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Effaith Siarter Ewrop dros Ieithoedd Rhanbarthol a Lleiafrifol

The Impact of the European Charter for Regional and Minority Languages

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Outline

- The essentials of the Charter
- The Charter as “legislation”
- What the Charter says about legislation
- The approach of COMEX
- Some thoughts about the UK?

Introduction

- Taking my brief literally
- Impact
- Legislation

The essentials of the Charter – 1

legal nature

- An International Treaty - the “States Party”
- “Undertakings”
- Instrument of Ratification

The essentials of the Charter – 2

Preamble

- Considering that the aim of the Council of Europe is to achieve a **greater unity between its members**, particularly for the purpose of safeguarding and realising the ideals and principles which are their common heritage;
- Considering that the protection of the historical regional or minority languages of Europe, some of which are in danger of eventual extinction, contributes to **the maintenance and development of Europe's cultural wealth and traditions**;
- Considering that **the right to use a regional or minority language in private and public life is an inalienable right** conforming to the principles embodied in the United Nations International Covenant on Civil and Political Rights, and according to the spirit of the Council of Europe Convention for the Protection of Human Rights and Fundamental Freedoms;
- Having regard to the work carried out within the CSCE and in particular to the Helsinki Final Act of 1975 and the document of the Copenhagen Meeting of 1990;
- Stressing the **value of interculturalism and multilingualism** and considering that **the protection and encouragement of regional or minority languages should not be to the detriment of the official languages and the need to learn them**;
- Realising that the protection and promotion of regional or minority languages in the different countries and regions of Europe represent an **important contribution to the building of a Europe based on the principles of democracy and cultural diversity within the framework of national sovereignty and territorial integrity**;
- Taking into consideration the specific conditions and historical traditions in the different regions of the European States,

The essentials of the Charter – 3

The principles

- Human Rights
- Civil Rights
- Consumer Rights
- Individual or group rights?
- Anti-discrimination and equality
- Promoting diversity
- Preserving heritage
- Keeping the peace

The essentials of the Charter – 4 structure

- Part II deals with Policy - applies to all Regional and Minority Languages
- Part III deals with Implementation - applies only to languages ratified by the State Party
- Part III Undertakings - the “menu” system
- Periodical reports
- COMEX
- Council of Ministers
- Recommendations

The Charter as “legislation”

- Category error?
- International instrument
- Creating obligations, but not justiciable
- No court – only COMEX – “naming and shaming” as a sanction
- A “language planning” instrument, beset by lawyers

Some issues

- Over-ratification
 - A feature in particular of many former Soviet bloc states – the concept of “National Minorities”
- Under-ratification
 - Unambitious, minimal ratification
- Territorial application
- Kin states
- Languages or dialects?
- Lesser-used official languages
- Positive discrimination

The Charter and legislation – 1

Part II Article 7

- In respect of regional or minority languages, within the territories in which such languages are used and according to the situation of each language, the Parties shall base their policies, **legislation** and practice on the following objectives and principles:
 - The objectives and principles are wide-ranging, covering general respect for RMLs and their use to specifics, particularly education
 - General obligation

The Charter and legislation – 2

Part III obligations

- Some have to do with legislation – translating of legislative texts into RMLs and eliminating discriminatory provisions from legislation
- In general, however, Part III obligations do not expressly require legislation
- The obligation on the State party is usually to bring about a particular state of affairs
- For instance, Art 8(i)(a) Primary Education:
- With regard to education, **the Parties undertake**, within the territory in which such languages are used, according to the situation of each of these languages, and without prejudice to the teaching of the official language(s) of the State: **to make available** primary education in the relevant regional or minority languages

The Charter and legislation – 3

Art 9

- Article 9 deals with Courts and judicial authorities
- The only Article which (in certain undertakings) explicitly refers to rights
- e.g. Art 9(1)(a)(ii):
 - The Parties undertake...in criminal proceedings to guarantee the accused the right to use his/her regional or minority language;
- Needs legislation to implement

The approach of COMEX - 1

- A focus on results and outcomes
- Legislation is only one of a number of ways in which these can be achieved
- But legislation will always be praised if it is positive, and encouraged
- No “one size fits all” – the situations of languages and of states parties differ widely – The “margin of appreciation”. What works in one context might not in another. cf. former Soviet bloc and other countries
- The importance of involvement and dialogue – authorities / speakers / COMEX

The approach of COMEX - 2

- Where legislation is the problem, legislation can be the only solution
- Territorial extent of RML protection in Sweden in the fields of judicial (art. 9) and administrative (art. 10) authorities for Saami, Finnish and Meänkieli confined by statute to the County of Norbotten
- This omitted the area where South Saami is spoken, and large areas where Finnish is spoken e.g. around Stockholm.
- By 4th monitoring round, following constant criticism by COMEX, Sweden amended the law so that these areas were included for article 10 protection
- Similar instances in central and eastern Europe

The approach of COMEX - 3

- Legislation alone does not guarantee outcomes. More is needed in many cases
- There are many instances where the legislation guarantees rights or outcomes, e.g. use of RML in court or with administrative authorities, the right to use RMLs in local or regional government
- But it doesn't happen – “formally fulfilled”
- The need for practical implementation measures – information sharing, encouragement, resources, recruitment policies, training, interpretation facilities etc.

The approach of COMEX - 4

- Sometimes legislation is the only answer, but it's not necessarily the easy answer
- 3rd UK report:
 - Adopt and implement a comprehensive Irish language policy, preferably through the adoption of legislation

Some thoughts about the UK - 1

- A minimal part III ratification
- Especially with regard to Irish and (in most respects other than education) Gaelic
- Ratification has happened just this side of what's already going on
- So-called Part II languages or “smaller languages”

Some thoughts about the UK - 2

- The spirit of the Charter can be more important than the letter of its law.
- The non-existent right to use Irish in Courts in Northern Ireland. Not ratified under Part III.
- But: Art 7.2 “The Parties undertake to eliminate, if they have not yet done so, any unjustified distinction, exclusion, restriction or preference relating to the use of a regional or minority language and intended to discourage or endanger the maintenance or development of it.”
- (The lawyer may say: Generalibus specialia derogant, but (s)he does not hold the moral high ground).

Some thoughts about the UK - 3

- Devolution or abrogation?
- The UK, not the devolved administrations nor Cornwall County Council, is responsible in international law for implementing the Charter
- Art. 7.3: The Parties undertake to promote, by appropriate measures, mutual understanding between all the linguistic groups of the country and in particular the inclusion of respect, understanding and tolerance in relation to regional or minority languages among the objectives of education and training provided within their countries and encouragement of the mass media to pursue the same objective.

To conclude

- COMEX likes legislation
- COMEX does not require legislation if other things work
- COMEX does require legislation where nothing else works
- COMEX is sometimes listened to by Governments
- The Charter has an impact: “You are the first people to take us seriously”