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Evaluation of Compliance with the Provisions of the European Charter for Regional or Minority Languages in the Light of the First Report of the Republic of Poland

Abstract: Poland's ratification of the European Charter for Regional or Minority Languages has imposed several obligations on the Republic of Poland. At the moment of ratification, Poland indicated which languages would be considered regional or minority, referring to the Act on National and Ethnic Minorities and Regional Language. This article outlines the mechanism for assessing Poland's compliance with the Charter and indicates which responsibilities rest with the executive power that needs to present detailed reports on the Charter's implementation to the Secretary General of the Council of Europe. The article presents the contents of the first report from 2010. It also shows the position of the Committee of Experts that initially evaluated the 2010 report, while analysing the existing normative acts in Poland in this regard to other regulations and actual practices. The activities of the Committee of Experts resulted in a report suggesting recommendations submitted to the Committee of Ministers of the Council of Europe. The Polish government referred to the Report of the Committee of Experts with its comments and objections. Based on all these documents, the Committee of Ministers of the Council of Europe formulated recommendations for Poland, fully sharing, despite the reservations of the Republic of Poland, the position of the Committee of Experts. From the content of the documents analysed in this article, it follows that the Committee of Ministers of the Council of Europe believes that Poland still has a lot of work to do in promoting awareness and tolerance of regional or minority languages. Poland also needs to improve in the field of education, relating to media, and finally in the delicate matter of communication between minorities and public authorities.

Keywords: Committee of Experts, Council of Europe, European Charter for Regional or Minority Languages, minority language, regional language

Introduction

Numerous peace agreements and other acts of international law have long addressed the problem of protecting national minorities, drawing attention from the 20th century on this occasion to issues relating to the use of languages by these minorities.¹ The work on the status of regional or minority languages in the legal system of the Council of Europe was completed with the adoption by the Committee of Ministers of the Council of Europe of the text of the Charter for Regional or Minority Languages (hereinafter: Charter) as a Convention of the Council of Europe on 25 June 1992.² The Charter's preamble states that the protection and promotion of regional or minority languages in the different countries and regions of Europe constitutes a significant contribution to building Europe based on the principles of democracy and cultural diversity within a framework of national sovereignty and territorial integrity³.

The purpose of the study was to consider to what extent the solutions presented in the Charter were reflected in the administrative actions of the Republic of Poland. The creators of the Charter were concerned that it should not become yet another well-meaning document for international law, the meaning of which will be reduced

- 1 J. Sobczak, *Europa mniejszości. Standardy prawne ochrony mniejszości narodowych i etnicznych oraz ich realizacja w polskim systemie prawnym*, (in:) M. Musiał-Karg (ed.), *'Europa XXI wieku. Perspektywy i uwarunkowania integracji europejskiej'*, Poznań 2007, pp. 167–201 (ibid. presentation of relevant literature); J. Sobczak, *Ochrona mniejszości narodowych w prawie europejskim*, (in:) W. J. Burszta, M. J. Dudziak, R. Piotrowski (eds), *'Europa – Slavia – Germania. W poszukiwaniu tożsamości'*, Warsaw/Gorzów Wielkopolski 2009, pp. 167–188; J. Sobczak, *Wokół problemu definicji mniejszości narodowych*, *'Środkowoeuropejskie Studia Polityczne'*, 2003, no. 1, pp. 25–62; A. Furier, *Wersalskie źródła międzynarodowej ochrony mniejszości narodowych*, *'Sprawy Narodowościowe – Seria Nowa'* 2001, no. 18, pp. 93–108; S. Sierpowski, *Kwestia narodowa w stosunkach międzynarodowych*, *'Sprawy Narodowościowe'* 1993, vol. II, no. 2–3, pp. 9–28; C. Mik, *Ochrona mniejszości narodowych w prawie europejskim*, *'Państwo i Prawo'* 1996, no. 3, p. 19; V. Czepek, E. Karska, *Peace Agreements as International Legal Acts Protecting National Minorities*, *'Białostockie Studia Prawnicze'* 2021, vol. 26, no. 5, pp. 75–89.
- 2 Work on the Charter began with Council of Europe Parliamentary Assembly Resolution 928 (1981). An initial draft of the Charter was presented in 1988 at the 23rd session of the Standing Conference of Local and Regional Authorities of Europe as Resolution 192. The presented text was the result of the work of the ad hoc committee of experts on regional and minority languages of Europe set up by the Committee of Ministers of the Council of Europe in its opinion No. 142 (1998) which interacted with the Standing Conference of Local and Regional Authorities of Europe.
- 3 J.M. Woehrling, *The European Charter for Regional or Minority Languages. A Critical Commentary*, Strasbourg 2005. See: P. McDermott, *Language rights and the Council of Europe: A failed response to a multilingual continent?*, *'Ethnicities'* 2017, no. 17(5), pp. 603–626.

to mere theoretical analyses among specialists. They were aiming for the Charter's provisions to create a possibility to control the compliance of the signatory states with the solutions adopted in its content. This was to be served by the control mechanism and the obligation imposed on states bound to the content of the Charter to submit reports, subsequently evaluated by the Committee of Experts. The considerations presented below aimed to show the not very formalized procedures for assessing compliance with the Charter, as well as trying to answer the question of how far the statutory solutions adopted by Poland appeared, in light of the first report, as rational and reasonable. Although the authors intend to present the full spectrum of the situation of existing regional or minority languages in Poland, unfortunately, due to the need to enclose the considerations in a reasonably sized framework, it was necessary to be limited to presenting only the first of the reports. Its content and subsequent evaluation by the entities appointed for this purpose is the starting point for further action in the area of Polish ethnic policy⁴ and, consequently, language policy⁵. The authors considered as particularly important whether the concept, adopted quite arbitrarily in the Polish Law on National and Ethnic Minorities and the Regional Language⁶, of distinguishing national, ethnic minority languages and the regional languages did not turn out to impose too great an obligation on the executive authorities, or whether it did not cause an excessive financial burden, unreasonable in relation to the expectations of minorities, which are often not very numerous.

4 Without going into a debate on ethnic politics, both those of global and regional international organizations and those of individual states, it is only appropriate to refer to the extensive literature in this regard, leaving aside the questions of the relationship between ethnic politics and geopolitics. Cf. on geopolitics K. Cordell, S. Wolff, *Ethnopolitics in Contemporary Europe*, (in:) *The Ethnopolitical Encyclopedia of Europe*, Palgrave 2004; S. Wolff, *Ethnic Conflict: A Global Perspective*, New York 2006; G. Sasse, *The Foundations of Ethnic Politics or a House Built on Sand?*, 'Nations and Nationalism' 2011, no. 4; R. Zendrowski, *Polityka etniczna – próba (re)konceptualizacji*, (in:) H. Chałupczak, R. Zendrowski, E. Pogorzała, T. Browarek (eds.), *Polityka etniczna. Teorie, koncepcje, wyzwania*, Lublin 2015, pp. 32ff. On the relationship between ethnic politics and geopolitics, see C. Jean, *Geopolityka*, Wrocław/Warsaw/Cracow 2003, pp. 31–59; P. Eberhardt, *Twórcy polskiej geopolityki*, Cracow 2006; J. Mondry, *Powrót geopolityki. Ameryka, Europa i Azja w XXI wieku*, Warsaw 2010, pp. 1–80; J. Potulski, *Wprowadzenie do geopolityki*, Gdańsk 2010, pp. 28–48.

5 On language policy, see H. Krasowska, *Language Policy*, (in:) H. Krasowska, *Języki mniejszości. Status, prestiż, dwujęzyczność*, Warsaw 2020, pp. 39–58; S. Gajda, *Program polskiej polityki językowej (rozważania wstępne)*, (in:) J. Mazur (ed.), *Polska polityka językowa na przełomie tysiącleci*, Lublin 1999, p. 38; H. Kurkowska, *Polityka językowa a zróżnicowanie społeczne współczesnej polszczyzny*, (in:) W. Lubaś (ed.), *Socjolingwistyka 1. Polityka językowa*, Katowice 1977, p. 17; N. Dołowy-Rybińska, *Języki i kultury mniejszościowe w Europie. Bretończycy, Łużyczanie, Kaszubi*, Warsaw 2011, *passim*; A. Pawłowski, *Zadania polskiej polityki językowej w Unii Europejskiej*, (in:) D. Krzyżyk, J. Warchała (eds.), *Polska polityka językowa w Unii Europejskiej*, Katowice 2008, pp. 113–147.

6 *Journal of Laws* 2017 item 823.

The issues addressed in this work required the use of several research methods that would meet the postulate of adequacy. Firstly, analysis of the texts of normative acts was used, interpreting them according to the indications contained in the concept of derivational concept in terms of M. Zieliński. This was accompanied by linguistic analysis, both in Ch. Perelman's topical-rhetorical approach, and to a somewhat lesser extent in procedural terms. In doing so, the need to draw on legal hermeneutics was not forgotten as a method of explaining the text. Among the research methods, it was also impossible to escape the descriptive method. With difficulty and hesitation, the authors resisted the temptation to use the comparative method as well as the desire to compare the assessment of the report submitted by Poland with the opinions that were formulated towards the reports of other countries. However, it was decided to indicate these positions on several issues that the writers of these words considered particularly important.

1. Ratification of the European Charter for Regional or Minority Languages by Poland

The Charter was opened for signature on 5 November 1992. It entered into force one month after its fifth ratification, on 1 March 1998. Poland ratified the Charter on 12 February 2009, effective 1 June 2009⁷. The Charter consists of a preamble and five parts. The first part formulates general provisions, which include definitions, minimum obligations of the parties ratifying the Charter, and the relationship of the Charter to existing regulations relating to minorities⁸. The second part sets out the

7 Journal of Laws 2009, No. 137, item 1121. Compare also the Government statement of 22 May 2009 on the validity of the European Charter for Regional or Minority Languages, drawn up in Strasbourg on 5 November 1992, Journal of Laws 2009, No. 137, item 1122. Consent to ratify the Charter was granted by an Act of 13 June 2008 on the ratification of the European Charter for Regional or Minority Languages, drawn up in Strasbourg on 5 November 1992, Journal of Laws 2008, No. 144, item 898. In the justification of the bill on ratification of the European Charter for Regional or Minority Languages, it was emphasized that ratification is consistent with bilateral agreements signed on behalf of the Republic of Poland with neighbouring countries and the Law on National and Ethnic Minorities and Regional Language, as well as with the applicable educational legislation. It was also noted that the Charter's provisions do not require the state that wishes to adopt it to apply the entire document. It was stressed that under Article 2 of the Charter, each state is required to apply at least 35 paragraphs or points selected from the provisions of Part III of the Charter, including at least three paragraphs from each of Articles 8 and 12 of the Charter and one from each of Articles 9, 10, 11 and 13 of the Charter. The text of the bill's justification explains in great detail and unambiguously why Poland wants to ratify the relevant articles of the Charter, and which ones it is, as it were, abandoning. Sejm, Druk Sejmowy no. 4158 of 7 June 2005, RM 10–87–05.

8 Article 4 of the Charter made it clear that nothing in the Charter will be construed as limiting or diminishing any of the rights guaranteed by the Convention on Human Rights and Fundamental Freedoms. It was also noted that the Charter's provisions would not affect any more favorable

goals that state parties to the Charter must pursue with regard to all regional or minority languages. Part III sets out measures to promote the use of regional or minority languages in public life. These measures do not have to be applied in their entirety, but according to Article 2(2) of the Charter, state parties may choose these measures but under the terms of that provision. The Charter's preamble states that the protection and promotion of regional or minority languages in the various countries and regions of Europe are an important contribution to building a Europe based on the principles of democracy and cultural diversity within the framework of national sovereignty and territorial integrity. In doing so, it emphasized that this should be done taking into account the specific conditions and historical traditions in the various regions of the European countries⁹.

While ratifying the Charter, it was declared that, according to Article 3(1), 'the Republic of Poland recognizes as regional or minority languages within the meaning of the Charter' the following languages: Belarusian, Czech, Hebrew, Yiddish, Karaim, Kashubian, Lithuanian, Lemko, German, Armenian, Roma, Russian, Slovak, Tatar, Ukrainian. It was said that Kashubian is considered a regional language, and Belarusian, Czech, Hebrew, Yiddish, Lithuanian, German, Armenian, Russian, Slovak and Ukrainian as national minority languages. Karaim, Lemko, Roma and Tatar were recognized as ethnic minority languages. The status of non-territorial languages was given to Hebrew, Yiddish, Karaite, Armenian and Romani. In addition, it was declared that Poland intends to apply the European Charter for Regional or Minority Languages under the Law of 6 January 2005 on National and Ethnic Minorities and Regional Languages¹⁰. In the following part of the statement, it was indicated which

provisions concerning the status of regional or minority languages or the legal status of individuals belonging to minorities covered by relevant international bilateral or multilateral agreements. Article 5 of the Charter also noted that nothing in the Charter shall be interpreted as providing the basis for any authority to engage in any action or activity contrary to the purposes of the UN Charter or other obligations under international law. Nor can it compromise the principle of sovereignty and territorial integrity of states. The parties were also obliged to ensure that all authorities, organizations and persons are informed of the rights and obligations established by the Charter (Article 6 of the Charter).

- 9 It is worth noting that the legal construction of the Charter does not establish any individual or group rights for people who speak regional or minority languages, but only formulates positive obligations for states to protect such languages. Thus, the Charter does not protect minorities using languages but the languages themselves. See: J. Sozanski, *Ochrona mniejszości w systemie uniwersalnym, europejskim i wspólnotowym*, Warsaw 2002, p. 100; M. Pentikainen, *Integration of minorities into society*, (in:) M. Scheinin, R. Toivanen (eds.), 'Rethinking Non-discrimination and Minority Rights', Institute for Human Rights, Åbo Akademi University, Turku 2004.
- 10 *Journal of Laws* 2017, item 823. The basis for the law was the Framework Convention for the Protection of National Minorities drawn up in Strasbourg on 1 February 1995, ratified by Poland on 10 November 2000, *Journal of Laws* 2002, No. 22, item 209. This convention was preceded by: a draft convention on the protection of minorities, developed by the European Commission for Democracy through Law (Venice Commission); Explanatory Report on the Proposal for Euro-

provisions of Part III of the Charter the Republic of Poland undertakes to apply to the listed regional or minority languages¹¹. Without going into an analysis of the content

pean Convention for the Protection of Minorities CDL91/8, Strasbourg 1991, p. 6; and the Instrument for the Protection of Minority Rights of the Central European Initiative opened for signature in Turin on 19 November 1994. J. Janusz, P. Bajda, *Ochrona mniejszości. Standardy europejskie*, Warsaw 2000, p. 61. For work on the definition of national and ethnic minorities and minority languages, see: J. Sobczak, *Europa mniejszości. Standardy prawne ochrony mniejszości narodowych i etnicznych oraz ich realizacja w polskim systemie prawnym*, (in:) M. Musiał-Karg (ed.), *Europa XXI wieku. Perspektywy i uwarunkowania integracji europejskiej*, Poznań 2007, pp. 167–201; same, *Mniejszości narodowe i wyznaniowe w polskim porządku prawnym*, (in:) J. Sobczak, A.W. Mikołajczak (eds.) with B. Hordeckiego, *Zderzenie czy dialog państw narodowych w Europie?*, Poznań 2008, pp. 9–43; same, *Ochrona mniejszości narodowych w prawie europejskim*, (in:) W.J. Burszta, M.J. Dudziak, R. Piotrowski (eds.), *‘Europa – Slavia – Germania. W poszukiwaniu tożsamości*, Warsaw/Gorzów Wielkopolski 2009, pp. 167–188; same, *Języki regionalne i etniczne a problem tożsamości narodowej*, (in:) T. Gardocka, J. Sobczak (eds.), *Prawa mniejszości narodowych*, Toruń 2010, pp. 127–174.

- 11 Such a statement causes uncertainty and rather significant confusion as to the legal status, given that the content of the statement was published in a different Journal of Laws than the text of the European Charter for Regional or Minority Languages. The content of the aforementioned Government Statement of 22 May 2009 indicates which states have already become parties to the Charter, at the same time informing about the content of the declarations they have made on the validity of specific provisions of the Charter. It was pointed out that these are in Article 8, paragraph 1, points a(i), b(i), c(i), d(iii), e(ii), g, h, i; paragraph 2; in Article 9, paragraph 2, point a; in Article 10, paragraph 2, points b, g, paragraph 5; in Art. 11(1) items a(ii), a(iii), b(ii), c(ii), d, e(i), f(ii), g; para. 2; para. 3; in Art. 12(1) items a, b, c, d, e, f, g; para. 2; para. 3; in Art. 13(1) items b, c, d; para. 2 pt. b; in Art. 14 pt. a, b. It should be noted that the Czech Republic recognized Slovak, Polish, German and Romani as minority languages on its territory. At the same time, the provisions on minorities in the Silesian-Moravian region on the territory of the districts of Frýdek-Místek and Karvina indicated in the statement of the provisions of Part III of the Charter will apply to the Polish language. It can be noted that in the Polish statement, Czech is the language to which the Charter applies without territorial restrictions. The Federal Republic of Germany, in its statement, did not indicate Polish as a minority language despite the fact that a significant group of Poles resides on its territory. It indicated that the minority languages are Danish, Upper Lusatian, Lower Lusatian, North Frisian and East Frisian, as well as Romani, German Sinti and Roma, and the regional language Lower German. Romania declared that the Charter's provisions apply to minority languages spoken on the territory of Romania, among which Polish is listed as a regional and minority language, with the territory where a regional or minority language is spoken meaning the geographic area where a regional or minority language is spoken by at least 20% of the population of that geographic area. The Slovak Republic has recognized that regional or minority languages are Bulgarian, Croatian, Czech, German, Hungarian, Polish, Roma, Ruthenian and Ukrainian. At the same time, it laid down rules for implementing the Charter's provisions. Ukraine said it wants to apply the Charter's provisions to the languages of Ukraine's ethnic minorities, namely: Belarusian, Bulgarian, Gagauz, Greek, Jewish, Crimean Tatar, Moldavian, German, Polish, Russian, Romani, Slovakian and Hungarian. From today's point of view, the statement in the Declaration 'that measures aimed at establishing Ukrainian as an official language, its development and functioning in all areas of social life on the territory of Ukraine were not taken to counteract or threaten the preservation or development of the languages to which the Charter applies...' ought to be considered important. It should be emphasized that at the time of the Government

of the Charter, as it has already been discussed,¹² it should be noted that Poland, like other states ratifying the Charter, obligated itself under Article 15 of the Charter to periodically submit to the Secretary General of the Council of Europe a report on Poland's policies implemented in accordance with Part II of the Charter (relating to the objectives and principles it pursues) and referring to measures taken to implement the provisions of Part III of the Charter (concerning the promotion of the use of regional or minority languages in public life). The reports, according to the Charter, should be made available to the public, although the manner of this release was not specified.

It should be noted that the Charter defines regional or minority languages as languages that are traditionally spoken in a specific territory of a state by citizens of that state, who form a group smaller than the rest of the population of that state, and are different from the official language or languages of that state. By the term territory where a regional or minority language is spoken, the Charter wants to understand the geographic area where the said language is the means of communication of such a number of people as to justify the adoption of the various protective and supportive measures provided for in the Charter. There are many regional languages in the territory of the states forming the Union¹³. By 'non-territorial language', the Charter wants

Statement of 22 May 2009, the Charter was not ratified by Lithuania, Latvia and Estonia. To date, 25 countries have ratified the Charter, apart from Lithuania, Latvia, Estonia and the Russian Federation. Nor has Belarus, which is the only one not a member of the Council of Europe. However, the Charter is also open to countries that are not members of the organization. It should be noted that the status of the Polish language as a minority language is of particular interest to Poland, precisely in those countries indicated above that did not ratify the Charter.

- 12 See: J. Sobczak, Europejska Karta języków regionalnych lub mniejszościowych jako instrument integracji międzynarodowej, 'Rocznik Integracji Europejskiej' 2009, no. 3, pp. 25–46; W. Sobczak, Język jako wyznacznik tożsamości narodowej w europejskim systemie prawnym, 'Studia Prawnoustrojowe' 2018, no. 42, pp. 425–435. See: J. Sozański, Ochrona mniejszości w systemie uniwersalnym, europejskim, wspólnotowym, Warsaw 2002, p. 101; A. Chrościcka, Ochrona praw mniejszości narodowych w systemie Rady Europy, 'Ius Novum' 2013, no. 4, pp. 84–103; A. Urbanik, Polska polityka etniczna lat 1989–2015 w świetle standardów prawa międzynarodowego i stopień realizacji przez Polskę postanowień głównych dokumentów Rady Europy z zakresu ochrony praw mniejszości, 'Przegląd Geopolityczny' 2020, no. 33, pp. 140–154; A. Oszmiańska-Pagett, Regional and Minority Languages, (in:) A. Wiesand, K. Chainoglou, A. Śledzińska-Simon, Y. Donders (eds.), Culture and Human Rights: The Wrocław Commentaries, Berlin 2016, pp. 255–257; A. Oszmiańska-Pagett, Escape from the Museum of Ethnography: the Right to Culture as the Core of the ECRML, 'Investigationes Linguisticae' 2018, no. 42, pp. 58–70.
- 13 The following languages have such status: in Spain, Catalan, Galician, Basque; in France, Champagne, Provençal, Alsatian and Breton; in Germany, plattdeutsch, or Lower German or Lower Saxon, which is spoken in northern Germany in the states of Brandenburg, Mecklenburg-Vorpommern, Lower Saxony, Saxony-Anhalt, Schleswig-Holstein, Bremen and in Hamburg, Mista on the rights of a federal state; it is also in use in the Kingdom of the Netherlands. Lower Lusatian and Upper Lusatian, which are West Slavic languages in danger of extinction, are sometimes considered regional languages. Also Walloon, Lëtzebuergesch, Frisian, Faroese, Sardinian, Ligurian,

to mean languages spoken by citizens of a specific state that differ from the language or languages spoken by the rest of the population of that state but which, although traditionally spoken in the territory of such state, cannot be identified with a specific area¹⁴.

The Polish legislator faced the need to define the terms ‘national minority’ and ‘ethnic minority’, as well as ‘regional language’ when working on the law. The original text did not distinguish between the terms ‘national minority’ and ‘ethnic minority’, attempting to define these terms only in the justification of the draft. Defining the term ‘national minority’ posed great difficulties. Draft Article 2 of the law formulated a descriptive definition of a national or ethnic minority, stating: ‘A national or ethnic minority, hereinafter referred to as a “minority”, shall mean a group of citizens of the Republic of Poland with a distinct origin traditionally residing on the territory of

Sami, Roma and Rhaeto-Romance, spoken in the Italian city of Udine and the Alpine areas of Italy and Switzerland are considered regional languages. See: K. Karasiewicz, Komentarz do art. 290, (in: A. Wróbel (ed.), *Traktat Ustanawiający Wspólnotę Europejską*. Komentarz, Warsaw 2010, p. 893. Rhaeto-Romance is also one of the official languages of Switzerland, which, as you know, is not part of the European Union. It has three dialects: Romansh (in Switzerland, mainly in the canton of Grisons), Ladin (Italy, central Dolomites and South Tyrol, province of Belluno), and Friulian or Friulian (Italy, an autonomous region of Friuli – Venezia Giulia) sometimes treated as separate standard languages, i.e. adopted by society for official communication, having a uniform orography and linguistic norms. See: E. Finegan, *Language: Its Structure and Use*, Boston 2008, <http://staffnew.uny.ac.id/upload/132107096/pendidikan/Book+one+for+Int.pdf> (30.10.2018).

- 14 In Polish practice, in the course of work on the Law on National and Ethnic Minorities and the Regional Language, the problem of recognizing the Silesian language as a regional language arose. J. Miodek, referring to this issue in his opinion on the draft law on national and ethnic minorities and regional language, as well as some other laws (1 October 2012, The Bureau of Research. Commissioned opinion), came to the conviction that the speech of Silesians does not differ from the official Polish language. It is only its regional variant or dialect. He added that the concept of ‘regional language’ does not function in the conceptual area of linguistics. A similar position seems to be taken by B. Wyderka in his opinion of 30 April 2011 on the parliamentary bill on national and ethnic minorities and regional language, as well as some other laws (Print No. 3835, The Bureau of Research. Commissioned opinion). B. Wyderka stated that the Silesian dialect belongs to the group of dialects of the Polish language (p. 4). He also added that a related Polish West Slavic language is emerging. This position is also shared by B. Cząstka-Szymon in her opinion of 5 October 2012 on the draft amendment to the Law on National and Ethnic Minorities and Regional Language and Some Other Laws (The Bureau of Research. Commissioned opinion), stating that the Silesian dialect is a Polish dialect and not a regional language (p. 14 of the opinion). A similar position was presented by A. Markowski in his opinion of 1 October 2012 on the draft law on national and ethnic minorities and regional language and some other laws (Print No. 567, pp. 6–8) and F.A. Marek in his opinion of 1 October 2012 on proposed amendments to the Law on National and Ethnic Minorities and Regional Language and Some Other Laws (The Bureau of Research. Commissioned opinion). A different position is presented by J. Tambor in his opinion of 3 May 2011 on the parliamentary bill on amendments to the Law on National and Ethnic Minorities and Regional Language and Some Other Laws (The Bureau of Research. Commissioned opinion, p. 13), recognizing that ‘Silesian’ has fully deserved the status of a regional language.

the Republic of Poland, remaining in the minority concerning the rest of the citizens characterized by a desire to preserve their language, customs, traditions, culture, religion or national or ethnic consciousness.’

In the course of the work, however, it was noted that this kind of framing is highly unsatisfactory and that the mere declaration of members of a collective is insufficient for it to become a national or ethnic minority. It was noted that the condition for the existence of such a group, in addition to the declaration of its members, is the simultaneous recognition of distinctiveness by other collectivities¹⁵. It was emphasized that self-identification always takes place concerning other groups, and that group distinctiveness can be perceived in such a context. In other words, the subjective declaration of subjectivity to a particular nationality group presupposes a prior social acceptance of the existence of such a group¹⁶.

Under Article 8(1)(i) of the Charter, the states acceding to the European Charter for Regional or Minority Languages undertook to establish a supervisory body or bodies responsible for monitoring the measures taken and the progress in the introduction or development of the teaching of regional or minority languages, and for drawing up periodic reports containing conclusions on the work carried out, which will be made public¹⁷.

15 The Supreme Court held that the registration of the association ‘Union of People of Silesian Nationality’ was inadmissible and emphasized that a national minority can exist only as a national group formed in the historical process and socially accepted. See Supreme Court’s decision of 18 March 1998, I PKN 4/98, OSN IAP and US, 1999, pos. 170. The European Court of Human Rights, while recognizing the complaint against the Supreme Court’s decision, did not go into the issue of the definition of national and ethnic minorities. It only stated that such a definition would be difficult to define, as it was not defined in any document of international law, including the Framework Convention of the Council of Europe. It found no violation of the law by refusing to register the association. As a result, the refusal to register was deemed necessary in a democratic society in light of Article 11(2), concluding that there was no violation of the European Convention on Human Rights and Fundamental Freedoms. See *Gorzelik and others v. Poland* – judgment of 17 February 2004, Application no. 44158/98, cf. *New European Court of Human Rights*. M.A. Nowicki, *Nowy Europejski Trybunał Praw Człowieka. Wybór orzeczeń 1999 – 2004*, Zakamycze 2005, pp. 1159–1168.

16 B. Wójtowicz, *Opinia projektu ustawy o mniejszościach narodowych i etnicznych w RP (druk 223) a sytuacji konfliktogenne*, Biuro Studiów i Ekspertyz, Warsaw, 8 lipca 2002 r., p. 5.

17 The obligations assumed by the state parties to the Charter were analysed by W. Sobczak, *Język jako wyznacznik tożsamości narodowej w europejskim systemie prawnym*, ‘*Studia Prawno-ustrojowe*’ 2018, no. 42, pp. 425–435; see: J. Sobczak, *Europejska Karta języków regionalnych lub mniejszościowych jako instrument integracji międzynarodowej*, ‘*Rocznik Integracji Europejskiej*’ 2009, no. 3, pp. 25–46.

2. Explanatory Report

The Charter is accompanied by a very comprehensive and detailed ‘Explanatory Report’¹⁸ that outlines the circumstances under which the Charter was created and then explains its purposes¹⁹. The report also emphasizes that its provisions do not apply to the new, often non-European languages that have emerged as a result of recent economic migration flows. Such languages deserve to be treated separately with a different legal tool. The Charter was created to protect and promote regional or minority languages as an endangered element of European cultural heritage. For this reason, the Charter contains not only non-discrimination clauses against languages but also enumerates measures for their active support, ensuring the use of these languages in education and the media, as well as in administration, the judiciary, economic and social life and culture. The Charter does not protect linguistic minorities and does not provide any individual or collective rights for users of regional or minority languages.

It was argued that although the Charter respects the principles of national independence and territorial integrity, it does not undermine any political or institutional order and requires each state to consider cultural and social realities. It was noted that while presenting the draft Charter, the problem of nations striving for independence or struggling to change their borders was not taken into consideration. Furthermore, it merely wanted to alleviate the problems of minorities speaking a regional or minority language so that they could feel at ease in the state in which they found themselves as a result of a confluence of historical events. It does not address the relationship between official and regional or minority languages, consciously representing an intercultural and multilingual attitude.

The Explanatory Report goes on to explain what the Charter means by language, noting that it does not define the term linguistic minorities because the Charter was not created to define the ethnic or cultural rights of minorities but to protect and promote regional or minority languages. It was argued that the adjective ‘regional’ refers to languages spoken in a small part of a country’s territory, where they are spoken by the majority of citizens. The phrase ‘minority’ refers to languages spoken by people who do not reside in dense concentrations or spoken by a group of people who, although concentrated in a part of the State’s territory, is numerically smaller than

18 Explanatory Report on the European Charter for Regional or Minority Languages, <http://mniejszosci.narodowe.mswia.gov.pl/download/86/13147/RaportwyjasniajacydoEuropejskiejkartyjezykowregionalnychlubmniejszosciowych.pdf> (25.06.2022).

19 It was pointed out that the Charter aimed to achieve greater unity among its members in promoting their common heritage, arguing that Europe’s cultural identity cannot be built based on linguistic standardization. The normative acts of international law referred to in the Charter were recalled.

the population in the region that speaks the state language²⁰. The concept behind the construction of the Charter text is explained in great detail, explaining the principles that arise from Parts II and III of the Charter in particular²¹.

Further, the procedure for implementing the principles set out in the Charter was described, explaining that states are not obliged to accept Parts II and III of the Charter simultaneously. It was also indicated how the Charter's provisions and national laws or international agreements establishing the legal status of linguistic minorities can be applied jointly. Finally, it was emphasized that the obligations to provide information will not be fully effective if the authorities and organizations concerned are not aware of the obligations arising from this document.

The concept of regional or minority language territory in the context of Article 7(1)(b) of the Charter and the issue of non-territorial languages were defined. Yiddish and Romani were identified as examples of such languages. It was noted that only a part of the Charter's provisions can be applied to languages without a territorial basis. It was stressed that state parties to the Charter have no discretion in granting or denying the status of regional or minority languages guaranteed by Part II of the Charter, but they can decide whether a language spoken on a particular territory by a group of citizens constitutes a regional or minority language within the meaning of the Charter. states may also declare that a regional or minority language existing in some of their territories will not enjoy the benefits of Part III of the Charter, but the reasons for such exclusion must be consistent with the spirit and principles of the Charter.

Attention was given to promotional activities for languages, guarantees for the teaching and learning of regional or minority languages, facilities to allow people who do not speak regional or minority languages to study and learn them, contacts between groups using regional or minority languages, the need to eliminate discrimination, and the need to create institutions representing the interests of regional or minority languages. The problem of applying the Charter's principles to non-territorial languages was also considered, as well as the measures to promote the use of regional or minority languages in public life, including education and higher education, as well as the use of regional or minority languages by the judiciary, administrative

20 The Explanatory Report points out that the Charter does not indicate which European languages correspond to the concept of regional or minority languages, as set out in Article 1.

21 The Explanatory Report explains that the Charter gives states the option of choosing different variants of the provisions by which they will wish to be bound. The purpose of such an arrangement was to increase the flexibility of the Charter, which should take into account the disparity in the actual situation of regional or minority languages in different states. The role of the states, however, is not to make arbitrary choices between the alternatives but to seek, for each regional or minority language, the solutions and formulations which best define the characteristics and state of development of that language. The Report explains which indicators should guide the states (point 46 of the Report).

bodies, public services and the media. The functioning of these languages in cultural activities and economic and social life was also addressed. The issue of cross-border exchange and the important issue of applying the Charter and monitoring its observance was discussed, emphasizing that this is not a quasi-judicial procedure.

3. The Mechanism for Monitoring the Application of the Charter

The Charter also established a monitoring mechanism to assess the application of the Charter by states that ratified it. Provision was made for the introduction of recommendations to improve the laws, policies and practices applied by those states. The Committee of Experts, established under Article 17 of the Charter, is a key element of this procedure. It is composed of one representative of each signatory to the Charter. It is appointed for a period of six years, with the right of reappointment, by the Committee of Ministers from a list proposed by the state party to the Charter²². The Committee's main purpose is to examine the current situation of regional or minority languages in the various states and to report to the Committee of Ministers to assess the state's compliance with its obligations. To facilitate this work, the Committee of Ministers defined, regarding Article 15(1) of the Charter, the form of the reports.

The Committee's task is to evaluate existing normative acts, other regulations and actual practices. After a preliminary analysis of the reports, the Committee of Experts addresses questions to the countries concerned on issues that it considers unclear or insufficiently addressed in the report. This written procedure is followed by a visit of the Committee to the respective countries, during which the delegation is expected to meet with bodies and associations whose work is related to the Charter issue and to hold consultations with the relevant authorities. At the end of this process, the Committee of Experts issues its report, which it submits to the Committee of Ministers with suggestions for recommendations.

To date, the Republic of Poland submitted to the Secretary General of the Council of Europe three reports on the implementation of the Charter of 2010, 2014 and 2019. These documents are accompanied by annexes. The overall assessment of the state's activities is formulated by proposals for recommendations of the Committee of Experts, presented to the Committee of Ministers of the Council of Europe.

22 The Committee of Experts operates according to its own rules of procedure, and its secretariat is provided by the Secretary of the Council of Europe (Article 17(3) of the Charter).

4. First Report of the Republic of Poland on the Implementation of the Charter

The document, drawn up in 2010, consists of three parts. It is preceded by an introduction, where the normative basis for drawing up the Report and its content are presented. Part I discusses the issue of the Charter's implementation into the Polish legal system. It deals with territorial languages in the Republic of Poland, the number of speakers of minority and regional languages, the organizations and entities supporting the protection and development of minority and regional languages²³, the scope of consultations conducted during the preparation of the Report²⁴, and finally measures for the dissemination of information about the rights and obligations established by the Charter. Part II sets out the objectives and principles pursued under Article 2(1) of the Charter, while the following Part III presents measures to promote the use of regional or minority languages in public life, in line with the obligations assumed in Article 2(2) of the Charter. In discussing territorial languages, the Report indicates the area of the Republic in which each language is spoken and how many people, based on the 2002 census, declare that they speak such languages.

The most interesting part of the Report seems to be Part II, which presents the attitude of public authorities towards regional or minority languages with a brief reference to historical conditions²⁵. Regarding the legal conditions in the field of language, Articles 27 and 35 of the Constitution of the Republic of Poland²⁶ and the relevant laws and regulations contained in the treaties with neighbouring countries

23 What is striking here is the large group of organizations that support the development of the German language, as well as the numerous organizations that promote the culture and language of the Roma. The omission of the Muslim Religious Union here is surprising.

24 It was indicated that during the preparation of the Report, its content was consulted with the Joint Commission of the Government and National and Ethnic Minorities, which is the opinion-advisory body of the Prime Minister. The Commission was established based on Article 23.1 of the Act on National and Ethnic Minorities and Regional Language as an opinion-giving body of the Prime Minister, i.e. Journal of Laws 2017, item 823. The following section of the Report introduces the composition of the Commission and discusses in more detail the scope of its activities.

25 It was emphasized that while constructing the new administrative division, the nationality structure was taken into account by creating the Sejny county, inhabited mostly by Lithuanian language speakers, and by forming the Opolskie province, inhabited largely by the German minority.

26 Article 2 point 2 of the Act of 7 October 1999 on the Polish language (consolidated text Journal of Laws 2021, item 672 and Article 8 points 1 and 2 in connection with Article 19 item 2 of the Act of 6 January 2005 on national and ethnic minorities and regional language, uniform text Journal of Laws 2017, item 823. On the legal status of the Polish language in the Republic see: M. Bartoszewicz, *Język polski i jego ochrona prawna w porządku konstytucyjnym Rzeczypospolitej Polskiej*, Warsaw 2017, passim; P. Czarnecki, *Ustawa o języku polskim. Komentarz*, Warsaw 2014, passim; A. Błaś, *Niektóre aspekty ochrony prawnej języka polskiego*, 'Acta Universitatis Wratislaviensis. Przegląd Prawa i Administracji' vol. XLVII, Warsaw 2001, pp. 13–21; K. Complak, *Wolność języka zamiast języka urzędowego*, (in:) R. Balicki, M. Masternak-Kubiak (eds), *Księga jubileuszowa dedykowana Profesorowi Januszowi Trzcinińskiemu*, Warsaw 2012, pp. 595–611.

were presented. Measures for promoting regional or minority languages in public life were shown, discussing the provisions of Article 13 of the Act of 7 September 1991 on the Education System²⁷ and the Regulation of the Minister of National Education of 14 November 2007 on the conditions and manners of performing by public kindergartens, schools and institutions the tasks enabling students belonging to national and ethnic minorities and communities speaking a regional language to maintain their sense of national, ethnic and linguistic identity²⁸. The Report emphasizes that learning a minority or regional language is organized by the headmaster of a kindergarten or public school voluntarily, at the request of parents or legal guardians of the student²⁹.

Under the Regulation of the Minister of National Education of 30 April 2007 on the conditions and manner of qualifying and promoting pupils and listeners and conducting tests and examinations at public schools³⁰, pupils can take matriculation exams in a minority language and post-primary school tests and exams in a minority or regional language. The establishment of a group of experts on the Romani language in 2008 resulted in the standardization of the notation of this language, taking into account dialectal differences. Data on teaching minority and ethnic languages and regional languages at different stages of education were presented in tables. The strategy for the Lithuanian minority's education development in Poland³¹, adopted in

27 Journal of Laws 2021, item 1915

28 Journal of Laws 2007, No. 214, item 1579. This regulation is no longer in force. It was first replaced by the Ordinance of 18 August 2017, Journal of Laws 2017, item 1627 with an identical title. Another regulation was that of the Minister of Education and Science on 4 February 2022, partially amending the existing regulation in §8(3), reducing the hours of German minority language instruction to one hour per week. Teaching of the language of other national minorities, ethnic minorities and regional languages in the form of additional study of the language of these minorities is still three hours per week. The regulation came into effect on 1 September 2022. The change introduced by the regulation is undoubtedly discriminatory against the German minority in relation to other minorities.

29 When creating a class in which a native language other than Polish is taught, 7 pupils at the primary level and 14 pupils at the secondary level are sufficient. In kindergarten, at the level of a given division, seven children are sufficient.

30 Journal of Laws 2007, No. 83, item 562. This regulation is no longer in force. The Regulation of the Minister of National Education of 10 June 2015 on detailed conditions and manner of assessing, classifying and promoting students and listeners in public schools, currently in force in this respect, Journal of Laws 2015, item 843, does not regulate the mentioned issue.

31 See: Strategy for development of Lithuanian minority education in Poland, Interministerial Team for National Minorities, Ministry of National Education and Sport, Warsaw, December 2001, <http://mniejszosci.narodowe.mswia.gov.pl/download/86/12957/mnstrategia.pdf>(25.06.2022). After the work related to the First Report on the implementation of the Charter was completed, a working team for the education of the Lithuanian minority in Poland was established. The first meeting of this team took place in Sejny on 20 April 2012, http://mniejszosci.narodowe.mswia.gov.pl/download/86/13480/ProtokolzIposiedzeniaZespolurobczegodos_oswiatymniejszoscilite-

2002, and a similar strategy for the German minority³² are also mentioned. The possibility of studying minority languages in Poland at the university level is discussed.

It was pointed out that the Law on National and Ethnic Minorities and Regional Language provides for the possibility of using before the municipal authorities, in addition to the official language, national and ethnic minority languages and regional languages as auxiliary languages³³. It is emphasized that the minority language may be used while dealing with the municipal authorities. Furthermore, it should be noted that the auxiliary language may be used only in the context of the government office with persons belonging to the minority. The law provides for the possibility of introducing additional traditional names of streets, places and physiographic objects in the languages of national and ethnic minorities and the regional language of the territory of the municipality³⁴.

Polish citizens belonging to national and ethnic minorities, under Polish legislation, may change their name and surname to a version that is consistent with the sound and spelling of their native language in an administrative procedure, based on the Act of 17 October 2008 on the Change of Name and Surname³⁵. It was indicated

wskiejwPolsceSejny.pdf (25.06.2022), and the next on 9 November 2012, <http://mniejszosci.narodowe.mswia.gov.pl/download/86/13481/ProtokolzIIposiedzenia.pdf> (25.06.2022).

32 See Strategy for the Development of German Minority Education in Poland, <http://mniejszosci.narodowe.mswia.gov.pl/download/86/12965/2007.pdf> (25.06.2022).

33 Under Article 9 of the above-mentioned Act, the auxiliary language may be used only in communes in which the number of inhabitants belonging to minorities or speaking a regional language is not less than 20% of the total number of inhabitants of the commune, and the commune itself has been entered into the Official Register of Communes in which the auxiliary language is used. In 2010, there were 30 such communes, including six in Podlaskie Voivodeship (in one commune the auxiliary language was Lithuanian, in the remaining five Belarusian). There are also two communes in Pomorskie Voivodeship, where Kashubian is the auxiliary language, and 22 communes in Opolskie Voivodeship, where German is the auxiliary language. It is possible to introduce the auxiliary language in 51 counties, including 13 in Podlaskie Voivodeship, 27 in Opolskie Voivodeship, ten in Pomorskie Voivodeship, and one in Śląskie Voivodeship.

34 Additional place names may be introduced in a municipality under two circumstances: if the last census has shown that the officially established number of inhabitants of the municipality declaring their affiliation to a minority or use of a regional language is not less than 20%, or if this requirement has not been met, but there are places within the municipality, the majority of whose inhabitants voted in favour of introducing additional place names in the minority or regional language. The additional place names may not refer to the names from the period from 1933 to 1945 given by the authorities of the Third German Reich or the USSR. Applications for determining the additional name of a locality or physiographic object shall be reviewed by the provincial governor and the Names of Places and Physiographic Objects Commission. The procedure for giving opinions on the names of places and physiographic objects by the Commission is specified in the Act of 29 August 2003 on official names of places and physiographic objects, consolidated text Journal of Laws 2019, item 1443.

35 Journal of Laws 2021, item 1988. This right is guaranteed by Articles 7(1) and (2) of the Law on National and Ethnic Minorities and Regional Language. Names and surnames of persons belonging to minorities, written in an alphabet other than Latin, are subject to transliteration.

in the Report that television broadcasts in national and ethnic minority languages and regional languages are broadcast on Polish territory, financed by the National Broadcasting Council³⁶. It was emphasized that there are also radio broadcasts in minority languages by public and non-public stations³⁷. Titles of magazines published in national and ethnic minority languages and regional languages were listed³⁸.

The activities of public authorities towards national and ethnic minorities in the field of culture were reported in great detail. General reference was made to issues of economic and social life and transborder exchange. In the final part of the Report, agreements concluded by Poland with Belarus, the Czech Republic, Slovakia, Lithuania, Germany, Russia and Ukraine are presented. Five appendices supplement the contents of the Report³⁹.

5. Position of the Committee of Experts on the First Report

The Committee of Experts has formulated its position on the first Report in three chapters. The first contains general information presenting the work of the Committee of Experts, the situation of regional and minority languages, and general issues regarding the evaluation of the Charter's application in Poland⁴⁰. The second chapter contains the evaluations of the Committee of Experts concerning Parts II and III of the Charter, while this evaluation for Part III of the Charter deals separately with the situation of minority and regional languages in Poland, except for Armenian, Czech, Karaite, Romani, Russian, Slovak, Tatar and Yiddish, whose comments were collected together. The third, relatively short chapter contains the experts' conclusions. The document is furnished with two annexes, the first relating to the instrument of ratification and the second to the observations of the Polish authorities.

The Report notes that representatives of associations from Upper Silesia informed the Committee of Experts that they demanded the Silesian language be rec-

36 These programmes are broadcast in Belarusian, Kashubian, Lithuanian, Lemko, German, Romani, Russian and Ukrainian languages.

37 The Report indicates the activity of the non-public radio station 'Kaszëbë' and also non-public stations: Belarusian Radio Racja, Radio Vanessa and Radio Park FM.

38 A cursory glance at this list shows that it is incomplete because the 'Tatar Review' and the 'Tatar Yearbook' are not indicated, even if only concerning the Tatar minority.

39 The first one indicates the minority languages taught at universities and colleges; the second contains a list of municipalities where the minority language is used as an auxiliary language; the third is a list of municipalities where names in the minority language are used; the fourth is a list of selected legal provisions from the interstate agreements concluded by Poland with Belarus, the Czech Republic, Slovakia, Lithuania, Russia, Ukraine and Germany; the fifth contains comments submitted to the Report, which have not been included in the main text.

40 Report of the Charter Expert Committee, 7 December 2011, ECRML (2011)5, http://mniejszosci.narodowe.msia.gov.pl/download/86/13154/Raport_Komitetu_Ekspertow_ds__Karty.pdf (25.05.2022).

ognized as one of the regional languages, pointing out that in the opinion of the Polish authorities, this language was a dialect of the Polish language. It was stressed that between 1945 and 1989 the use and teaching of the German language were prohibited in Poland. This was followed by the removal of traces of this language from public places and an official refusal to recognize the rights of the German minority in Poland. As far as Hebrew is concerned, it was emphasized that in Poland mainly the New Hebrew language is used, which differs significantly from classical Hebrew. The Committee of Experts did not know whether Hebrew was used in Poland for everyday communication. After the Polish authorities clarified these issues, the Committee of Experts promised to return to this matter.

The Kashubian language is classified as a Slavic language, and it is emphasized that Polish legislation does not recognize Kashubians as an ethnic minority, but Kashubian is defined as a regional language. It was argued that only a small part of Karaites and a slightly larger group of Tatars use their native language in domestic contact. Poland's decision to apply Part III of the Charter to Armenian, Czech, Hebrew, Karaite, Romani, Russian, Slovak, Tatar and Yiddish, given the small number of speakers of these languages, is a very ambitious step and entails great responsibility. It was also stressed that the legal obligations accepted by Poland must be put into practice, taking into account the situation of each of the languages.

It was noted that the Polish authorities should develop flexible and innovative measures to implement the provisions of the Charter, adopt a medium-term strategy for the implementation of the provisions of the Charter concerning each language⁴¹, and define the territory that constitutes the historical basis for individual languages. Poland should cooperate with other countries by exchanging teachers and journalists, importing textbooks and retransmitting radio and television broadcasts. The Committee of Experts referred to the Karaim minority with some reserve, demanding that the Polish authorities explain whether this minority was interested in the restitution of the Karaim language as a living language. It was indicated that in this respect, one should not rely on the results of censuses.

It was noted during the visit of the Committee of Experts to Poland that no initiatives were being taken to raise public awareness of minorities and regional or minority languages. These tasks should be undertaken by the media, as well as the education system. The Committee noted the destruction of plaques with place names in German or bilingual in villages inhabited by Lemkos. It was concluded that the Polish

41 Immediately after the preparation of the First Report, the following were prepared: Education development strategy for the Ukrainian minority in Poland, Warsaw, 28 June 2011, <http://mniejszosci.narodowe.mswia.gov.pl/download/86/12966/StrategiaUkrainskapodpisana.pdf> (25.06.2022); and Education development strategy of the Belarusian minority in Poland, Białystok 2014, <http://mniejszosci.narodowe.mswia.gov.pl/download/86/15653/Strategiarozarnoświ-atymyszomscibialoruskiejwPolsce.pdf> (25.06.2022).

authorities should make further efforts to actively oppose intolerance and to increase the knowledge of broad social circles about regional and minority languages, as well as the cultures that these languages represent.

In assessing education issues, it urged the Polish authorities to take measures to make education available in the Belarusian language at the primary and secondary levels to ensure its continuity from the primary to the secondary level in areas where the Belarusian language is spoken. It was also considered that Poland has not fulfilled its commitment to establish at least one radio station and one television channel in regional or minority languages, and that the existence of a programme in the Belarusian language is not sufficient to fulfil the commitment made. Poland was found not to have fulfilled its commitment to encourage the stateuse of regional or minority languages in economic or social life.

The Committee concluded that Poland failed to fulfil its obligation to set up a board responsible for monitoring the introduction and development of the teaching of regional or minority languages. It said that the rigid adherence to the 20% limit set by Polish law on the number of inhabitants speaking a regional or minority language as a basis for using that language in contact with authorities was inappropriate.

It was indicated that Poland has fulfilled the obligations set out in Article 9(2) of the Charter, consisting in not questioning the validity of legal documents drawn up in a regional or minority language. Furthermore, it was recognized that Poland should take steps to create one radio station and one TV channel in regional languages, admitting that it is fully possible to freely receive radio and television programmes broadcast from neighbouring countries in languages used in an identical or similar form to a regional or minority language. Regarding the cultural commitments, the lack of sufficient information on the measures taken by Poland in this respect was highlighted, making it impossible to carry out a reliable assessment. Nevertheless, most commitments were considered unfulfilled. Most of the obligations in the area of economic and social life related to the Kashubian language were found to be unfulfilled, pointing to information gaps in this regard. It was noted, with some surprise, that many parents find teaching in a regional or minority language too burdensome and counterproductive in the long term. The Committee of Experts considered the measures taken by Poland to be insufficient for all minorities, particularly emphasizing this fact concerning the Lemko language.

Concerning the Armenian, Czech, Karaite, Roma, Russian, Slovak, Tatar and Yiddish languages (taken together in the Committee's work), it was stated that for each of these languages, the nature and scope of the measures to be taken to implement the provisions of the Charter must be flexible, focusing as far as possible on municipalities where the language is historically established.

The Committee of Experts considered that Poland's commitments concerning Articles 9–11 and 13 of the Charter and Article 12 of the Charter concerning most languages were not fulfilled. However, the Committee of Experts highlighted the fact

that the Republic of Poland is a party to bilateral agreements that contain regulations enabling the protection of minority languages.

6. Comments of the Polish authorities to the Report of the Committee of Experts of 5 May 2011

The Polish Government, in a rather extensive document, referred to the position taken in the Report of the Committee of Experts, explaining, among other things, that the Silesian dialect of the Polish language does not fulfil the conditions laid down in the Charter, and therefore it is not legitimate to refer to it as a language. It was proposed to replace the term 'Silesian language' with 'Silesian dialect' or 'Silesian ethnolect'. Some doubts of the Committee of Experts on the 2002 population census as to the declaration of membership of Armenian, Belarusian, Czech, Lemko, Roma, Russian, Ukrainian minorities were clarified. The comments of the Committee of Experts on the resettlement of Germans were protested against.

The Polish authorities also stated that the results of the census cannot be the basis for allocating funds and airtime. Polish legislation provides the possibility of organizing kindergarten classes in a regional or minority language, but users of these languages are not interested in such an offer. It was also emphasized that the Report did not note the existence of an education development strategy for the Ukrainian minority.

It was pointed out that the Polish authorities react strongly to every case of vandalism connected with the destruction of plaques with place names in minority and regional languages. Likewise, it was noted that the amount of subsidies for the education of minority and regional languages was systematically increasing. It was said that, contrary to the concerns of the Committee of Experts, there is no threat to the continuation of education in these languages. It disagreed with the view that the possibility of submitting applications in minority or regional languages was being restricted, stressing that the Committee had not presented convincing arguments that the 20% threshold adopted in the Polish Act was too high. Furthermore, it was pointed out, incidentally, that it was possible to use additional place names in the regional languages and minority languages, and the Committee did not indicate any cases in which the Polish legislation in this regard would not be respected. The Committee's doubts about the need for radio and television stations broadcasting in the Belarusian language were also clarified. It was emphasized that the state provides subsidies for the activities of numerous cultural undertakings⁴².

42 It does not add that the Tatars and Karaites do not use their languages in everyday life, the former having lost the language already in the 17th century. The representatives of these minorities have not expressed a desire to publish newspapers in such languages. However, periodicals addressed to the representatives of these minorities are published in Polish.

The Polish side argued that the allegation of non-fulfilment of obligations under Article 10 of the Charter, which the Committee formulated quite often in the context of different languages, is false, since additional place names in a regional language or minority languages can be adopted in municipalities where a minority constitute not less than 20% of the total population. This possibility also exists in localities located in municipalities that do not meet this condition. It was pointed out that the establishment of an additional name for a locality in the aforementioned languages was supported in the consultations by more than half of the participating residents of that locality.

The reading of the Comments to the Report of the Committee of Experts leaves an impression of a certain chaotic communication, forced to a large extent by the desire to refer to specific charges related to individual regional and minority languages. Regrettably, the repeated allegations concerning individual languages were not collected and addressed together. On several occasions, the Comments to the Report of the Committee of Experts raised issues concerning broadcasting, the printed press, subsidies for education, etc.

7. Recommendations of the Committee of Ministers on the implementation of the European Charter for Regional or Minority Languages by Poland

The Committee of Experts submitted to the Committee of Ministers of the Council of Europe its proposed recommendations for Poland, and the Committee of Ministers, at its 1129th meeting held on 7 December 2011, approved them⁴³. In this short document, the Committee of Ministers of the Council of Europe fully shared the position of the Committee of Experts with regard to its recommendations on the measures to be taken in the future by Poland in relation to its obligations under the Charter. The Committee of Ministers of the Council of Europe indicated that: ‘Taking note of the comments of the Polish authorities on the content of the report of the Committee of Experts; recommends that the Polish authorities accept all the observations and recommendations of the Committee of Experts and give priority to six actions.’ First, to promote awareness and tolerance in Polish society towards regional or minority languages and the cultures they represent. Second, making education in Belarusian, German, Kashubian, Lemko and Ukrainian available as languages of instruction at preschool, elementary and secondary school levels. Third, providing up-to-date textbooks for teaching in the regional or minority language under the new core curriculum and providing basic and extended training for a sufficient number

43 See Recommendation RecChL (2011) 4 of the Committee of Ministers on the implementation of the European Charter for Regional or Minority Languages by Poland.

of teachers who can teach subjects in Belarusian, German, Kashubian, Lemko and Ukrainian. Fourth, taking steps to improve the range of programmes broadcast in all regional and minority languages. Fifth, reconsidering the application of the 20% threshold for the obligation in Article 10 of the Charter and creating a legal possibility for oral or written requests in regional or minority languages also in counties and provinces. Sixth, creating, in close cooperation with the speakers of the language concerned, a coherent policy and taking flexible measures to facilitate the application of the Charter concerning Armenian, Czech, Karaite, Roma, Russian, Slovak, Tatar and Yiddish.

Conclusions

The European Charter for Regional or Minority Languages plays a significant role in safeguarding the rights of national minorities. The Charter obliges the state parties to develop their policies and legislation based on the objectives and principles set out in its text. It obliges them to take measures to promote regional or minority languages, protect them, facilitate their use in public and private life, enable teaching and studying in these languages, and enable study and research on them. The Charter is undoubtedly an essential instrument for the protection of these languages.

The procedure of evaluating compliance with the Charter assumes the cooperation of Poland with the organs of the Council of Europe. It must be based on dialogue and goodwill. From a broader perspective, it entails the necessity of closer cooperation, firstly, with the states neighbouring the Republic of Poland. It may contribute to better integration within the Council of Europe and strengthen bilateral relations. The procedure for evaluating compliance with the Charter is not, as seems obvious, an ideal tool. However, its necessity can hardly be denied. It seems that, if only about the presented Report, one should expect a more 'friendly' way of cooperating with the states that have adopted the Charter. Surprisingly, the Committee of Ministers did not consider some essential elements contained in the comments to the Report of the Committee of Experts on the European Charter for Regional or Minority Languages.

The Polish side, in its Comments to the Report of the Committee of Experts, indicated, among other things, that it could not agree with the statements that the 2002 census did not provide reliable data on the national and linguistic structure of the population of the Republic of Poland (as emphasized in the Committee's Report). The Notes also stated that the Committee 'does not state reasons for casting doubt on the data collected based on scientific research methods. It also does not state what research tools are available to language speakers that the researchers conducting the census do not have, and what basis there is for the data provided by these speakers to be more reliable than the data collected by the researchers of the Central Statisti-

cal Office.' On the other hand, with regard to the frequently formulated accusation of Poland's failure to meet its obligations under Article 9 of the Charter, the Polish side noted that 'the provisions of Polish law provide for the possibility of organizing kindergarten classes in a minority or regional language and conducting schooling in these languages, but the question arises regarding the possibility of the existence of such schools in the absence of interest in the educational offer from users of minority languages and regional language. The Polish government can only create opportunities and encourage their use. However, it does not and cannot have instruments that would mandate the use of these opportunities.'⁴⁴ According to the Polish side, it provides education in a minority or regional language at the level of the law. In the opinion of the Polish government, the lack of kindergartens or schools with instruction in some minority languages and regional languages, caused by the lack of those willing to take up language instruction in such a form, cannot be the basis for an allegation. It was also pointed out that the Polish government is taking measures to promote the use of additional traditional place names in minority languages and regional languages.

The undoubted problem was that the Committee of Experts' understanding of national minorities was different from the Polish Law on National and Ethnic Minorities and Regional Languages. The Committee of Experts accepted with evident surprise and doubt the fact that Poland had granted national minority status to the Karaite, Tatar and Armenian communities. It was stressed that it had thus assumed an obligation to provide them with the kind of treatment accorded to much more numerous minorities. It was noted that such obligations were essentially impossible for Poland to meet, failing to acknowledge the arguments that representatives of the aforementioned less numerous minorities do not at all seek access to television stations and radio broadcasts in their languages, and do not even always want their children to benefit from adequate instruction in their national language. In doing so, the Committee overlooked the fact that the minorities in question have become deeply assimilated, with the younger generation most often no longer speaking the language of their ancestors.

It hasn't been recognized that in Poland, in addition to the minorities affected by the Polish law, there are now quite numerous minorities whose representatives cannot enjoy the benefits of the law, including Vietnamese, Korean, Chinese, Indian and Pakistani minorities. However, it should be noted that the preamble to the

44 Providing parents with the opportunity to maintain their children's linguistic and cultural identity, Polish law offers them the choice of one of three options: instruction in a minority or regional language, instruction in two equivalent languages, and language instruction in the form of a subject. The parents' decision to choose a model for their child's education is a sovereign one. In matters concerning the choice of how to sustain children's linguistic and cultural identity (which is related to the choice of a model of language teaching), any interference from the authorities is statutorily impermissible.

Charter emphasizes the need to protect 'the historic regional or minority languages of Europe', among which there are some that are in danger of total extinction. This protection aims to preserve and develop the cultural richness and traditions of Europe. The concept of 'historic regional or minority languages of Europe' is not explained in any way in the text of the Charter. This gives reason for the view that it refers to the languages of populations that have lived on European territory for years, and therefore does not apply to the languages of those residents who have settled in European countries in recent years. This position is confirmed by the content of Article 1a of the Charter. It explicitly states that the term 'regional or minority languages' does not include within its scope the language of migrants, i.e. all those who arrived and settled in the European area in the second half of the 20th century and the beginning of the 21st century. Thus, the Charter stipulates two groups of regional or minority languages and, consequently, two groups of minorities – the privileged European minority group and the remaining non-European group. It must raise doubts since the preamble indicates that the right to use a regional or minority language in private and public life is an inalienable right 'under the principles contained in the UN International Covenant on Civil and Political Rights and the spirit of the Council of Europe's Convention for the Protection of Human Rights and Fundamental Freedoms'. As a result, it is difficult to approve the subjective limitation of the Charter's content.

The evaluation of the Report did not result in a broader view of the problem of minorities and the protection of languages. Completely ignored were important definitional issues, which also relate to the issue of dialects and regional languages. The latter problem seems to be particularly acute in Poland because of the demands of some residents of Silesia.

It is worth noting that the Charter did not create detailed, strictly framed mechanisms for verifying reports, limiting itself to generally outlined principles. An analysis of the documents indicates that the Expert Committee's work is characterized by insight and detail, although it does not always demonstrate an understanding of the conditions existing in the country in which the Committee has come to operate.

An assessment of Poland's compliance with the Charter would therefore require a broader, more in-depth look at several problems. This was lacking in the work of the Committee of Experts. Nevertheless, forging European standards based on the Charter, although certainly not an easy matter, is an essential contribution to the protection of national minorities and their cultures and languages, contributing to the preservation of the cultural heritage of Europe and building open civil societies, aware of the linguistic and national diversity in the areas they inhabit.

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