explanatory Report, paragraph 86. It is also viewed as an important part of the awareness-raising endeavour regarding the majority language speaking population, especially when prejudices vis-à-vis minority speakers remain strong.

¹⁶¹ CE Report on Slovakia, para.304 (1st monitoring cycle)

¹⁶² CE Report on Sweden, paras.90, 203 (1st monitoring cycle)

¹⁶³ See CE Report on Austria, para.136 (1st monitoring cycle); Finland, para.110 (2nd monitoring cycle); Norway, para. 64 (1st monitoring cycle) and para. 100 (2nd monitoring cycle); Slovakia, paras.196, 303,545,611(1st monitoring cycle); Croatia, para.100 (2nd monitoring cycle), Spain, paras. 345,752,884 (1st monitoring cycle), Spain, para. 373 (2nd monitoring cycle).

¹⁶⁴ CE Report on Denmark, para.65 (2nd monitoring cycle)

¹⁶⁵ Similarly to the Advisory Committee, the Committee of Experts indicated on many occasions that lack of teachers (or their poor qualifications) creates difficulties for the provision of education in/of minority languages. See Committee of Experts Reports on Serbia, para.82 (1st monitoring cycle), Armenia, paras. 55,58,62,65(1st monitoring cycle), Finland, para.141 (1st monitoring cycle), and para.101 (2nd monitoring cycle), Germany, paras.180,428,437 (1st monitoring cycle), paras.90,170,262 (2nd monitoring cycle), paras. 194,199 (3rd monitoring cycle), Hungary, para.39 (1st monitoring cycle), the Netherlands, paras. 86, 92, 113(2nd monitoring cycle) and para.87(3rd monitoring cycle), Serbia, paras.80-2 (1st monitoring cycle), Slovakia, paras.305-6 (1st monitoring cycle), Sweden, para.97 (1st monitoring cycle), paras.96 (2nd monitoring cycle)

¹⁶⁶ Just as the lack of teachers, the shortage of teaching materials renders the implementation of the provisions of Article 8 particularly difficult. See CE Report on Finland, para.101 (2nd monitoring cycle), Netherlands, para. 70 (1st monitoring cycle), Serbia, para.82 (1st monitoring cycle), Slovakia, para.305-6 (1st monitoring cycle), Sweden, paras.75,191 (1st monitoring cycle) and paras.82, 228, 304 (2nd monitoring cycle).

¹⁶⁷ CE Report on Hungary, para. 44 (1st monitoring cycle), para.102 (3rd monitoring cycle), Finland, para. 141 (1st monitoring cycle), paras.180,189 (3rd monitoring cycle), Slovakia, para. 204 (1st monitoring cycle)

assignment in areas where there is a need for their skills¹⁶⁸ and earmarking special funds for the teacher training.¹⁶⁹

While strengthening teacher training is undoubtedly an important factor in strengthening the position of minority languages, it should not be considered in isolation from the development of teaching materials.¹⁷⁰ Here the parties are encouraged to take a systematic, strengthened approach in *their own* production of textbooks and teaching materials, specifically drafted for minority language education,¹⁷¹ or to intensify co-operation with third-party states where teaching materials for education in the regional or minority languages concerned can be produced, where necessary, investing resources with a view to achieving adequate translations of teaching materials into minority languages.¹⁷²

The various choices in Article 8.1 are also connected with the creation of a supervisory body in Article 8.1.i. The purpose of such supervisory body is to set up a monitoring mechanism, which allows the authorities and the general public to follow the situation on the ground regarding regional or minority language education and the effects of the existing protection measures. This is essential for identifying and tackling possible problems and helping the authorities to take appropriate decisions regarding further action.¹⁷³ The characteristics of such a body have been specified by the Committee of Experts as follows: a dedicated mechanism¹⁷⁴ for monitoring the measures taken and progress achieved with regard to regional or minority language education, going beyond the inspection and reporting of mainstream education,¹⁷⁵ preferably in close co-operation with representatives of language groups.¹⁷⁶ A comprehensive report, containing information on the extent and availability of minority language education together with developments in language proficiency, teacher supply and the provision of teacher materials,¹⁷⁷ would be the logically consistent and tangible conclusion of the concerted supervisory work.¹⁷⁸ The findings of such a report must be public.¹⁷⁹

Finally, Article 8.2¹⁸⁰ envisages the possibility of language teaching outside areas where a language is traditionally used 'at all the appropriate stages of education'. The provision was drafted in the

¹⁶⁸ CE Report on Germany, para. 266 (2nd monitoring cycle)

¹⁶⁹ CE Report on Germany, para. 483 (1st monitoring cycle)

¹⁷⁰ CE Report on Finland, para. 110 (2nd monitoring cycle)

¹⁷¹ CE Report on Croatia, para. 70 (2nd monitoring cycle), Armenia, paras. 54,61(1st monitoring cycle)

On a number of occasions the Committee of Experts underlined that textbooks that are originally drafted in a regional or minority language are better adapted to minority language education and may also better reflect the history and culture of that language. Whereas imported teaching materials do not always easily fit in the local curriculum. See, for example, CE Report on Serbia, para.82 (1st monitoring cycle); Croatia, paras. 68-71(2nd monitoring cycle); Sweden, paras.191,205 (1st monitoring cycle) and the UK, para. 412 (2nd monitoring cycle)

¹⁷² CE Report on Croatia, para. 71 (2nd monitoring cycle). Whereas the use of kin-state state support, virtual teaching, distant learning facilities, including digital and on-line materials have been commended by the Committee of Experts (see, for example, CE Report on Armenia, paras. 56,63 (1st monitoring cycle), Sweden, para.76(1st monitoring cycle) and paras. 92, 106 (2nd monitoring cycle), Finland, para. 102 (2nd monitoring cycle) and para. 175 (3rd monitoring cycle)), it has noted that reliance on these methods *alone* is insufficient to fulfill the provisions of Article 8 (see, for example, CE Report on Sweden, para. 92 (3rd monitoring cycle)).

¹⁷³ CE Report on Slovenia, paras. 85,146 (2nd monitoring cycle). The absence of a supervisory body makes it difficult to assess the quality of education and to control how the funding devoted to teaching in minority languages is actually spent (CE Report on Hungary, para.104 (3rd monitoring cycle)), more generally it hampers the development of the teaching of minority languages (CE Report on Germany, para. 686 (2nd monitoring cycle))

¹⁷⁴ However, it is also possible for already existing supervisory bodies to carry out these functions and be integrated into existing administrative structures. See CE Report on Germany, paras.342,617,679 (3rd monitoring cycle)

¹⁷⁵ CE Report on Hungary, para.105 (3rd monitoring cycle), Germany, paras.142,181,438 (1st monitoring cycle) and paras.142,220,343,618,680 (3rd monitoring cycle)

¹⁷⁶ CE Report on Finland, para.203(3rd monitoring cycle)

¹⁷⁷ CE Report on Germany, paras. 142,220,343,618, 680 (3rd monitoring cycle)

¹⁷⁸ CE Report on Germany, paras.143, 221,344,619,681 (3rd monitoring cycle)

¹⁷⁹ CE Report on Finland, para. 203 (3rd monitoring cycle), Slovakia, paras.205,389,548,615 (1st monitoring cycle); Slovenia, para.113 (1st monitoring cycle), Spain, para.1057 (2nd monitoring cycle); Switzerland, paras.81,198 (1st monitoring cycle); the UK, para.217 (2nd monitoring cycle), Germany, paras. 142,181,438(1st monitoring cycle), paras. 270 (2nd monitoring cycle) and paras.143,567,681 (3rd monitoring cycle), Sweden, paras.209,323 (1st monitoring cycle)

¹⁸⁰ It echoes Article 7 of the Charter

light of the modern phenomenon of social mobility.¹⁸¹ Language teaching in such a case would apply only where the numbers justified it.¹⁸²

In sum, Article 8 lists all the important areas, from pre-school and primary school, through vocational training and secondary education, up to university and adult education. With a view to meeting the great diversity of regional or minority languages in Europe, the Charter offers extremely varied possibilities from which the parties may choose. At the same time, as Arquint puts it,

The Charter does not ... provide a universal yardstick for all language communities. It contains no list of measures which can simply be ticked off in order. It insists that all educational institutions must provide opportunities to study regional or minority languages, and calls on speakers of those languages to negotiate with policy-makers on all levels. ... it also insists that the chosen solutions must be tested, subjected to ongoing evaluation, and adapted in the light of new insights and requirements. It would hardly be an exaggeration to say that the path which leads to concrete solutions is at least as important as the solutions themselves.¹⁸³

Finally, the above analysis of the monitoring practice of the Committee of Experts has identified the importance of consistent treatment of minority languages and implementation of the Language Charter. It has also shown that very often further steps and a strong will on the part of the state parties to consolidate and develop regional or minority language teaching in their regions are needed in order to progress towards 'a European space where regional or minority language education is systematically provided in a coherent fashion'.¹⁸⁴

Conclusion.

The analysis in the article shows that providing adequate education for minority groups is no longer a choice but a legal obligation for the Council of Europe's members. The ECHR, and to a greater extent, the FCNM and the ECRML outline the duty to respect the right to minority language education and to avoid measures preventing it. However, the monitoring practice of the committees of experts under the two latter documents has explicitly indicated that while the rhetorical value of many educational policies is high, the potential for implementation of such policies remains rather precarious at the level of separate nation-states. A lot of efforts are further warranted to give full effect to the entire spectrum of states' obligations under the documents. There is a further need for consistent and qualitative improvement of the system of minority language education in different European states.

¹⁸¹ Thornberry, P., Estebanez, M. (2004) *Minority Rights in Europe: A Review of the Work and Standards of the Council of Europe*, Council of Europe Publishing, p.150

¹⁸² Explanatory Report, paragraph 89. See also Arquint, R. (1998) *Regional or Minority Languages and Education Problems*, in *International Conference on the European Charter for Regional or Minority Languages 1*, Strasbourg: Council of Europe Publishing, pp.18-23, at p.19.

¹⁸³ Arquint, R. (1998) *Regional or Minority Languages and Education Problems*, in *International Conference on the European Charter for Regional or Minority Languages 1*, Strasbourg: Council of Europe Publishing, pp.18-23, at pp.21-2.

¹⁸⁴ Council of Europe, Congress of Local and Regional Authorities, Recommendation 222 (2007) *Language Education in Regional or Minority Languages*, para.4