

OPINION

on the draft Charter for Regional or Minority Languages
adopted by the European Commission for Democracy through Law during its 9th meeting
(Venice, 22-23 November 1991)

1. At its 8th and 9th meetings (Venice, 13-14 September and 22-23 November 1991), the European Commission for Democracy through Law examined the draft European Charter for Regional or Minority Languages prepared by the ad hoc Committee of Experts on Regional or Minority Languages in Europe (CAHLR), following an initiative of the Standing Conference of Local and Regional Authorities of Europe.
2. At its meeting in April 1991, the CAHLR had asked several steering committees and the European Commission for Democracy through Law for their opinion on the draft.
3. The Commission welcomes this request and attaches great importance to collaboration with the Council of Europe's intergovernmental activities, particularly through requests for opinions such as this.
4. The Commission notes that at its 5th meeting (Venice, 7-8 February 1991) it adopted and made public a proposal for a European Convention for the Protection of Minorities. It considers that this is a very important proposal, which, could serve as the basis for a binding legal instrument, capable of providing a solution to the problems of minorities throughout Europe. The present opinion naturally takes this proposal into account and is particularly concerned with how far the two texts are compatible.
5. The Commission's proposal is designed to provide an overall response to all the situations affecting minorities. It therefore sets out a number of individual, and where appropriate collective, rights which apply to all minorities covered by the definition included in the proposal. The Charter for regional or minority languages, in contrast, is not intended to establish rights for individuals or groups but is aimed at protecting the existence and promoting the use of regional or minority languages as threatened elements of Europe's cultural heritage. The Commission believes that these two different approaches to providing a solution to the situation of minorities complement each other harmoniously. Moreover, it considers that the pragmatic approach adopted by the draft Charter can be beneficial in a more general context whose object is the defence of fundamental rights and freedoms. The Statute of the Council of Europe, together with the European Convention of Human Rights and the European Social Charter provide the basic elements of such a context. They should however be supplemented by a general text concerning minorities.
6. The Commission observes that Article 3 are very flexible, in order to make them acceptable to a large number of states. However, since the rights of individuals belonging to minorities should be treated as fundamental rights, it would have preferred a solution with a broader reach incorporating the greatest number, and preferably, all minority languages.
7. The Commission agrees with the objectives and principles set out in Article 7 of the draft Charter.
8. The Commission questions whether it wouldn't be useful to introduce a clause that would enable States in which regional or minority languages do not exist but in which an official language which is less widely used does exist, to ratify the Charter with the sole object of protecting that official language.
9. The wording of Article 9 of the draft Charter appears to be consistent with that of Article 9 of the proposed Convention. However, the Commission suggests that when states are not in a position to provide pupils with teaching in their mother tongue, they must permit those children to attend private schools. The Commission considers that it would be appropriate to consider the inclusion of a specific provision on the subject.
10. The Commission questions why Article 10 of the Charter does not apply to proceedings before administrative tribunals.
11. The Commission considers that it would be appropriate to establish a relatively brief timescale for the submission of the first three-yearly report. A time limit of one year after the Charter comes into force in the State concerned would appear to be satisfactory. The Commission thinks that the flexible system of supervision by means of periodical reports presented by the parties will allow the application of the Charter's provisions to be monitored effectively. Given the optional nature of the Charter's provisions, it does not consider it appropriate to introduce a judicial system of supervision.
12. In conclusion, the Commission considers that the draft Charter represents a decisive contribution to the protection of minority languages. It notes in this regard that the linguistic dimension is a factor common to nearly all existing minorities in Europe.
13. The Commission finds the existing draft Charter to be compatible in all respects with the proposal for a European Convention for the Protection of Minorities and hopes that the member States of the Council of Europe will rapidly adopt these instruments and ratify them so that they can come into force as soon as possible.