Language Rights in Comparative Perspective: Europe

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I. INTRODUCTION

Europe is a wonderland of linguistic diversity.[1] Most European states have a single "national" language, a language spoken by a majority of the state's population and that is used for conducting the state's public business.[2] All European states also have "autochthonous minority languages"[3] — languages which a minority population within the state have spoken for a long time.[4]

Some autochthonous minority languages are national languages of another state or states.[5] Where this occurs, they are strongly reinforced, and rarely in danger of dying out.[6] Interestingly, this situation can give

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1 One recent estimate is that there are 239 living languages which originate in Europe. Europe is, however, apparently the least linguistically diverse continent; these 239 languages represent only 3.5 per cent of the world's total, compared to 32.8 per cent in Asia, 30.3 per cent in Africa, 14.5 per cent in the Americas, and 19 per cent in the Pacific. See Raymond G. Gordon, Jr., ed., *Ethnologue: Languages of the World* (Dallas: SIL International, 2005), online: Ethnologue, <http://www.ethnologue.com>; for the statistics just cited, see <http://www.ethnologue.com/ethno_docs/distribution.asp?by=area>.

2 There are, of course, a small number of European states that have more than one official language and in which no particular linguistic group is dominant: Belgium and Switzerland are the best examples. Finland is an officially bilingual state, but Finnish-speakers far outnumber Swedish-speakers. Under Article 8 of the Irish constitution, Irish is the "national and first official" language of the Republic of Ireland, but it is far less widely spoken than English, the other "official" language.

3 "Autochthonous" is the adjective given to these languages in the Explanatory Report to the *European Charter for Regional or Minority Languages*, 5 November 1992, Eur. T.S. No. 148; it is intended to describe minority languages which could be said to be indigenous to a state, and to distinguish these from languages of more recent immigrant populations.

4 Iceland, Liechtenstein and, arguably, Portugal are the only European states that could claim to have no such autochthonous languages and therefore are, in a sense, monolingual.

5 For example, Swedish in Finland, Finnish in Sweden, Irish in Britain, or Danish in Germany. Some languages, such as German, French, Russian, Hungarian, to take but a few examples, are autochthonous languages in several other European states.

6 Sociolinguists are concerned that the 21st century could see the disappearance of an unprecedented number of languages. Some estimates suggest that between 50 per cent and 90 per cent of the world's estimated 5,000 to 6,000 languages could disappear by the year 2100: see, for example, David Crystal, *Language Death* (Cambridge: Cambridge University Press, 2000), and

rise to international tension. Any perceived mistreatment of minority language communities quickly arouses the attention of neighbouring states whose national language is that of the mistreated minority.

Some autochthonous minority languages may be the minority language of one[7] or more[8] European states, although not the national language of any state. Languages of this type easily erode in numbers of speakers, and tend to be demographically "threatened" languages. Nevertheless, they are less likely to give rise to international tension, although some have been associated with violent nationalist struggles within their home state.[9]

Many languages have been brought to European states by recent waves of immigration. This adds considerably to Europe's linguistic complexity. Immigration has been enhanced within the 27 member states of the European Union (the "EU") by the mobility rights which are guaranteed under the EU treaties.[10]

Certain languages are languages of wider communication in Europe. Latin, for example, performed this role in Western Christendom until the Protestant Reformation. French later played an important role as the language of international diplomacy. During the Communist period, Russian became *de rigueur* throughout the Soviet Union's sphere of influence. Today, English dominates in an unprecedented number of

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Daniel Nettle and Suzanne Romaine, *Vanishing Voices: The Extinction of the World's Languages* (Oxford: Oxford University Press, 2000).

7 Examples include Welsh and Scottish Gaelic in Britain, Sorbian in Germany, Galician in Spain. There are many such languages in Russia, which is the most linguistically diverse European state, with some 59 living languages originating in Russia west of the Urals and a further 42 to the east: Raymond G. Gordon, Jr., ed, *Ethnologue: Languages of the World* (Dallas: SIL International, 2005) online: Ethnologue, <http://www.ethnologue.com/show_country.asp?name=RUE>; <http://www.ethnologue.com/show_country.asp?name=RUA>.

8 Examples would include Basque, which is spoken in Spain and France; Frisian, variants of which are spoken in the Netherlands, Germany and Denmark; and Sami, variants of which are spoken in Norway, Sweden, Finland and Russia, as well as languages such as Romany, variants of which are spoken in many European states, and Yiddish. Catalan, which is spoken in several autonomous communities of Spain (Catalonia, Valencia, Aragon and the Balearics), in southern France and in Italy (in Sardinia), might be another example, but for the fact that it is the "national" language of Andorra, and should therefore be placed in the first category mentioned.

9 For example, Basque in Spain and France, Corsican in France, Kurdish in Turkey (particularly the southeast of the country) and Irish in Northern Ireland are obvious examples.

10 The European Union will be considered more closely below. The most recent rounds of EU enlargement have brought many former Communist states of Central and Eastern Europe into the EU, and this has resulted in quite massive movements of people in a very short period of time; for example, between May 1, 2004, when 10 new member states joined the EU, and August 2006, 427,000 migrant workers from eight of those states came to the U.K., with 264,560 (or about 62 per cent) coming from Poland; online: BBC News Online <http://news.bbc.co.uk/1/hi/uk_politics/5273356.stm>.

linguistic domains. The unprecedented strength of English has raised concerns about the long-term future of Europe's linguistic diversity.[11]

This paper considers European approaches to managing linguistic diversity. In particular, we focus attention on the use of "rights", including "language rights",[12] to manage the challenges which linguistic diversity poses for Europe.

Geographers define Europe as the continent whose southeastern and eastern limits are defined by the Bosporus, the Caucasus and the Urals. Europe is easily defined more or less extensively than this from a political point of view, depending on the international institution through which the question is examined. For many Europeans, "Europe" is synonymous with the EU. This "Europe" has grown from the original six states which were the signatories to the *Treaty of Rome* in 1957[13] to 27 states, with the accession of Romania and Bulgaria on January 1, 2007. The EU was created as a customs union for overtly economic reasons — to promote free trade and closer economic integration among member states. However, the EU always had political goals as well. Its founders considered that through economic integration, political stability within Europe would be enhanced.

The Council of Europe (the "COE") was created shortly after the Second World War. Unlike the EU, the COE is not concerned with closer economic and political integration, but with the promotion of greater cooperation between European states on a range of issues, and in particular the promotion of the rule of law, human rights and fundamental freedoms.[14] For the COE, "Europe" is more expansively conceived: it has 46 members, including all of the member states of the EU, as well as every other state on the land mass of the continent of

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[11] See, for example, Robert Phillipson, *English-Only Europe? Challenging Language Policy* (London: Routledge, 2003), esp. ch. 3.

[12] In this paper, the term "language rights" is used to describe rights which explicitly guarantee the right-holder to use a particular language in particular circumstances. As we shall see, there are a number of human rights which are of relevance to speakers of minority languages, whether "autochthonous" minority languages or otherwise, but which are not language-specific.

[13] *Treaty Establishing the European Economic Community* ("*Treaty of Rome*"), 25 March 1957, 298 U.N.T.S. 11 (France, West Germany, Italy, the Netherlands, Belgium and Luxembourg).

[14] Article 1 of the *Statute of the Council of Europe*, 5 May 1949, 87 U.N.T.S. 103, Eur. T.S. 1 which sets out the aims of the COE, makes reference to achieving "greater unity between its members for the purpose of safeguarding and realising the ideas and principles which are their common heritage and facilitating their economic and social progress", and that this aim should be pursued through the organs of the COE by "discussion of questions of common concern and by agreements and common action in economic, social, cultural, scientific, legal and administrative matters and in the maintenance and further realisation of human rights and fundamental freedoms".

Europe as defined by geographers, and the successor states of the Soviet Union in the Caucasus.[15]

Another international institution that impacts the management of linguistic diversity in Europe is the Organization for Security and Co-operation in Europe (the "OSCE"). This institution contemplates an even wider definition of Europe, one that includes the central Asian successor states to the Soviet Union — Kazakhstan, Tajikistan, Turkmenistan, Uzbekistan and Kyrgyzstan,[16] in addition to those states which belong to the COE.

This paper has no ambition to define "Europe" explicitly. Rather, it deals with all regimes for the management of linguistic diversity that have been developed within the context of the EU, the COE and the OSCE. We begin with an analysis of the language rules within these international institutions, particularly the EU. The EU is more than an international organization. It has a direct relationship with citizens of its member states, who are also EU citizens.[17]

The second part of this paper considers norms within the COE, OSCE and the EU for management of linguistic diversity by member states of those organizations. The paper does not address domestic legal rules for the management of linguistic diversity within European states, of which there are many. But as national regimes interact with the rules developed by these various European institutions, the paper will make reference to them in that respect.

II. Language Governance in European Institutions

1. The EU

The EU is the most significant European institution in terms of impact on the daily lives of the populations of its member states. The

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15 Armenia, Georgia and Azerbaijan. Other successor states to the Soviet Union which are part of the COE are Russia, Latvia, Lithuania, Estonia, Moldova and Ukraine; the central Asian successor states of Kazakhstan, Turkmenistan, Tajikistan, Uzbekistan and Kyrgyzstan are not members of the COE — nor is Belarus.

16 Indeed, other states which are clearly not part of Europe in a geographical sense, including the United States and Canada, are members of the OSCE, but consideration of linguistic management in those states will not be considered, for obvious reasons.

17 See EC, *Consolidated Version of the Treaty Establishing the European Community*, [2006] O.J. C. 321E/37 Art. 17 (ex Article 8) (the "EC Treaty"). For a discussion of the concept of EU citizenship, see, for example, Anthony Arnull *et al.*, eds., *Wyatt & Dashwood's European Union Law*, 5th ed. (London: Sweet & Maxwell, 2006), ch. 17.

origin of the EU lies in the desire after the Second World War to build a durable European peace through closer economic and political integration. The EU grew from an original six states which created the European Economic Community (the "EEC"), to 27 member states today.[18]

The EEC began life as a customs union. It has grown into a *sui generis* international organization. What makes it so is that its member states have ceded to the EU some of their sovereignty. They have endowed the EU with powers to act independently of them.[19] Significantly, EU institutions have legislative powers in strictly delimited but very important areas.

EU legislation takes different forms and is enacted by EU institutions in different ways. Of particular significance are Regulations, which lay down the same law throughout the EU. These apply fully in all member states; they are "directly applicable", meaning that they self-execute without aid from the national law of member states. Regulations confer rights and impose duties in the same way as do national laws. The public administration and the courts of the member states are required to comply fully with EU Regulations. EU Directives are also important. These, too, bind member states, but unlike Regulations, Directives do not self-execute. Directives must be incorporated into the national laws of member states as those member states see fit. Directives aim to harmonize national laws of member states, but leave the precise modalities to the member states themselves.[20]

The EU's key institutions are:

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[18] The constitutional development of the EU has resulted in a confusing array of institutional names and associated acronyms. The EU was created in November 1993 as a result of the 1991 *Treaty on European Union* (the "TEU"), signed at Maastrict, in the Netherlands, and also known as the Maastricht Treaty: EC, *Treaty on European Union*, [1992] O.J. C. 191/1. As part of this treaty, the EEC was renamed the European Community (the "EC"), and the competencies of the new organization, the EU, included those of the EC, as well as responsibility for a common foreign and security policy, and the development of greater cooperation amongst member states in justice and home affairs.

[19] This was made abundantly clear by the decision of the European Court of Justice in *Van Gend and Loos v. Nederlandse Administratie der Belastingen*, in which the court noted that "the Community [*i.e.* the EEC] constitutes a new legal order of international law for the benefit of which the states have limited their sovereign rights, albeit within limited fields, and the subjects of which comprise not only Member states but also their nationals": *E.C.J.*, Case 26/62, [1963] E.C.R. 1, at 12.

[20] It should be noted that unincorporated Directives can have direct effect in certain circumstances: see Florian Becker & Angus Campbell, "The Direct Effect of European Directives: Towards the Final Act?" (2007) 13:2 Colum. J. Eur. L. 401.

- the European Council. This is composed of the Heads of state or government of the 27 member states;
- the Council of the European Union. This is composed of the representatives of the governments of the member states; it is the EU's main decision-making body;
- the European Parliament. This is composed of 785 members ("MEPs"), directly elected by the citizens of the EU member states, with greater numbers of members from the more populous member states;[21] and
- the European Commission. This is composed of 27 Commissioners (including the Commission President) who are appointed by common accord of the governments of the member states, subject to ratification by the European Parliament.[22]

The European Court of Justice (the "ECJ") is the highest judicial authority on EU law.[23] The Court's 27 judges and eight Advocates General[24] are appointed by common accord of the governments of the member states.

The EU treaties contain limited language rights. Article 314 of the *European Community Treaty* (the "EC Treaty")[25] provides that the treaty was originally drawn up in Dutch, French, German and Italian, the four official languages of the six original EEC member states,[26] and that all

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21 For example, Germany has the most members, with 99, followed by the U.K., France and Italy, with 78, and Spain and Poland, with 54; Malta has the fewest members, with 5, followed by Estonia, Cyprus and Luxembourg, with 6, Slovenia, with 7, and Latvia, with 9.

22 The Commission is, in practice, of fundamental importance, and acts as a quasi-executive body, in that it oversees policy development, has the right to propose texts of EU legislation, and monitors member states' application and implementation of the various EU treaties and of EU legislation. In practice, there is, in effect, one Commissioner from every member state, and each is responsible for a particular policy area. Interestingly, there is a Commissioner for Multilingualism, Leonard Orban, from Romania. See, generally, online: Europa <http://ec.europa.eu/index_en.htm>.

23 There is now a wealth of literature on the EU and its law; for a useful short introduction to the topic, see Dr. Klaus-Dieter Borchardt, *The ABC of Community Law* (Brussels: The European Commission, 2000), or John Pinder, *The European Union: A Very Short Introduction* (Oxford: Oxford University Press, 2001).

24 The Advocates General assist the ECJ by presenting opinions to the ECJ.

25 Except where otherwise provided, all references in the context of the discussion of the EU are to the consolidated version of the EC Treaty. It should be noted that it was proposed by the 2007 Intergovernmental Conference (the "IGC") that the EC Treaty will become *The Treaty on the Functioning of the Union*, and that the numbering of the treaty articles will change. See online: Consilium <http://www.consilium.europa.eu/cms3_fo/showPage.asp?id=1296&lang=en>.

26 Prior to 1984, French was the official language of Luxembourg, with German designated as a "working language". In 1984, Lëtzebuergesch, a language related to German and spoken by most of the citizens, became the "national language" of Luxembourg. French was designated the

four of these texts are equally authoritative. Article 314 provides that the official languages of the other 21 member states are also authentic, pursuant to their treaties of accession. Thus, the EU currently has 23 "treaty languages".[27] As a matter of strict treaty interpretation, any ambiguity in the treaty would have to be resolved by considering the text in all these languages.

Article 314 is silent about how the "treaty" languages are to be used within the various EU institutions, or in dealings between those institutions and EU citizens. Article 21 provides that every citizen of the EU may write to the European Parliament, the Council, the Commission and the ECJ[28] in any of the 23 treaty languages and have an answer in that same language. Article 290 leaves wider questions of language use within the EU to the Council.[29]

The Council created the language regime for the EU institutions in its very first legislative act.[30] The Regulation (Regulation No. 1) provides that the "official and working languages" of the EU institutions[31] are the 23 official languages of the EU member states.[32] All

"legislative language", and French, Lëtzebuergesch and German became "administrative" and "judicial" languages. In spite of this, the state chose not to request the addition of Lëtzebuergesch to the EU's "treaty" or "official and working" languages: see Richard L. Creech, *Law and Language in the European Union: The Paradox of a Babel "United in Diversity"* (Groningen: Europa Law Publishing, 2005), at 18.

[27] In addition to the four original languages, Bulgarian, Czech, Danish, English, Estonian, Finnish, Greek, Hungarian, Irish, Latvian, Lithuanian, Maltese, Polish, Portuguese, Romanian, Slovak, Slovenian, Spanish and Swedish.

[28] Reference is also made to other EU institutions, namely the Court of Auditors and the Ombudsman: see EC, *Consolidated Version of the Treaty Establishing the European Community*, [2006] O.J. C. 321E/37 Article 21 (ex Article 8d), and Article 7 (ex Article 4).

[29] The article provides that the rules governing the languages of the institutions of the EU shall, without prejudice to the provisions contained in the Statute of the ECJ, be determined by the Council, acting unanimously.

[30] EC, *Council Regulation No. 1 of 15 April 1958 determining the languages to be used by the European Economic Community*, O.J. 17, 6.10.1958, 385/58, as amended over time to take account of the accession of new member states.

[31] The "institutions" of the EU are identified in EC, *Consolidated Version of the Treaty Establishing the European Community*, [2006] O.J. C. 321E/37 Article 7 (ex Article 4), and are the Parliament, the Council, the Commission, the ECJ and the Court of Auditors.

[32] As already noted (note 2), article 8 of the Irish constitution recognizes Irish as the "national and first official" language of the state, with English also recognized as "an official language". As such, as we have already seen, Irish is one of the 23 treaty languages. However, at the time of Irish accession, in 1973, the Irish government chose not to accord Irish the status of an "official and working language" under Regulation No. 1, with the result that the provisions of the regulation did not apply to Irish. The reasons for this decision are still unclear. In spite of its constitutional status, Irish is also a minority language, and although about 40 per cent of the population of the state claim some competence in it, the number of people who are fluent in the language is estimated to be much smaller, and the number who use it with any regularity — perhaps 250,000 — is smaller still. The current legislative position of Irish will be discussed briefly, below. Undoubtedly, the small

Regulations and other documents of general application must be drafted,[33] and the Official Journal of the European Union[34] must be published, in these "official and working languages".[35] These two obligations do not apply in full to Irish and Maltese.[36] The reason why is not clear. It is likely that practical considerations were overriding: Irish and Maltese are spoken by relatively small numbers of people; the pool of translators and legislative drafters with the necessary linguistic skills

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pool of persons from which translators, interpreters and legal drafters could be drawn would have been a consideration, but for further discussion — and speculation — see, for example, Dónall Ó Riagáin, "Gàidhlig and other Lesser Used Languages: What Future in the New Europe?" (Paper presented at the University of Edinburgh, March 6, 2002), online: Poileasaidh Cànain, Oilthigh Dhun Èideann <http://www.arts.ed.ac.uk/celtic/poileasaidh/gaelic&other.html>; see also Niamh Nic Shuibhne, "Ascertaining a Minority Linguistic Group: Ireland as a Case-Study" in Deirdre Fottrell & Bill Bowring, eds., *Minority and Group Rights in the New Millennium* (The Hague: Martinus Nijhoff, 1999). As a result of sustained political pressure from various Irish language groups, particularly in the wake of the legislative changes described below, the Irish government requested, and the Council agreed, that Irish would be made an "official and working language" under Regulation No. 1 from 1 January 2007: EC, *Council Regulation (EC) No. 920/2005 amending Regulation No. 1 of 15 April 1958 determining the language to be used by the European Economic Community and Regulation No. 1 of 15 April 1958 determining the language to be used by the European Atomic Energy Community and introducing temporary derogation measures from those Regulations*, [2005] O.J. L. 156/3.

[33] EC, *Council Regulation No. 1 of 15 April 1958 determining the languages to be used by the European Economic Community*, O.J. 17, 6.10.1958, 385/58, Article 4; effectively, this means that all of the EU's legislation must be drafted in all of the official and working languages.

[34] Effectively, the EU's *Hansard*.

[35] EC, *Council Regulation No. 1 of 15 April 1958 determining the languages to be used by the European Economic Community*, O.J. 17, 6.10.1958, 385/58, Article 5.

[36] With respect to Irish, the exception applies for a renewable five-year period from 1 January 2007, but does not apply to regulations (*i.e.* those adopted jointly by the European Parliament and the Council: EC, *Council Regulation (EC) No. 920/2005 amending Regulation No. 1 of 15 April 1958 determining the language to be used by the European Economic Community and Regulation No. 1 of 15 April 1958 determining the language to be used by the European Atomic Energy Community and introducing temporary derogation measures from those Regulations*, [2005] O.J. L. 156/3, Article 2. With respect to Maltese, the exception also does not apply to regulations adopted jointly by the European Parliament and the Council, but the exception only applies for a period of three years, from the date of accession (1 May 1 2004 — although this may be extended): EC, *Council Regulation (EC) No. 930/2004 of 1 May 2004 on temporary derogation measures relating to the drafting in Maltese of the acts of the institutions of the European Union*, [2004] O.J. L. 169/1, Articles 1 and 2.

is small;[37] and English is an official language of both states and is widely spoken.[38]

Article 2 of Regulation No. 1 deals with communications with EU institutions initiated by member states themselves or members of the public in those states. It provides that the sender of documents to EU institutions may draft the documents in any one of the 23 official languages, and that the EU institution must draft its reply in that same language.[39] The Article does not require that the sender use the official language of his or her member state. Accordingly, Article 2 may benefit speakers of minority languages of particular EU member states if the minority language is one of the 23 official languages of the EU.[40] Where an institution of the EU initiates correspondence with member states or a member of the public in those states, the documents must be drafted in "the language"[41] of such state. This guarantee is therefore of less use to speakers of minority languages in the state in which they reside.[42]

The linguistic regime created by Regulation No. 1 is driven by political and practical realities. The requirement that regulations and other documents of general application must be drafted and published in

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[37] This issue was specifically referred to in EC, *Council Regulation (EC) No. 930/2004 of 1 May 2004 on temporary derogation measures relating to the drafting in Maltese of the acts of the institutions of the European Union*, [2004] O.J. L. 169/1, the derogation in respect of the use of Maltese, as the reason for the derogation. The third preambular paragraph provides: "It appears from contacts between the Maltese authorities and the European Union institutions that, due to the current situation regarding the recruitment of Maltese linguists and the resulting lack of qualified translators, it is not possible to guarantee the drafting in Maltese of all acts adopted by the institutions."

[38] In Ireland, 94 per cent of the population claim English as a mother tongue, and virtually all of the rest speak it fluently; while 97 per cent of the population of Malta claim Maltese as a mother tongue and only 2 per cent claim English, 88 per cent claim to know English: see Special Eurobarometer, *Europeans and their Languages* (Brussels: European Commission, February 2006), at 7, 13.

[39] Recall that in respect of citizens of the EU, this right was already effectively guaranteed by EC, *Consolidated Version of the Treaty Establishing the European Community*, [2006] O.J. C. 321E/37, Article 21 (ex Article 8d).

[40] For example, a German-speaker in Denmark, Italy, Poland, the Czech Republic, Hungary, Romania, or a Danish-speaker in Germany, or a Swedish-speaker in Finland, or a Finnish-speaker in Sweden, and so forth. It would also apply to EU citizens who, like the large number of Poles living in the U.K., have taken advantage of the EU right to free movement (and therefore employment) within the EU.

[41] "Official language" is not used, but almost certainly, the reference here is to that language (or, if more than one language is official, those languages), rather than any of the languages spoken in the relevant member state.

[42] It should also be noted that Article 8 of EC, *Council Regulation No. 1 of 15 April 1958 determining the languages to be used by the European Economic Community*, O.J. 17, 6.10.1958, 385/58 provides that, if a member state has more than one official language, the language to be used shall, at the request of the state, be governed by the general rules of its domestic law on language use.

all of the official and working languages grows out of the necessity to treat all member states equally. However, regulations also have the unique character of being directly applicable in the domestic law of EU member states, without the need for any further domestic legislative act. It is therefore imperative that the governments responsible for their application and the persons to whom they apply can read them in the language in which legislation of the member states is drafted, which is the official language or languages of those states.[43]

Article 6 of Regulation No. 1 provides that the EU institutions may stipulate in their rules of procedure which of the official and working languages are to be used in specific cases. Generally these rules of procedure do not modify the guarantees that Articles 2 and 3 provide for communications with member states and the public. The procedures of the Commission and the Council do, however, limit the number of languages used in the internal operations of those two institutions. The Commission, for example, uses English, French, and to a lesser extent, German as the working languages for daily communication. Where legal texts are produced they will be translated into the 23 official and working languages and authenticated.[44] The Council uses all "official and working languages" at ministerial-level meetings, and most of these languages, if not all, at working group level. In the day-to-day work of the institution and in COREPER,[45] ambassadors and staff use English, French and German.[46]

The situation in the European Parliament is somewhat different, because of its nature as a popularly elected representative body composed of members from every member state. The Parliament's Rules of Procedure allow each MEP to use his or her official and

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[43] See Richard L. Creech, *Law and Language in the European Union: The Paradox of a Babel "United in Diversity"* (Groningen: Europa Law Publishing, 2005), at 14.

[44] See, for example, Niamh Nic Shuibhne, *EC Law and Minority Language Policy: Culture, Citizenship and Fundamental Rights* (Dordrecht: Kluwer, 2002), at 15. The decision by the Office for Harmonisation in the Internal Market (trade marks and designs) ("OHIM") to limit the working languages of this body (which is not, strictly speaking, an "institution" of the EU within the meaning of EC, *Consolidated Version of the Treaty Establishing the European Community*, [2006] O.J. C. 321E/37, Article 7, although it is an EU body) to English, French, German, Italian and Spanish, and to require that applications for EC trade marks had to be made in one of these languages, as well as the official language of a member state, was unsuccessfully challenged in *Kik v. Council and Commission, E.C.J.*, C-270/95, [1996] E.C.R. I-1987.

[45] *Comité des représentants permanents* (Committee of Permanent Representatives) in the European Union.

[46] See Richard L. Creech, *Law and Language in the European Union: The Paradox of a Babel "United in Diversity"* (Groningen: Europa Law Publishing, 2005), at 24.

working language for both written and oral communications. All documents must be drafted in the various official and working languages.[47] The use and interpretation of languages other than official and working languages of the EU — including autochthonous minority languages — is permitted, if the Parliamentary Bureau, which manages the business of the Parliament, considers this necessary. Advance notice of the intention to use such a language must be given, in order to allow the appointment of interpreters.[48]

Article 7 of Council Regulation No. 1 provides that the languages to be used in ECJ proceedings shall be laid down in ECJ rules of procedure. These rules allow any of the 23 "treaty languages"[49] to be used in proceedings.[50] The language used in the written and oral pleadings and supporting documents, and in the minutes and decisions of the court[51] is usually chosen by the applicant. In cases where the defendant is a member state or a natural or legal person of member state nationality, the official language of that state must be used.[52]

Unsurprisingly, the judges are not fluent in all 23 languages. They are allowed to participate in any of the treaty languages with the assistance of a translator, which is provided for them.[53] Where a witness or an expert is unable to express himself or herself adequately in any of the treaty languages, the court may authorize their evidence to be given in another language, and a translator will be provided.[54] Judgments of the ECJ are delivered in the language of the case, and are of legal effect

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47 Rule 138, *Rules of Procedure of the European Parliament*, provisional version, January 2007.

48 See Niamh Nic Shuibhne, *EC Law and Minority Language Policy: Culture, Citizenship and Fundamental Rights* (Dordrecht: Kluwer, 2002), at 17, and Rule 138(2), *Rules of Procedure of the European Parliament*.

49 That is, the languages described in EC, *Consolidated Version of the Treaty Establishing the European Community*, [2006] O.J. C. 321E/37, Article 314 (ex Article 248), which were described above.

50 Article 29(1), *Rules of Procedure of the Court of Justice of the European Communities*, [1991] O.J. L. 176/9, as amended from time to time. For the most recent version, see online: <http://curia.europa.eu/eu/instit/txtdocfr/txtsenvigueur/txt5.pdf>.

51 *Rules of Procedure of the Court of Justice of the European Communities*, [1991] O.J. L. 176/9, Article 29(3); documents submitted in another language must be accompanied by a translation in the language of the case.

52 *Rules of Procedure of the Court of Justice of the European Communities*, [1991] O.J. L. 176/9, Article 29(2)(b) and (c). If the member state has more than one official language, the applicant can choose between them. Note, though, that whenever a member state intervenes in a case, it may use its own official language, irrespective of the language of the case: Article 29(3).

53 *Rules of Procedure of the Court of Justice of the European Communities*, [1991] O.J. L. 176/9, Article 29(5).

54 *Rules of Procedure of the Court of Justice of the European Communities*, [1991] O.J. L. 176/9, Article 29(4).

only in that language.[55] Judgments are then translated into all other treaty languages.[56]

The need for translation has led to significant delays. These are likely to lengthen. Because judgments are legally operative throughout the EU as soon as they are issued, it is desirable that judgments be available at the same time in each of the languages used in the legal systems of the member states.[57]

A more limited pattern of language use prevails in the internal operations of the ECJ. Discussions between the judges of the court must be held in closed session. As this does not allow for interpreters and translators, judges must communicate in a common working language.[58] The language chosen has typically been French. Opinions are drafted in French, translated into the language of the case and then translated into the other treaty languages. While the choice of a common working language is necessary, it may have an adverse impact on the full and effective participation of those judges who are less confident in the common language.[59]

The language regime that has been created within the EU is almost certainly the most complex of any international organization. Its goal of the equal treatment of the official languages of all of its member states is highly unusual.[60]

The regime faces important challenges. First, there is the practical management of the language regime, which involves interpreting and translating proceedings and written documents in 23 different languages. Leonard Orban is the Commissioner for Multilingualism; his office contains a Directorate-General for Translation ("DGT") and one for Interpretation ("DGI"). The DGT is the largest translation service in the world, with a permanent staff of about 1,750 linguists and 600

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55 *Rules of Procedure of the Court of Justice of the European Communities*, [1991] O.J. L. 176/9, Article 31.

56 *Rules of Procedure of the Court of Justice of the European Communities*, [1991] O.J. L. 176/9, Article 30(2).

57 Richard L. Creech, *Law and Language in the European Union: The Paradox of a Babel "United in Diversity"* (Groningen: Europa Law Publishing, 2005), at 25-26.

58 *Rules of Procedure of the Court of Justice of the European Communities*, [1991] O.J. L. 176/9, Article 27(1).

59 See, for example, Niamh Nic Shuibhne, *EC Law and Minority Language Policy: Culture, Citizenship and Fundamental Rights* (Dordrecht: Kluwer, 2002), at 14.

60 As we shall see, the COE, for example, has only two official languages, French and English, and even the United Nations has only six: Arabic, Chinese, English, French, Russian and Spanish.

support staff. In 2006, it translated 1,541,518 pages.[61] The DGI is the largest interpretation service in the world. It provides simultaneous interpretation for about 11,000 meetings a year,[62] employs 500 staff interpreters and has 2,700 accredited freelance interpreters, 300 to 400 of whom are used every day.[63] The cost of these services is significant: for 2006, the total costs associated with all translation and interpretation services within the EU was approximately €800 million, which was over 2 per cent of the entire EU budget for that year.

The need to translate a wide range of documents into 23 languages causes significant delays in their circulation. Simultaneous interpretation into 23 languages creates another variety of difficulties. The process often involves interpretation from the language of the speaker into a "relay" language — generally, one of the more widely spoken English, French or Spanish languages — and then interpretation into a third language. This creates a danger of imprecise communications. With further expansion of the EU in the future, all of these difficulties can be expected to grow.

A second challenge is that a small number of languages dominate day-to-day operations of the EU institutions, in spite of the goal of equality of official languages of the member states. EU institutions effectively function through English and French, with German a very distant third. In recent years, English has become the international *lingua franca*, and has unprecedented power. Within EU institutions English has displaced French as the most frequently used language of internal operations.[64] Further growth in the use of English will likely be fuelled by further enlargement of the EU. The predominance of English in such important institutions can only enhance its prestige, and this can be expected to influence Europeans when they decide to learn second and third languages. This will have long-term implications for Europe's linguistic ecology, and in particular for the maintenance of less

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61 Note that the DGT only provides translation services to the Commission; other institutions also have a translation service. About 80 per cent of this work is done by the DGT itself, but freelance translators are also used. See "Frequently Asked Questions about the Translation DG (DGT)", online: <http://ec.europa.eu/translation/navigation/faq/faq_facts_en.htm>.

62 Unlike the DGT, the DGI provides services for other EU institutions and bodies, including the Council.

63 See DGI, "What We Do", online: <http://scic.cec.eu.int/europa/display>.

64 See, for example, Robert Phillipson, *English-Only Europe? Challenging Language Policy* (London: Routledge, 2003). It should be noted that it did take some years from the time of U.K. and Irish accession for English to displace French.

prestigious national languages, of autochthonous languages, and for the languages of "new" minorities.

The language regime of EU institutions generally does not protect or promote minority languages.[65] In June 2005, a decision of the Council permitted use of regional languages whose status is recognized by the constitution of a member state. As a result of this decision, Spain and the Committee of Regions (the "COR")[66] concluded an administrative arrangement on November 16, 2005 to permit the use of Catalan, Basque and Galician in the operations of the COR and in communications with it by members of the public. These languages are official languages of autonomous communities[67] in Spain. This may create a precedent for other minority languages, particularly autochthonous minority languages, which have some measure of constitutional or statutory protection within member states.[68]

As already noted, EU institutions create rules which have binding effect in the domestic legal regime of EU member states. Some regional languages, for example Catalan, Basque and Welsh, are official languages of regional parliaments in Spain and the U.K. These parliaments have law-making powers, and legislate in the regional languages as well as in the official language of the state. From a practical point of view, there may therefore be as much need for translation of EU legal rules into languages such as Catalan, Basque and Welsh as into Spanish and English. These considerations are, however, of limited relevance to most autochthonous minority and "new minorities" languages. Most of these have no formal legal place within the constitutional order of member states of the EU.

2. The COE

The COE is of a different and more limited nature than the EU in that member states of the COE have not ceded any sovereignty to the organization and the COE does not create "legislation". Members of the European public do not have the same direct engagement with the COE

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65 The exception is where a minority language within a particular EU member state is an official language of another EU member state: in this case the minority language is reinforced as a "treaty language" and an "official and working language".

66 The COR is a purely advisory body within the EU composed of representatives of regional and local authorities within member states and having no powers to make binding decisions.

67 Effectively, regional governments.

68 Welsh is a particular example.

or its various bodies as they have with the EU.[69] Owing to these differences, there is much less practical and arguably somewhat less political need for the COE to have the regime of linguistic equality to which the EU aspires in principle.

The most striking thing about the language regime of the COE is its simplicity compared to that of the EU. The COE has only two official languages, English and French,[70] notwithstanding its wider membership of 46 member states.

The two main deliberative bodies of the COE are the Committee of Ministers, composed of one representative of each member state,[71] and the Consultative Assembly,[72] composed of members elected by the parliaments of the member states. Each member state is entitled to a number of members in the Consultative Assembly roughly based on population.[73]

English and French are the official languages of the Committee of Ministers. The rules of procedure of Committee of Ministers determine in what circumstances other languages may be used.[74] A representative may speak in *any other language*, not merely the official language of the representative's state. Where, however, the representative does so, the representative shall provide for interpretation into one of the official languages.[75]

English and French are also the official languages of the Assembly. All Assembly documents must be published in those official languages.[76] However, German, Italian and Russian are designated as working languages,[77] and may be used orally at sessions and in committees,

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69 Excepting the European Court of Human Rights (ECtHR), created under the COE's *Convention for the Protection of Human Rights and Fundamental Freedoms*, also known as the *European Convention on Human Rights* (the "ECHR").

70 *Statute of the Council of Europe*, 5 May 1949, 87 U.N.T.S. 103, Eur. T.S. 1, Article 12.

71 *Statute of the Council of Europe*, 5 May 1949, 87 U.N.T.S. 103, Eur. T.S. 1, Article 14.

72 Also referred to as the "Parliamentary Assembly".

73 *Statute of the Council of Europe*, 5 May 1949, 87 U.N.T.S. 103, Eur. T.S. 1, Articles 25 and 26.

74 *Statute of the Council of Europe*, 5 May 1949, 87 U.N.T.S. 103, Eur. T.S. 1, Article 12.

75 Council of Europe, *Rules of Procedure of the Committee of Ministers*, 5th revised ed. (2005), Article 12.

76 Council of Europe, P.A., *Rules of Procedure of the Assembly*, Resolution 1202 (1999), adopted on 4 November 1999 with subsequent modifications, Rules 26.1 and 26.2.

77 Council of Europe, P.A., *Rules of Procedure of the Assembly*, Resolution 1202 (1999), adopted on 4 November 1999, with subsequent modifications, Rule 26.3.

where necessary. The COE provides and pays for simultaneous interpretation.[78]

Assembly speeches may be made in any language in addition to an official or a working language. Thus, speeches may be in an autochthonous minority language or the language of an immigrant group. When such languages are used, the speaker is responsible for arranging (and paying for) simultaneous interpretation into one of the official or working languages. Once the speech is interpreted into an official language, it will be simultaneously interpreted into the other official and working languages.[79]

The COE makes information available to the public generally in French and English. Further distribution in the official languages of member states and in autochthonous minority — and other — languages is generally a matter of policy and administrative effectiveness, rather than legal obligation. Policy is driven by the goal of making COE instruments and policies more widely available.

The linguistic regime of the European Court of Human Rights (the "ECtHR"), the Court to which cases may be brought in respect of the COE's single most important treaty, the *European Convention on Human Rights* ("ECHR"),[80] is set out in the Rules of Court, not the treaty.[81] Under the Rules, the official languages of the Court are English and French.[82] All communications with and oral and written submissions by applicants or their representatives must be in one of the court's official languages, or one of the official languages of states which are parties to the ECHR.[83] All communications with and all oral and written submissions by applicants or their representatives in respect of a hearing

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78 Council of Europe, P.A., *Rules of Procedure of the Assembly*, Resolution 1202 (1999), adopted on 4 November 1999, with subsequent modifications, Rule 27.1. Florence Benoît-Rohmer and Heinrich Klebes, *Council of Europe Law: Towards a Pan-European Legal Area* (Strasbourg: Council of Europe Publishing, 2005), at 24-25.

79 Council of Europe, P.A., *Rules of Procedure of the Assembly*, Resolution 1202 (1999), adopted on 4 November 1999, with subsequent modifications, Rule 27.2.

80 *Convention for the Protection of Human Rights and Fundamental Freedoms*, 4 November 1950, 213 U.N.T.S. 221 at 223, Eur. T.S. 5.

81 Article 26 of the *Convention for the Protection of Human Rights and Fundamental Freedoms*, 4 November 1950, 213 U.N.T.S. 221 at 223, Eur. T.S. 5 ("ECHR") provides that the plenary court may adopt its own rules of court. The most recent version, adopted by the plenary court on May 29, 2006, was circulated by the Registry of the Court, in July 2006, and they came into force on July 1, 2006.

82 Council of Europe, *European Court of Human Rights Rules of Court* (adopted 29 May 2006; in force 1 July 2006), Rule 34(1).

83 Council of Europe, *European Court of Human Rights Rules of Court* (adopted 29 May 2006; in force 1 July 2006), Rule 34(2).

must be in either English or French, unless the President of the Chamber[84] grants leave for the continued use of the official language of the member state, and where leave is granted, the registrar of the court will make arrangements for translation into English or French.[85] The President may grant leave to a member state to use its official language. Where this occurs, the state must also file written submissions in English or French. The Registrar of the court will arrange for the interpretation of oral submissions into English or French; the associated costs are borne by the state itself.[86] A witness, expert or other person appearing before the court may use his or her own language (including a minority language) if he or she does not have sufficient knowledge of English or French. The registrar will make arrangements for interpretation.[87]

3. The OSCE

The origins of the OSCE lie in the process of *détente* in the early 1970s, when the Conference for Security and Co-operation in Europe (the "CSCE") was established to serve as a multilateral forum for dialogue and negotiation between the West and the Communist bloc. With the end of the Cold War, the participating states called on the CSCE to play a new role in the management of change that was taking place in Europe in the 1990s. They recognized that the CSCE required permanent institutions and operational capabilities. The CSCE was renamed the OSCE in December 1994. It has presently 56 participating states, from Europe, Central Asia and North America. It remains a regional security organization, and in particular an instrument for early warning, conflict prevention, crisis management and post-conflict rehabilitation. To the extent that language issues may give rise to conflict, and therefore to security issues, the OSCE has an interest in the management of linguistic diversity.

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[84] Essentially, the chief presiding judge within the court.

[85] Council of Europe, *European Court of Human Rights Rules of Court* (adopted 29 May 2006; in force 1 July 2006), Rule 34(3).

[86] Council of Europe, *European Court of Human Rights Rules of Court* (adopted 29 May 2006; in force 1 July 2006), Rule 34(4).

[87] Council of Europe, *European Court of Human Rights Rules of Court* (adopted 29 May 2006; in force 1 July 2006), Rule 34(6).

One of the three dimensions of security the OSCE addresses is the so-called "Human Dimension".[88] This includes human rights and the rights of national minorities. These easily embrace language issues. Through the Human Dimension the OSCE has developed important norms for language management, although these norms are not legally binding.

The OSCE's complex structure contains so-called "decision-making bodies" and "informal bodies". The highest "decision-making body" is a Meeting of Heads of State or Government, also known as a Summit.[89] Between Summits the OSCE's central governing body is the Ministerial Council. This consists of the Foreign Ministers of the participating states.[90] Between meetings of the Ministerial Council the principal decision-making body is the "Permanent Council". This governs the OSCE's day-to-day operational work, and maintains regular political consultations.[91] The "Forum for Security and Co-operation" has a mandate determined by the Summit or Ministerial Council.[92]

Various operational institutions assist in the daily workings of the OSCE. The most important of these is the Chairmanship-in-Office, which is held for a year by the Foreign Minister of the participating state designated by a Summit or the Ministerial Conference. The Chairman-in-Office is responsible for co-ordination of and consultation about current OSCE business. The Chairman-in-Office is assisted by his or her immediate predecessor and immediate successor; together they are known as the "Troika".[93] A Parliamentary Assembly, composed of 320 members, facilitates dialogue between Parliaments of the participating states. Of particular importance for language issues are the Office for

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[88] The other two are the Politico-Military Dimension, and the Economic and Environmental Dimension.

[89] Organization for Security and Co-operation in Europe, Ministerial Council, *Rules of Procedure of the Organization for Security and Co-operation in Europe*, MC.DOC/1/06, 1 November 2006, hereafter referred to as the "OSCE Rules of Procedure", Part II, s. (B), Article 2.

[90] Organization for Security and Co-operation in Europe, Ministerial Council, *Rules of Procedure of the Organization for Security and Co-operation in Europe*, MC.DOC/1/06, 1 November 2006, Part II, s. (B), Article 3.

[91] Organization for Security and Co-operation in Europe, Ministerial Council, *Rules of Procedure of the Organization for Security and Co-operation in Europe*, MC.DOC/1/06, 1 November 2006, Part II, s. (B), Article 4.

[92] Organization for Security and Co-operation in Europe, Ministerial Council, *Rules of Procedure of the Organization for Security and Co-operation in Europe*, MC.DOC/1/06, 1 November 2006, Part II, s. (B), Article 7.

[93] Organization for Security and Co-operation in Europe, Ministerial Council, *Rules of Procedure of the Organization for Security and Co-operation in Europe*, MC.DOC/1/06, 1 November 2006, Part III, Articles 1-3.

Democratic Institutions and Human Rights ("ODIHR") and the High Commissioner on National Minorities ("HCNM").

The basic rules of the OSCE's language regime are set out in the OSCE Rules of Procedure.[94] These specify that the OSCE has six working languages: English, French, German, Italian, Russian and Spanish. Generally, all meetings of all decision-making bodies are conducted in these working languages, with interpretation provided by the OSCE.[95] A representative can make statements in a language other than one of the working languages. Where this is done, the representative must him- or herself provide for interpretation.[96] A similar regime applies within the Parliamentary Assembly.[97] All proceedings of decision-making bodies must be recorded in journals of the meetings, which are public documents that must be issued in each of the working languages,[98] as must all decisions and supporting documents.[99] As with the COE, other languages are used by the OSCE, but as in the COE, this is dictated by administrative necessity.

The OSCE does not create binding legal rules for states, unlike the EU. Nor does the OSCE oversee the development of treaties, unlike the COE. The OSCE has limited direct contact with the citizens of participating states. It has no court, tribunal or dispute resolution body to which participating states or their citizens have recourse. Accordingly, the OSCE has less need for a highly articulated internal language regime.

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94 Organization for Security and Co-operation in Europe, Ministerial Council, *Rules of Procedure of the Organization for Security and Co-operation in Europe*, MC.DOC/1/06, 1 November 2006, Part IV.1, s. (B).

95 Organization for Security and Co-operation in Europe, Ministerial Council, *Rules of Procedure of the Organization for Security and Co-operation in Europe*, MC.DOC/1/06, 1 November 2006, Part IV.1, s. (B), Article 2, although a meeting of a decision-making body can be held through one language only, without interpretation, where the Chairperson of the body has suggested this and the participating states assent.

96 Organization for Security and Co-operation in Europe, Ministerial Council, *Rules of Procedure of the Organization for Security and Co-operation in Europe*, MC.DOC/1/06, 1 November 2006, Part IV.1, s. (B), Article 3.

97 Organization for Security and Co-operation in Europe, Parliamentary Assembly *Rules of Procedure*, 18 November 2006, Rules 27 and 28.

98 Organization for Security and Co-operation in Europe, Ministerial Council, *Rules of Procedure of the Organization for Security and Co-operation in Europe*, MC.DOC/1/06, 1 November 2006, Part IV.1, s. (B), Article 4.

99 Organization for Security and Co-operation in Europe, Ministerial Council, *Rules of Procedure of the Organization for Security and Co-operation in Europe*, MC.DOC/1/06, 1 November 2006, Part IV.1, s. (B), Article 6.

The OSCE developed a language regime attuned to its mission to promote dialogue between the West and the Communist bloc. This is why Russian plays a significant role. It is also the reason why there is little provision for the use of autochthonous minority or "new minority" languages.

To conclude, both the COE and the OSCE have an internal language regime that is more typical of international institutions than that of the EU: both have a limited number of official and working languages — generally, high-prestige, widely spoken languages, and languages of the most influential member states — with at best limited accommodation of the official languages of less influential member states, and little or no provision for other languages, including autochthonous minority languages. Driven by practicality and *realpolitik*, such regimes tend to reinforce already-existing linguistic hierarchies within Europe and, arguably, the homogenizing tendencies of such hierarchies.

III. European Regional International Legal Norms Concerning Language

Norms are contained in instruments concerned with the protection of human rights or the protection of minorities.[100] These are generally not explicitly directed at language issues.[101] Standard-setting in these areas has been piecemeal and reactive, and is most intense in the wake of threats to international peace and security in Europe. The system of minority protection developed after the First World War is a good example. New nation-states grew out of the defunct multinational, multi-faith Austro-Hungarian, Ottoman and Russian empires. Large ethnic, linguistic and religious minorities were included in these states. Under the aegis of the League of Nations, a system of minority protection was established to ensure that the mistreatment of such minorities would not become a reason or pretext for intervention by neighbouring states with which a particular minority had close affinities. This system applied to new or newly re-emergent states in Central and Eastern Europe and in the Middle East until the outbreak of the Second

100 Some, but not all of the minorities are linguistic minorities.

101 There is a prominent exception, the COE's *European Charter for Regional or Minority Languages*, 5 November 1992, Eur. T.S. No. 148, discussed below.

World War.[102] The system contained the earliest explicit "language rights" in a European context, including a right to use minority languages in the courts, a right for linguistic and religious minorities to establish their own private schools and a right for linguistic minorities to have children receive primary education in public schools in the minority language.[103]

The atrocities of the Second World War produced major international human rights treaties. The first such European treaty was the COE's *European Convention on Human Rights*.[104] From 1990, the outbreak of violence between different ethnic and religious groups — particularly in the former Yugoslavia — resulted in another period of standard-setting.

1. The COE

The most significant regional international legal norms relevant to the management of European linguistic diversity are all COE treaties — the ECHR,[105] the *Framework Convention for the Protection of National*

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[102] The League of Nations "minorities system" comprised the following four types of instruments, involving the following states and/or territories: minorities-specific treaties with newly created states such as Czechoslovakia and Poland or states which obtained new territories under the peace treaties, such as Serbia, Romania and Greece; chapters on minorities in the peace treaties imposed on four of the defeated states, Austria, Hungary, Bulgaria and Turkey; further treaties with respect to particular minority territories, such as Danzig, the Åland Islands, Upper Silesia and the Territory of Memel; and unilateral declarations in respect of minority populations made by Albania, Lithuania, Latvia, Estonia and Iraq on their entry into the League of Nations.

[103] See, for example, articles 7, 8 and 9, respectively, of the *Treaty between the Allied and Associated Powers and Poland* ("*The Polish Minorities Treaty*"), Versailles, 28 June 1919. (See, Patrick Thornberry, *International Law and the Rights of Minorities* (Oxford: Clarendon, 1991), Appendix 1, 399-403, and in Manley O. Hudson, ed., *International Legislation, vol. I* (Washington: Carnegie Endowment for International Peace, 1934), at 283), which was generally used as a model for the other instruments which formed part of this "system". For a good discussion of the League of Nations "minorities system", see Patrick Thornberry, *International Law and the Rights of Minorities* (Oxford: Clarendon Press, 1991), chs. 2-4 at 25-54, or Francesco Capotorti, *Study on the Rights of Persons Belonging to Ethnic, Religious and Linguistic Minorities* (New York: United Nations, 1991), ch. 1, at 16-26.

[104] *Convention for the Protection of Human Rights and Fundamental Freedoms*, 4 November 1950, 213 U.N.T.S. 221 at 223, Eur. T.S. 5.

[105] *Convention for the Protection of Human Rights and Fundamental Freedoms*, 4 November 1950, 213 U.N.T.S. 221 at 223, Eur. T.S. 5. The ECHR was opened for signature on 4 November 1950, entered into force on 3 September 1953, and has been ratified by all 46 COE member states. The Parliamentary Assembly of the COE, which is generally consulted with respect to accession of new members to the COE, now generally requires applicant states to ratify the ECHR and Protocols 1, 4, 6 and 7: see, for example, Council of Europe, P.A., *Opinion No. 209 (1999), Georgia's application for membership of the council of Europe*, in respect of Georgia's application for

Minorities (the "Framework Convention")[106] and the *European Charter for Regional or Minority Languages* (the "Languages Charter").[107] Only the last is explicitly directed at language issues.

The ECHR[108] creates a limited regime for the protection of speakers of minority languages.[109] Only three provisions create what could be described as "language rights". Article 5, paragraph 2, guarantees that everyone who is arrested will be informed promptly, in a language which he understands, of the reasons for his arrest and the charges against him. Article 6, subparagraphs 3(a) and 3(e), guarantee that everyone charged with a criminal offence will be informed promptly, in a language which he understands, of the nature and cause of the accusation against him, and will have the free assistance of an interpreter if he cannot understand or speak the language of the court. These rights are limited and primarily concerned with procedural fairness, not the management of linguistic diversity. The ECtHR has made clear that speakers of minority languages who also speak and understand the language of the relevant national court cannot avail themselves of the right to an interpreter in order to use the minority language in court.[110] Given state education policies in Europe, which

membership; and Florence Benoît-Rohmer & Heinrich Klebes, *Council of Europe Law: Towards a Pan-European Legal Area* (Strasbourg: Council of Europe Publishing, 2005), at 39-40.

[106] Eur. T.S. No. 157. The Framework Convention was opened for signature on 1 February 1995, entered into force on 1 February 1998, and has been ratified by 38 member states of the COE, and one non-member, Montenegro (of the COE member states, only Andorra, Belgium, France, Greece, Iceland, Luxembourg, Monaco and Turkey have not ratified it). The Parliamentary Assembly of the COE now generally requires states applying for membership to ratify the Framework Convention: Council of Europe, P.A., *Opinion no. 209 (1999), Georgia's application for membership of the Council of Europe*.

[107] Eur. T.S. No. 148. The Languages Charter was opened for signature on 5 November 1992, entered into force on 1 March 1998, and has been ratified by 22 member states of the COE (seven of the eight COE member states that have not ratified the Framework Convention have also not ratified the Languages Charter — Luxembourg being the exception). Once again, the Parliamentary Assembly of the COE now generally requires states applying for membership to ratify the Languages Charter: Council of Europe, P.A., *Opinion no. 209 (1999), Georgia's application for membership of the Council of Europe*.

[108] *Convention for the Protection of Human Rights and Fundamental Freedoms*, 4 November 1950, 213 U.N.T.S. 221 at 223, Eur. T.S. 5.

[109] For a good discussion of the ECHR's effectiveness as a mechanism for the protection of minorities generally, see, for example, Patrick Thornberry & María Amor Martín Estébanez, *Minority Rights in Europe* (Strasbourg: Council of Europe, 2004), ch. 1, "The European Convention on Human Rights (ECHR) and 'ethnic' questions", at 39-87.

[110] See, for example, *Isop v. Austria* (1962), 5 Y.B. Eur. Conv. H.R. 108, in which a Slovenian speaker claimed the right to use Slovene in criminal proceedings; he also spoke German, and the European Commission — which no longer exists, but which had formerly effectively been used to screen admissibility of cases to the full Court — ruled that Article 6, para. 3(e) did not

have generally sought to equip all citizens with the national language, speakers of autochthonous minority languages tend also to speak and understand that national language, with the result that these ECHR provisions are likely to be of greater value to non-citizens or members of migrant populations, many of whom have little or no grasp of the national language.[111]

The limited nature of the ECHR as a guarantor of "language rights" becomes apparent from in the manner in which not only the aforementioned but also other potentially relevant rights have been interpreted by the ECtHR. Article 2 of the First Optional Protocol of the ECHR provides that no person shall be denied the right to education and that the state shall respect the right of parents to ensure such education and teaching is in conformity with their religious and philosophical convictions. The *Belgian Linguistics* case of 1968[112] involved a challenge to the Belgian linguistic regime, which divided the country into monolingual linguistic territories, except in and around the capital, Brussels, in which French-Flemish bilingualism prevailed. French-speaking parents living in Flemish-speaking territory complained that the denial of French education to their children violated Article 2 of the First Optional Protocol. The ECtHR rejected this argument. The right to education, the Court said, did not recognize a right to be educated in any particular language. If it did, the ECtHR reasoned, anyone would be free to claim any language of instruction in the territories of the contracting states.[113]

The implication of the *Belgian Linguistics* case[114] is that states are under no obligation to offer minority-language education. Where instruction is provided in more than one language, the non-discrimination principle may support a claim to equal provision for

include a right to be heard in one's own language. See, also, *K v. France* (1983), 35 Eur. Comm'n. H.R.D.R. 203. Similarly, in *Bideault v. France* (1986), 48 Eur. Comm'n. H.R.D.R. 232, the Commission ruled, in respect of Breton-speaking witnesses who also spoke French, that witnesses were not entitled under this provision to use the language of their choice. See also Alpha Connelly, "The European Convention on Human Rights and the Protection of Linguistic Minorities" (1993) 2 I.J.E.L. 277, at 281-83.

111 See, for example, *Twalib v. Greece* (1988), 33 E.H.R.R. 584.

112 *Case Relating to Certain Aspects of the Laws on the Use of Languages in Education in Belgium v. Belgium* (1968), 6 Eur. Ct. H.R. (Ser. A) 31 (the "*Belgian Linguistics* case").

113 For a comment, see Bruno de Witte, "Surviving in Babel: Language Rights and European Integration" in Yoram Dinstein & Mala Tabory, eds., *The Protection of Minorities and Human Rights* (Dordrecht: Martinus Nijhoff, 1992), at 277-300.

114 *Case Relating to Certain Aspects of the Laws on the Use of Languages in Education in Belgium v. Belgium* (1968), 6 Eur. Ct. H.R. (Ser. A) 31.

members of a linguistic minority if they can establish that they are similarly situated to the minority to which such education has been extended.[115] It remains unclear whether the non-discrimination principle in Article 14 of the ECHR would support other areas of minority language policy, for example, the use of minority languages in public services. This is because Article 14 applies only to discrimination in the enjoyment of ECHR rights, and there is no clear ECHR right to public services other than education.[116]

The situation established in the *Belgian Linguistics* case[117] may change as a result of treaty and jurisprudential evolution. Protocol 12 to the ECHR[118] evolves the Treaty non-discrimination commitments. Protocol 12 has wider application than Article 14 because it provides that the enjoyment of *any right set forth by law* — and not just any ECHR right — shall be secured without discrimination on a number of grounds, including language.[119]

In *Cyprus v. Turkey*[120] the ECtHR considered a complaint against closure of the only secondary school in Turkish-controlled Cyprus which offered education in Greek. Greek education continued to be available at the primary level. The ECtHR ruled that the discontinuance of Greek education at the secondary level was a complete denial of the substance of the right to education contained in Article 2 of Protocol

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[115] The claimants in *Case Relating to Certain Aspects of the Laws on the Use of Languages in Education in Belgium v. Belgium* (1968), 6 Eur. Ct. H.R. (Ser. A) 31 did succeed on these grounds. In six communes around Brussels, French-medium education was available only to children of parents living within those communes, while Flemish-medium education was available to children of parents living outside the communes as well as within them. The ECtHR ruled that there was no legitimate basis for this differential treatment, and that the claimants, who lived outside the communes, should be able send their children to a French-speaking school within the communes in the same way that Flemish-speaking parents living outside the communes were entitled to do in order for their children to receive Flemish-medium education.

[116] The right to a fair trial, set out in *Convention for the Protection of Human Rights and Fundamental Freedoms*, 4 November 1950, 213 U.N.T.S. 221 at 223, Eur. T.S. 5, Article 6, which applies to civil as well as criminal processes, may support a non-discrimination claim if a state made it possible to use a minority language in the court system.

[117] *Case Relating to Certain Aspects of the Laws on the Use of Languages in Education in Belgium v. Belgium* (1968), 6 Eur. Ct. H.R. (Ser. A) 31.

[118] *Protocol No. 12 to the Convention for the Protection of Human Rights and Fundamental Freedoms*, 11 November 2000, Eur. T.S. 177 (entered into force 1 April 2004). The Protocol entered into force on 1 April 2004 but has only been ratified by 14 COE member states.

[119] *Protocol No. 12 to the Convention for the Protection of Human Rights and Fundamental Freedoms*, 11 November 2000, Eur. T.S. 177 (entered into force 1 April 2004), Article 1, para. 1. Furthermore, Article 1, para. 2 of Protocol 12 provides that no one shall be discriminated against by any public authority on any such grounds.

[120] (2001), 35 Eur. Ct. H.R. 967.

1.[121] The ECtHR was influenced by Cyprus' circumstances. The border between the Turkish-controlled part of Cyprus and the rest of the island was tense. Sending children across the border, though possible, was not practicable. The children concerned had already received their primary education in Greek. Placement in Turkish secondary schools meant that they would be unable to understand what was being taught to them.

The decision does not create a general right to minority-language education. In this sense it does not dismantle the *Belgian Linguistics* case.[122] Still, the ruling in *Cyprus v. Turkey*[123] may imply that a right to minority-language education could arise in circumstances where children from a linguistic minority do not speak the language of the school they are required to attend. Even if the principle is so extended, however, it would be of limited use to speakers of autochthonous minority languages, many of whose children have some facility in the majority language.

Other cases show the wide deference the ECtHR gives to member states with respect to their linguistic regimes. In *Podkolzina v. Latvia*,[124] the Court considered the situation of a Russian-speaker who stood for election to the Latvian Parliament. Like many of the former Soviet Republics, Latvia wanted to reverse the linguistic dominance of Russian which characterized the Soviet period. After independence, Latvia made Latvian the sole official language of the state.[125] Latvian electoral legislation provided that no candidate could stand for election to the national parliament unless the person could demonstrate the highest level of competence in Latvian under prescribed tests.[126] The applicant

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121 See *Cyprus v. Turkey* (2001), 35 Eur. Ct. H.R. 967, at paras. 273-80.

122 *Case Relating to Certain Aspects of the Laws on the Use of Languages in Education in Belgium v. Belgium* (1968), 6 Eur. Ct. H.R. (Ser. A) 31. Indeed, in a subsequent case, *Skender v. the Former Yugoslav Republic of Macedonia*, Application No. 62059/00, (10 March 2005), the ECtHR strongly reaffirmed the general position taken in the *Belgian Linguistics* case.

123 (2001), 35 Eur. Ct. H.R. 967.

124 Application No. 46726/99 (9 April 2002).

125 See, for example, Article 14 of the Constitution of Lithuania (6 November 1992), Article 6 of the Constitution of Estonia (28 June 1992, as am.), Article 4 of the Constitution of Latvia (15 February 1922, as am.), Article 13 of the Constitution of Moldova (29 July 1994), Article 8 of the Constitution of Georgia (24 August 1995), Article 21, paragraph 1 of the Constitution of Azerbaijan (12 November 1995, as am.), and Article 12 of the Constitution of Armenia (5 July 1995).

126 See Article 21 of the Constitution of Latvia, and Articles 18 and 50 of the Law on the Rules and Procedure of the Saeima. Article 18 of the Latvian constitution also requires that everyone elected to the Saeima, the national parliament, must take an oath in which they agree, among other things, to defend the Latvian language as the sole official language. Estonia also applies such a rule: see, for example, Article 1 of the Estonian Law on the Rules and Procedures of the Riigikogu of

had obtained certification for this level of competence, but was nonetheless struck off the list of candidates by a state official, a member of the Language Board. The official determined in an impromptu test of competence that the candidate lacked sufficient command of Latvian. The ECtHR found that the official's determination was a violation of Article 3 of Protocol 1 to the ECHR. This article provides that States Parties undertake to hold free elections at reasonable intervals by secret ballot, under conditions which will ensure the free expression of the opinion of the people in the choice of the legislature. The ECtHR interpreted Article 3 as protecting the right to be elected, in addition to the right to vote. The ECtHR found objectionable the manner in which the test of competence had been carried out. The reassessment of the applicant's linguistic competence had not followed normal procedures for certification, it relied entirely on the discretion of a single civil servant, and it did not thereby guarantee objective assessment. As such, the impromptu reassessment was incompatible with the requirements for procedural fairness and legal certainty.[127] The ECtHR did not, however, object to the basic requirement of competency in Latvian. The Court allowed Member states a wide margin of appreciation to determine competency.[128] Concerning the regulation of elections, the Court accepted as legitimate and proportionate Latvia's requirement that candidates for parliament must have sufficient knowledge of the official language. The ECtHR noted that the choice of the working language of a national parliament "is determined by historical and political considerations specific to each country" and "is in principle one which the state alone has power to make".[129]

1994, and the Law on Elections to the Riigikogu. The language regime of several former Soviet republics requires that all public employees, as well as private and voluntary sector employees and independent contractors whose employment or trade involves the provision of services in respect of which there is a legitimate public interest — for example, public security, health, medical services, protection of consumers' rights, and so forth — are obliged to use the official language, and to demonstrate the level of competence in the official language that is required by regulation: see, for example, Article 6, para. 2 of Latvia's Law on the Official Language, Article 5, para. 3 of the Estonian Law on Language, and Article 3 of the Law on the Language of the Republic of Armenia.

[127] *Podkolzina v. Latvia*, Application No. 46726/99 (9 April 2002), at para. 36.

[128] This is a doctrine which has developed in the Court's case law, particularly in respect of whether a limitation imposed on certain ECHR rights is necessary in a democratic society, and therefore acceptable; the Court has generally taken the approach that, where there is no common approach to determining, for example, what is an acceptable restriction on an ECHR right in order to protect public morals, states are given greater latitude in their determination of what is acceptable. For a discussion, see: Clare Ovey & Robin C.A. White, *Jacobs & White, The European Convention on Human Rights*, 4th ed. (Oxford: Oxford University Press, 2006), at 52-54, 232-40.

[129] *Podkolzina v. Latvia*, Application No. 46726/99 (9 April 2002), at para. 34.

The right to freedom to manifest a religious belief and the right to freedom of expression, set out in Articles 9 and 10 of the ECHR, should be beneficial to speakers of minority languages. These rights in principle limit states from restricting minority-language use or imposing use of a national language in private communications, in religious observance, in a minority-language press, and similar private spheres. Although the potential of these ECHR rights in this respect has not yet been tested, it is likely, if the jurisprudence of other international human rights treaty bodies is an indication, that certain forms of regulation of private use of minority languages — for example, on signage directed at the public — may constitute permissible restrictions on such rights, so long as the regulation falls short of a complete prohibition on the use of minority languages.[130]

Different considerations apply to the use of language by the state itself. Decisions under the ECHR clarify that the right to freedom of expression does not guarantee the right to use the language of one's choice in "official" contexts or in dealing with the state itself. In *Inhabitants of Leew-St. Pierre v. Belgium*,[131] for example, a complaint about the refusal of municipal authorities in an area in which Flemish was the only official language to provide documentation in French was ruled inadmissible, on the ground that the right to freedom of expression did not include a guarantee as to the choice of language by the state. Similarly, in *X v. Ireland*,[132] the requirement to fill in a form in Irish, even where the applicant spoke only English, was not considered a violation of the right to freedom of expression. And, in *Fryske Nasjonale Partij v. Netherlands*,[133] where the applicants claimed that their right to freedom of expression was violated when they were prevented from standing for election because their registration forms were not in Dutch but in Frisian, it was decided that the right to freedom of expression does not guarantee the right to use one's language of

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130 See, for example, *Ballantyne v. Canada*, UN doc. A/48/40 (1993), involving a communication brought under the United Nation's *International Covenant on Civil and Political Rights*, G.A. res. 2200A (XXI), 21 U.N. GAOR Supp. (No. 16) at 52, U.N. Doc. A/6316 (1966), 999 U.N.T.S. 171 (entered into force 23 March 1976), in which the treaty body, the Human Rights Committee, concluded that the complete prohibition on English-language signage in Quebec constituted an unacceptable violation of the right to freedom of expression.

131 (1965), 8 Y.B. Eur. Conv. H.R. 388.

132 (1970), 13 Y.B. Eur. Conv. H.R. 792.

133 (1986), 45 Eur. Comm. H.R.D.R. 243.

choice in administrative matters.[134] Thus, as in the *Belgian Linguistics* case[135] and *Podkolzina*,[136] considerable deference is given to the state to specify the language of public or "official" business, or for use in the public sector.

More recent COE instruments create a more extensive basis for a "language rights" regime than the ECHR. The Framework Convention on National Minorities reproduces certain ECHR norms. However, it also broadens the ECHR "language rights" regime in important ways, albeit with ambiguities and limitations. We consider first the articles of the Framework Convention that run in channels first cut by the ECHR.

Article 7 of the Framework Convention requires states "to respect the right of every person belonging to a national minority to freedom of peaceful assembly, freedom of association, and freedom of expression. . . ." Article 9 expands upon expression rights. Article 8 recognizes rights to manifest religion or beliefs. Article 10(3) guarantees rights of persons arrested and detained to language rights in the criminal process. This article effectively reproduces the ECHR guarantees for the use of minority languages in the criminal justice system, described above.

The next set of Framework Convention obligations is different. Article 10(1) obliges states "to recognize that every person belonging to a national minority has the right to use freely and without interference his or her minority language, in private and in public, orally and in writing". The Advisory Committee, which monitors the implementation of the treaty, interprets this to mean that states cannot prohibit the use of minority languages in signage[137] or the use of a different alphabet on signage.[138] Article 4(1) guarantees the right of equality before the law and of equal protection of the law to persons belonging to national minorities.[139] Article 4(2) commits states "to adopt

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[134] Whether such a restrictive approach would still be taken, given the development of COE treaties with respect to the use of minority languages, is unclear; the Court has shown some inclination to take such broader developments in the consideration of certain ECHR rights, such as the Article 8 right to private and family life: see, for example, *Chapman v. U.K.*, Application No. 27238/95 (18 January 2001), especially paras. 93-94.

[135] *Case Relating to Certain Aspects of the Laws on the Use of Languages in Education in Belgium v. Belgium* (1968), 6 Eur. Ct. H.R. (Ser. A) 31.

[136] *Podkolzina v. Latvia*, Application No. 46726/99 (9 April 2002).

[137] Advisory Committee Opinion on Switzerland, ACFC/INF/OP/I (2003)007, para. 96.

[138] Advisory Committee Opinion on the Russian Federation, ACFC/INF/OP/I (2003)005, para. 83.

[139] As noted above, Optional Protocol 12 (*Protocol No. 12 to the Convention for the Protection of Human Rights and Fundamental Freedoms*, 11 November 2000, Eur. T.S. 177 (entered into force

adequate measures . . . to promote, in all areas of economic, social, political and cultural life, full and effective equality between persons belonging to a national minority and those belonging to the majority". Measures adopted under art. 4(2) cannot be considered acts of discrimination.[140] Article 5(1) requires states "to promote the conditions necessary for persons belonging to national minorities to maintain and develop their culture, and to preserve the essential elements of their identity, including their religion, *language*, traditions and cultural heritage." This general principle manifests itself in greater detail elsewhere in the treaty, particularly in explicit language "rights" for education. Article 5(2) recognizes that states may take measures to integrate minorities. These measures must refrain from policies or practices aimed at the assimilation of persons belonging to national minorities against their will.

With regard to education, the Framework Convention contains some clearly identifiable "language rights", although these tend to be pitched at a high level of generality and subject to qualifications. The Convention guarantees the right of persons belonging to national minorities to set up and manage their own educational establishments (implicitly allowing for the creation of minority language education establishments) — albeit with no right to financial support from the state.[141] States are required "to recognise that every person belonging to a national minority has the right to learn his or her minority language".[142]

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1 April 2004)), which contains such equal protection provisions, has only been ratified by 14 COE member states.

[140] Art. 4(3). Although the ECtHR has recognized that the principle of non-discrimination may involve an obligation on states to take positive measures (see, for example, *Thlimmenos v. Greece*, Application No. 34369/97 (6 April 2000)), unlike the Framework Convention, the ECHR itself does not explicitly recognize this principle.

[141] *Framework Convention for the Protection of National Minorities*, 1 February 1995, Eur. T.S. 5, Article 13, paras. 1 and 2.

[142] *Framework Convention for the Protection of National Minorities*, 1 February 1995, Eur. T.S. 5, Article 14, para. 1. The precise implications of this are not clear, and are made even more opaque by the Explanatory Report which accompanies the Framework Convention, para. 74 of which asserts, on the one hand, that the right to learn one's minority language "concerns one of the principal means by which [members of national minorities] can assert and preserve their identity", and that there can therefore "be no exceptions to this", but on the other hand, makes clear that Article 14, para. 1 "does not imply positive action, notably of a financial nature, on the part of the State". Thus, it would appear that Article 14, para. 1 is meant to restrict the ability of the state to interfere with attempts by members of minorities to learn their language, but does not require the state to actually assist them in doing so.

Article 14(2) deals with state-supported minority-language education. The basic right is that of persons belonging to national minorities to have "adequate opportunities" for either "being taught the minority language" or "receiving instruction in this language". What constitutes "adequate opportunities" is not defined. The Explanatory Report which accompanies the Framework Convention anticipates that "instruction in" the minority language refers to the use of the language as the medium of instruction. It notes that "bilingual education" may be one means of achieving the objective of this provision.[143] It also notes that there are two options — "being taught" and "receiving instruction in" the minority language. These are not necessarily mutually exclusive.[144] It is not clear whether the right is limited to primary education, or extends beyond — to secondary or tertiary education. The Explanatory Report observes that the right may extend to pre-school education.[145]

The right is, however, subject to conditions. It applies only in areas of the state "inhabited by persons belonging to national minorities *traditionally* or *in substantial numbers*".[146] The Framework Convention gives no guidance as to what "traditional inhabitation" implies or what would constitute numerical sufficiency. Even in such areas, the right applies only where there is "sufficient demand". This crucial term is not defined. Paragraph 75 of the Explanatory Report observes that the Article was drafted to give states "a wide measure of discretion". The obligation only requires states to "endeavour", "as far as possible", to satisfy the right. Paragraph 75 of the Explanatory Report observes that there are "possible financial, administrative and technical difficulties associated with instruction of or in minority languages", and notes that

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[143] *Explanatory Report to the Framework Convention for the Protection of National Minorities*, 1 February 1995, Eur. T.S. 5, para. 77.

[144] *Explanatory Report to the Framework Convention for the Protection of National Minorities*, 1 February 1995, Eur. T.S. 5.

[145] *Explanatory Report to the Framework Convention for the Protection of National Minorities*, 1 February 1995, Eur. T.S. 5.

[146] Significantly, though, both the Article 16 of the *Framework Convention for the Protection of National Minorities*, 1 February 1995, Eur. T.S. 5 and Article 5 of the Proposed Minorities Protocol Council of Europe, P.A., *Recommendation 1201 (1993) on an additional protocol on the rights of national minorities to the European Convention on Human Rights* (Assembly debate on 1 February 1993 (22nd Sitting); Text adopted by the Assembly on 1 February 1993 (22nd Sitting); Recommendation not followed: Council of Europe, P.A., *Recommendation 1255 (1995) on the protection of the rights of national minorities* (Assembly debate on 31 January 1995 (3rd Sitting)) attempt to prevent states from avoiding their obligations under this and other similar provisions by providing that states are prohibited from making deliberate changes to the demographic composition of a region in which a minority is settled (by gerrymandering or otherwise) which is to the detriment of the minority or its rights.

provision of the right can only be "dependent on the available resources" of the state concerned.

Some of these ambiguities are being addressed by the Advisory Committee,[147] which issued a commentary on these provisions in 2006.[148] The Advisory Committee asked states to provide clear numerical thresholds by which sufficiency of demand is determined.[149] The Advisory Committee was critical of numerical thresholds that it considered too high,[150] and commended lower numerical thresholds, although without specifying what these should be.[151] It encouraged states to take a more flexible approach towards minimum class sizes than that used for non-minority students.[152] The Advisory Committee criticized states for giving too much discretion to school authorities on minority-language education decisions. It called instead for legislative guarantees.[153] The Advisory Committee criticized shortages of teachers, appropriate teaching materials and textbooks, and the lack of minority-language education at the post-primary level. The Advisory Committee clarified that the rights protected by Article 14 apply regardless of whether the pupils also speak the national language.[154]

The Advisory Committee recognized that states are entitled to promote the use of the national language and to ensure its protection,[155] although in doing so, states must respect the right, set out in Article 10(1), of members of minorities to use their language in private communications, with the consequence that the mandatory use of the national language is not required beyond the public sphere.[156]

The Framework Convention also goes beyond the ECHR in creating binding legal obligations concerning the use of minority languages in

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147 For a comprehensive evaluation, see Marc Weller, ed., *The Rights of Minorities: A Commentary on the European Framework Convention for the Protection of National Minorities* (Oxford: Oxford University Press, 2005).

148 "Commentary on Education under the Framework Convention for the Protection of National Minorities", 2 March 2006, ACFC/25DOC(2006)02, the first such document the Advisory Committee has issued.

149 See, for example, Advisory Committee Opinion on Croatia, ACFC/INF/OP/I (2002)003, para. 51, Advisory Committee Opinion on Armenia, ACFC/INF/OP/I (2003)001, para. 71, Advisory Committee Opinion on the Russian Federation, ACFC/INF/OP/I (2002)007, paras. 94, 154.

150 Advisory Committee Opinion on Germany, ACFC/INF/OP/I (2002)008, para. 60, where it felt that a minimum number of 20 pupils for a minority language instruction was high.

151 Advisory Committee Opinion on Ukraine, ACFC/INF/OP/I (2002)010, para. 63.

152 Advisory Committee Opinion on Austria, ACFC/INF/OP/I (2003)001, para. 96.

153 Advisory Committee Opinion on Estonia, ACFC/INF/OP/I (2002)005, paras. 51, 52.

154 Advisory Committee Opinion on Norway, ACFC/INF/OP/I (2003)003, para. 59.

155 Advisory Committee Opinion on Ukraine, ACFC/INF/OP/I (2002)010, para. 50.

156 Advisory Committee Opinion on Lithuania, ACFC/INF/OP/I (2003)008, paras. 55, 98.

dealing with public institutions. Article 10(2) deals with the use by persons belonging to national minorities of their minority language in dealings with "administrative authorities". The article does not create any clear or explicit "right". Rather, states commit to "endeavour to ensure, as far as possible, the conditions which would make it possible to use the minority language in relations between those persons and the administrative authorities". There are many qualifications. The obligation is territorially restricted: the state is only under an obligation "in areas inhabited traditionally or in substantial numbers" by persons belonging to national minorities.[157] The Advisory Committee observed that the provision of minority-language services should not be left solely to the discretion of the administrative authorities concerned, and that clear legislative guidelines should be provided.[158] The Advisory Committee has criticized thresholds that it considers to be too high.[159] Furthermore, persons wishing such services must request them. Also, there must be a "real need" for such minority-language services. Paragraph 65 of the Explanatory Report observed that the state alone will assess this need, but that it is to apply unspecified "objective criteria". This condition is potentially more limiting than demand contingency. However, the Advisory Committee observed that "real need" is not dependent upon a lack of proficiency in the national languages.[160] This is reassuring, since it means that members of a minority should be entitled to use their minority language even if they speak the national language. Still, the

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[157] States sometimes establish numerical thresholds which trigger a right to request and a duty to provide public services through the medium of a minority language. While the Advisory Committee has not been prescriptive here — it has not, for example, suggested any specific minimum threshold — it has made clear that certain minimum thresholds are too high, and are therefore unacceptable. See, for example, its opinions on Estonia, Moldova and Ukraine, in which it made clear that a requirement that the linguistic minority constitute a majority of the inhabitants of a municipality in order to be entitled to use their language in dealings with administrative authorities was too high: Advisory Committee, Opinion on Estonia, ACFC/INF/OP/I(2002)005, para. 40; Advisory Committee Opinion on Moldova, ACFC/INF/OP/I(2003)02, para. 62; Advisory Committee Opinion on Ukraine, ACFC/INF/OP/I(2002)010, para. 51.

[158] Advisory Committee Opinion on Armenia, ACFC/INF/OP/I(2003)001, para. 101.

[159] Thus, requirements that members of the national minority represent more than half the local population before the provision of minority language services is made available have been criticized as being too high: Advisory Committee Opinion on Croatia, ACFC/INF/OP/I(2002)003, para. 44, Advisory Committee Opinion on Estonia, ACFC/INF/OP/I(2002)005, para. 40, Advisory Committee Opinion on Moldova, ACFC/INF/OP/I(2003)002, para. 62, Advisory Committee Opinion on Ukraine, ACFC/INF/OP/I (2002)010, para. 51.

[160] Advisory Committee Opinion on Germany, ACFC/ING/OP/I(2002)009, 2002, para. 49: "the fact that persons belonging to national minorities also have a command of the German language is not decisive as the effective use of minority languages remains essential to consolidate the presence of those languages in the public sphere."

concept of "real need" lacks specificity. How this need is to be demonstrated remains unclear. The Advisory Committee observed that where sufficient numbers of speakers of minority languages are present, the state should actively ensure that they can, in practice, take advantage of the possibility of using their language in dealing with the authorities.[161] Finally, even where all these conditions are met, the obligation on the state is not to provide minority-language administrative services, but to "endeavour" to do so "as far as possible".

Paragraph 64 of the Explanatory Report to the Framework Convention justified this "wide measure of discretion" given to states "in recognition of possible financial, administrative . . . and technical difficulties" associated with minority-language use in official contexts. The report specifically provided that the financial resources of the state may be taken into consideration. States are apparently concerned that it may be difficult to recruit civil servants who speak the minority language, and that the cost of providing such services may be high. Yet, the discretion given to the state on these grounds potentially allows states to avoid taking the very measures necessary to redress such shortages.

Article 11(3) of the Framework Convention requires states to display traditional local names, street names and topographical indications intended for the public in both the minority language and the majority or official language. This obligation is limited geographically to those areas "traditionally inhabited by substantial numbers" of minority language speakers. It is also conditional on there being "sufficient demand". Where these conditions are met, the state is required only to "endeavour" to meet the obligation.[162] As with the other provisions that have just been examined, the Advisory Committee has encouraged the establishment of a clear legislative framework for the implementation of this provision, and has been critical of the establishment of numerical thresholds which are considered too high. Other obligations in this area include the right of persons belonging to national minorities to use their

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161 Advisory Committee Opinion on Germany, ACFC/ING/OP/I(2002)009, 2002, at para. 85.

162 Again, the Advisory Committee has clarified this provision to some extent. For a useful discussion, again see the relevant chapter in Marc Weller, ed., *The Rights of Minorities: A Commentary on the European Framework Convention for the Protection of National Minorities* (Oxford: Oxford University Press, 2005).

surnames and first names in their minority language, and to official recognition of these forms of their names.[163]

The pervasive presence of modern communications media and their profound impact on maintenance of autochthonous minority languages cannot be overstated. The Framework Convention is limited in this important area. Article 9(3) requires states to ensure, as far as possible, that members of national minorities have the possibility of creating and using their own radio and television broadcasting media, although no obligation is imposed on states to actually fund or otherwise assist such efforts. Article 9(4) provides that states "shall adopt adequate measures in order to facilitate access to the media for persons belonging to national minorities". The Advisory Committee interpreted this provision expansively in order to address minority-language television and radio broadcasting. The Advisory Committee has made clear that Article 9(4) implies a general obligation to produce and broadcast programs intended for persons belonging to national minorities,[164] that sufficient time be allocated to such broadcasting[165] and that minority-language programming be broadcast at times that will allow persons belonging to national minorities to enjoy such programming in a meaningful way. This last requirement implies that minority-language programming is transmitted at reasonable times of the day,[166] when it can reach the greatest audience.[167]

The Languages Charter is the only international instrument which relates exclusively to language. The Explanatory Report to the Languages Charter states that its overriding purpose is to preserve and promote autochthonous languages of Europe, all of which are characterized by "a greater or lesser degree of precariousness".[168] It recognizes that the threat posed to such languages is due "at least as much to the inevitably standardising influence of modern civilisation and especially of the mass media as to an unfriendly environment or a government policy of assimilation".[169]

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[163] *Framework Convention for the Protection of National Minorities*, 1 February 1995, Eur. T.S. 5, Article 11(1).

[164] Advisory Committee Opinion on Croatia, ACFC/INF/OP/I (2002)003.

[165] Advisory Committee Opinion on Armenia, ACFC/INF/OP/I (2003)001, para. 48.

[166] Advisory Committee Opinion on Moldova, ACFC/INF/OP/I (2003)002, para. 52.

[167] Advisory Committee Opinion on Hungary, ACFC/INF/OP/I (2001)004, para. 31.

[168] *Explanatory Report to the European Charter for Regional or Minority Languages*, 5 November 1992, Eur. T.S. No. 148, paras. 2 and 11.

[169] *Explanatory Report to the European Charter for Regional or Minority Languages*, 5 November 1992, Eur. T.S. No. 148, para. 2.

The substantive provisions of the Languages Charter are set out in Parts II and III.[170] Part II contains only one article, Article 7, which applies to all regional or minority languages in the state and to the state's "non-territorial languages". These terms are defined objectively; states are not entitled to choose which languages benefit from the protection of Part II. Article 7 requires states party to the Languages Charter to base their policies, legislation and practice on certain broad objectives and principles.[171] These include the need for resolute action to promote regional or minority languages in order to safeguard them,[172] to the facilitation and/or encouragement of the use of these languages, in speech and writing, in public and private life,[173] and to the provision of appropriate forms and means for the teaching and study of regional or minority languages at all appropriate stages.[174] Article 7 requires that states take measures to encourage participation of groups which use regional or minority languages. In particular, states must take into consideration the needs and wishes expressed by the groups which use such languages. States are encouraged to establish bodies for the purpose of advising the authorities on matters pertaining to regional or minority languages.[175]

The Languages Charter recognizes the legitimacy of positive measures to promote languages. The Explanatory Report emphasizes that, having regard to the present weakness of some of Europe's historical regional or minority languages, the mere prohibition of discrimination against their users is not sufficient. The Explanatory Report observes that special supporting measures reflecting the interests of those users are essential to language preservation.[176] Article 7 provides that adoption of special measures to promote equality between

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[170] See, generally, Jean-Marie Woehrling, *The European Charter for Regional or Minority Languages: A Critical Commentary* (Strasbourg: Council of Europe, 2005).

[171] *European Charter for Regional or Minority Languages*, 5 November 1992, Eur. T.S. No. 148, Article 7, para. 1.

[172] *European Charter for Regional or Minority Languages*, 5 November 1992, Eur. T.S. No. 148, Article 7, subpara. 1 c.

[173] *European Charter for Regional or Minority Languages*, 5 November 1992, Eur. T.S. No. 148, Article 7, subpara. 1 d.

[174] *European Charter for Regional or Minority Languages*, 5 November 1992, Eur. T.S. No. 148, Article 7, subpara. 1 f.

[175] *European Charter for Regional or Minority Languages*, 5 November 1992, Eur. T.S. No. 148, Article 7, para. 4.

[176] See, for example, para. 27 and para. 61.

regional or minority languages and the rest of the population is not discrimination.[177]

Part III of the Languages Charter sets out in seven articles more detailed obligations relating to the use of minority languages. These apply to education,[178] the judicial authorities,[179] administrative authorities and public services,[180] the media,[181] cultural activities and facilities,[182] economic and social life[183] and transfrontier exchanges.[184] These provisions provide specificity and detail to language issues beyond what is found in any other international instrument. For example, the article on education creates obligations relating to pre-school, primary, secondary and post-secondary education; it also obliges states to provide technical, vocational, and adult and continuing education in minority languages.[185] The article on media obliges states to create or facilitate television and radio broadcasting, newspapers and audio and audiovisual works in minority-languages.[186] The article on judicial authorities has implementation standards for the use of minority languages in the criminal courts, civil courts, and administrative tribunals.[187] By contrast, the ECHR and Framework Convention limit minority-language obligations to the criminal processes. Also noteworthy in contrast to most other treaties is that the provisions in the Languages Charter on judicial authorities allow for the use of the minority language even

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[177] *European Charter for Regional or Minority Languages*, 5 November 1992, Eur. T.S. No. 148, Article 7, para. 2.

[178] *European Charter for Regional or Minority Languages*, 5 November 1992, Eur. T.S. No. 148, Article 8.

[179] *European Charter for Regional or Minority Languages*, 5 November 1992, Eur. T.S. No. 148, Article 9.

[180] *European Charter for Regional or Minority Languages*, 5 November 1992, Eur. T.S. No. 148, Article 10.

[181] *European Charter for Regional or Minority Languages*, 5 November 1992, Eur. T.S. No. 148, Article 11.

[182] *European Charter for Regional or Minority Languages*, 5 November 1992, Eur. T.S. No. 148, Article 12.

[183] *European Charter for Regional or Minority Languages*, 5 November 1992, Eur. T.S. No. 148, Article 13.

[184] *European Charter for Regional or Minority Languages*, 5 November 1992, Eur. T.S. No. 148, Article 14.

[185] *European Charter for Regional or Minority Languages*, 5 November 1992, Eur. T.S. No. 148, Article 8, subparas. 1 a to f.

[186] *European Charter for Regional or Minority Languages*, 5 November 1992, Eur. T.S. No. 148, Article 11, subparas. 1 a to e.

[187] *European Charter for Regional or Minority Languages*, 5 November 1992, Eur. T.S. No. 148, Article 9, subparas. 1 a to c.

where the person seeking to rely upon them has complete command of the national language.[188]

The Languages Charter also has important limitations, though. It does not create legally enforceable rights for minority-language communities or individual speakers of the protected languages, a point explicitly emphasized in the Explanatory Report.[189] Part III, however, imposes obligations on states, and the treaty body charged with overseeing implementation of the Languages Charter, the Committee of Experts, has indicated that in certain circumstances, the creation of a right is the appropriate way to implement such obligations.

A second limitation is that not all speakers of regional or minority languages benefit from the protection of Part III. Part III applies only to those regional or minority languages chosen by the state. With respect to such languages, Part III invests states with wide discretion to determine which obligations apply. Part III sets out obligations in 65 paragraphs and subparagraphs in seven articles. A state which designates a language for the protection of Part III is required to select only 35 of these. The specific commitments within the various paragraphs and subparagraphs also allow for a range of choice, from relatively more onerous to relatively lighter commitments.[190]

A third limitation arises from the ambiguity of the most important concepts in the Languages Charter. The definition of the territory of regional or minority languages is important because many of the state's obligations under the Languages Charter apply only to certain territories within the state, not throughout the state as a whole. The definition of these territories is ambiguous: in some places the Charter refers to "the territories in which regional or minority languages are used",[191] in other

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[188] See, for example, Committee of Experts, Application of the Charter in Hungary, ECRML (2001) 4 (4 October 2001), at paras. 12 and 45, where the Committee noted that most speakers of minority languages in Hungary are bilingual and live in situations of diglossia, and that provisions such as *European Charter for Regional or Minority Languages*, 5 November 1992, Eur. T.S. No. 148, Article 9, subpara. 1 a ii, which guarantees the accused the right in criminal proceedings to use his or her minority language, imposes an unconditional obligation on judicial authorities to allow the accused the right to use the minority language, regardless of competence in Hungarian.

[189] *Explanatory Report to the European Charter for Regional or Minority Languages*, 5 November 1992, Eur. T.S. No. 148, para. 11.

[190] Take, for example, *European Charter for Regional or Minority Languages*, 5 November 1992, Eur. T.S. No. 148, Article 8, subpara. 1 b, which is the provision on primary school education. The obligations range from making public school education available in the language through the more limited commitment of providing for the teaching of the language as a subject. Either will satisfy the commitment under the subparagraph.

[191] *European Charter for Regional or Minority Languages*, 5 November 1992, Eur. T.S. No. 148, Article 7, para. 1 (Objectives and Principles), Article 8, para. 1 (Education), Article 10, para. 3

places, the Charter limits states' obligations to those territories within the state in which "the number of residents using the regional or minority language justifies the measures" set out in the provision.[192] The ambiguity creates flexibility. The need for flexibility arises from the fact that in both cases, the Languages Charter requires state parties to take positive measures to support minority languages. It is difficult to do this in parts of the country where numbers and concentrations of speakers are very low. Positive measures involve expenditure. States have differing capacities in this regard. Inevitably, flexibility is necessary.

Article 1(b) defines the territories in which regional or minority languages are used as "the geographical area in which the said language is the mode of expression of a number of persons justifying the adoption of the various protective and promotional measures provided in this Charter". The Explanatory Report clarifies that these territories are ones in which the language is spoken to a significant extent, even if only by a minority within the area, and correspond to the historical base of the language.[193] The Report observes that it is up to the state itself to define these territories, but that the state must do so "in the spirit of the Charter". The Explanatory Report also notes that it is up to the state to assess how best to implement the related concept of "the territories in which the number of persons using the regional or minority languages justifies the protective and promotional measures", once again limiting the states' discretion by "the spirit of the Charter".

As noted in the Explanatory Report, the Languages Charter did not establish a fixed percentage of speakers at which the measures set out in

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(Administrative authorities and public services), Article 11, para. 1 (Media), Art. 12, para. 1 (Cultural activities and facilities), and Article 13, para. 2 (Economic and social life).

[192] *European Charter for Regional or Minority Languages*, 5 November 1992, Eur. T.S. No. 148, Article 9, para. 1 (Judicial authorities), and Article 10, paras. 1 and 2 (Administrative authorities and public services).

[193] Here we have the creation of an additional ambiguity that does not exist in the Languages Charter itself, as the definition in *European Charter for Regional or Minority Languages*, 5 November 1992, Eur. T.S. No. 148, Article 1, para. b makes no reference to correspondence to some "historical base". In many cases, the determination of an "historical base" may create additional interpretative difficulties, and may also restrict the application of the Languages Charter in ways that are inappropriate. It is often the case, for example, that users of regional or minority languages live in relatively isolated rural regions, but have "emigrated" to either a major regional centre or a national capital that is outside of these regions. In some cases, such emigration has taken place over a long period of time. As long as the numbers of speakers in those areas — note that the Article 1, para. b definition does not refer to "*percentages*" of speakers — is sufficient to support various protective and promotional measures, it is difficult to see how such locations should be excluded from the territory of the language. The Committee of Experts has not had to deal explicitly with this question.

the Charter should be applied. The Committee of Experts has criticized states that set excessively high numerical thresholds.[194] The Committee of Experts has also criticized designations of the territory of regional or minority languages that excluded large percentages of the speakers of such languages.[195]

There are other issues relevant to both the Framework Convention and the Languages Charter. First, these instruments are international treaties. They create binding international legal obligations on states that ratify them. Not all Council of Europe member states have done so, for example, Greece and Turkey. Both of these states pursue domestic linguistic policies that are unflinchingly unilingual, give no legal recognition to minority languages, and restrict the use of languages other than the national language.[196] France's constitution recognizes French as the sole official language. France provides only limited recognition to other autochthonous languages on its soil. France signed the Languages Charter, but France's Constitutional Council found that ratification of that treaty would be inconsistent with the constitution.[197] Absent ratification, the treaties' norms do not moderate this behaviour.

A second issue relates to the beneficiaries of the Framework Convention and the Languages Charter. Many languages are spoken in Europe. As the circumstances of their speakers differ considerably, so too does their need for protection and promotion. It is an open question

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[194] In its initial monitoring of Croatia, the Committee of Experts noted that the Croatian Constitution provided that such languages would be official languages only where they were spoken by over 50 per cent of the population of the area; in its subsequent monitoring, it noted that this threshold had been reduced to 33 per cent. The Committee of Experts noted that these percentages were very high, and in their findings noted that this has created obstacles to the promotion of regional or minority languages: Committee of Experts, Application of the Charter in Croatia, ECRML (2001) 2, 20 September 2001, at paras. 19-21, finding C.

[195] This was the case, for example, in respect of Sweden, where the definition of the territory of Finnish left about 95 per cent of Finnish speakers unprotected. The Committee acknowledged that there was a serious debate on the issue going on in Sweden and expressed its hope that this process would lead to a gradual inclusion of other areas where Finnish is traditionally used to a significant extent: Committee of Experts, Application of the Charter in Sweden, ECRML (2003) 2, 19 June 2003, para. 23.

[196] This is evident in Turkish policy with respect to its largest linguistic minority, the Kurds, who are thought to represent up to 20 per cent of the population of the Republic of Turkey: see, for example, Kerim Yildiz & Georgina Fryer, *The Kurds: Culture and Language Rights* (London: Kurdish Human Rights Project, 2004), especially chs. 2.1 and 7.1.

[197] *Charte européene des langues régionales ou minoritaires*, Decision no. 99-412 DC (15 June, 1999); for an excellent discussion of this and other issues relevant to the language policies of the Republic of France, see Council of Europe, *The European Charter for Regional or Minority Languages and the French Dilemma: Diversity v. Unicity — Which Language(s) for the Republic?*, Regional or Minority Languages, No. 4 (Strasbourg: Council of Europe Publishing, 2004).

to what extent the COE treaties apply to different types of languages, and in particular, whether the languages of "new minorities" are embraced by the treaties to the same extent as the languages of autochthonous minorities.

The ECHR generally does not make distinctions between different categories of languages. However, the differing circumstances of speakers of different categories of languages may control the practical consequences of the ECHR regime for those speakers. For example, many immigrants have but a limited grasp of the national language, whereas speakers of autochthonous minority languages tend to be bilingual — indeed, many are more proficient in the national language than in their mother tongue. Thus, the guarantees relating to the provision of interpretation in the criminal justice system — which, as discussed above, only apply where participants lack a sufficient command of the national language — may, practically speaking, be of more use to members of new minorities. If the principle in *Cyprus v. Turkey*[198] can be extended to require at least some initial mother tongue instruction for children who have no grasp of the language of the school, this may once again be of greater practical value to members of new minorities. It may also be possible for members of a new minority to obtain services where the state offers services to an autochthonous minority. This may flow from the principle of non-discrimination.

The Framework Convention creates rights for members of "national minorities". Famously, however, the concept of a minority in international law defies definition; the Framework Convention itself has no explicit definition. Whether "new minorities" benefit from protection of these instruments is the subject of scholarly debate. Under the Framework Convention, states apply the "national minority" concept.[199] States tend to restrict application of the treaty to autochthonous minorities. A few states have taken a wider approach, notably the U.K. The U.K.'s initial report to the Advisory Committee observed that as the concept of "national minority" did not exist in domestic British law, the U.K. would base its application of the Framework Convention on the

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198 (2001), 35 Eur. Ct. H.R. 967.

199 In all their reports, the Advisory Committee notes that in the absence of a definition in the Framework Convention of the term "national minority", the states themselves must examine the scope of application to be given to the treaty, and that while they have a "margin of appreciation" in this respect "in order to take the specific circumstances prevailing in their country into account", this "must be exercised in accordance with general principles of international law and the fundamental principles set out in Article 3" of the treaty.

concept of "racial group" used in its domestic anti-discrimination legislation.[200] The U.K "racial group" concept is broad; it refers not only to "race" but to nationality, national origins and ethnicity. As such, the U.K.'s approach in theory applies to many "new minorities". The Advisory Committee stated that it "strongly welcomes the inclusive approach" taken by the U.K.,[201] arguably signalling its preference for an expansive definition that would include such "new minorities". In spite of this, when it came to implement provisions which may require positive measures of support, including Articles 10(2) and 14, the U.K. concentrated primarily on speakers of Welsh, Scottish Gaelic and Irish, all of which are autochthonous languages;[202] the Advisory Committee did not suggest that this rather narrower focus on autochthonous minorities was inappropriate.

An important consequence of the Languages Charter's focus on languages themselves is that it makes no reference to concepts of "minorities" or "national minorities". The Languages Charter imposes obligations on states in respect of "users" of regional or minority languages. This does not require determining whether the individual "user" is a member of a particular group. An individual may be a "user" of a regional or minority language, and therefore entitled to the benefit of a service guaranteed under the Charter, without that individual necessarily being a member of the group with which the language is associated — whether a minority, national minority, or otherwise.

The Languages Charter creates different categories of languages. Only users of certain languages — the "regional or minority languages" — are supposed to benefit from the Charter's protections. The Committee of Experts clarified that the existence of "regional or minority languages" in a state is to be determined objectively, regardless of the approach taken by the state.[203] The Languages Charter defines

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[200] *The Race Relations Act 1976*, c. 76, s. 3. See Report Submitted by the United Kingdom pursuant to Article 25, para. 1 of the Framework Convention for the Protection of National Minorities, ACFC/SR(1999)013, 26 July 1999, para. 2.

[201] Advisory Committee Opinion on the United Kingdom, ACFC/INF/OP/I(2002)006, 30 November, 2001, para. 14. They noted that the domestic U.K. definition covered not only Scots, Irish and Welsh, but also Roma, Irish Travellers, Sikhs and Jews, among others.

[202] *Report Submitted by the United Kingdom pursuant to Article 25, Paragraph 1 of the Framework Convention for the Protection of National Minorities*, ACFC/SR(1999)013, 26 July 1999, at paras. 152-62, and 193-203.

[203] In its consideration of Croatia's first periodical report, for example, the Committee of Experts indicated that they had received information that suggested that Slovene and Bosnian should be considered to be regional or minority languages on the basis of their traditional use in Croatia, and that the authorities were encouraged to clarify these issues: The Committee of Experts,

"regional or minority languages" as languages that are different from the official language or languages of the state[204] and that are "traditionally used" within a given state by nationals of that state. The users of such languages must form a group that is numerically smaller than the rest of the state's population.[205] The concept of "regional or minority language" does not include dialects of an official language or languages, or "the languages of migrants".[206] The requirement of "traditional use" and the exclusion of languages of migrants suggest that the Charter does not apply to minority languages spoken by new migrants.[207]

Finally, the treaties vary concerning implementation. The ECHR creates rights and a judicial mechanism for enforcement. Individuals can make claims against their state where they feel that their rights are violated. Neither the Framework Convention nor the Languages Charter creates a judicial mechanism similar to that of the ECtHR. Individuals

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Application of the Charter in Croatia, ECRML (2001) 2, 20 September 2001, at para. 11. In its report on Croatia's second periodical report, the Committee of Experts received some additional information in respect of Slovenian (as it was referred to in that second report), but there was still uncertainty as to whether it was associated with a particular territory, and so the Committee of Experts again asked for further clarification: The Committee of Experts, Application of the Charter in Croatia, Second monitoring cycle, ECRML (2005) 3, 7 September 2005, paras. 48-50.

[204] *European Charter for Regional or Minority Languages*, 5 November 1992, Eur. T.S. No. 148, Article 1, subpara. a ii.

[205] *European Charter for Regional or Minority Languages*, 5 November 1992, Eur. T.S. No. 148, Article 1, para. a.

[206] *European Charter for Regional or Minority Languages*, 5 November 1992, Eur. T.S. No. 148, Article 1, para. a. The Charter also recognizes a second category of languages. These are "non-territorial languages", which are entitled to the protection of Part II of the Charter but not of the more detailed provisions of Part III. "Non-territorial languages" are defined as languages used by nationals of the state which differ from the languages used by the rest of the state's population and which, although like regional or minority languages are traditionally used within the territory of the state, unlike regional or minority languages cannot be identified with a particular area of the state: Article 1, para. c. The *Explanatory Report to the European Charter for Regional or Minority Languages*, 5 November 1992, Eur. T.S. No. 148 offers as examples of "non-territorial languages" Yiddish and Romany (para. 36) and justifies the exclusion of these languages from the protection of the more detailed provisions of Part III of the Charter on the basis that those provisions generally aim to protect regional or minority languages on the territory in which they are used, and the absence of such a territorial base makes the satisfaction of such provisions difficult (para. 37).

[207] The *Explanatory Report to the European Charter for Regional or Minority Languages*, 5 November 1992, Eur. T.S. No. 148 provides the following information: "The purpose of the charter is not to resolve the problems arising out of recent immigration phenomena, resulting in the existence of groups speaking a foreign language in the country of immigration . . . . In particular, the charter is not concerned with the phenomenon of non-European groups who have immigrated recently into Europe and acquired the nationality of a European state" (para. 37). It is possible, however, that such a language may become a regional or minority language if it continues to be spoken in the territory of the state for an extended period of time of perhaps three to four generations; the Committee of Experts have not yet had to consider this, and in practice, states have not made reference to the languages of "new minorities".

do not have recourse against their state under either treaty. Implementation of both treaties is by a mechanism which requires states to report to the Council of Europe on their progress in implementing the treaties. State reports are monitored at regular intervals by a body created under the treaties: under the Framework Convention, the Advisory Committee monitors; under the Languages Charter, monitoring is by the Committee of Experts.[208] Members of minority-language communities participate in the monitoring process in two ways. Both the Advisory Committee and the Committee of Experts can receive information from sources other than the state, which allows for the participation of minority linguistic communities.[209] Both monitoring bodies also have developed the practice of visiting states being monitored, in order to meet with representative organizations, politicians, government officials, and so forth. This has deepened the understanding of both committees about implementation of the two treaties, and has resulted in more effective monitoring of state responsibilities. Still, the monitoring mechanisms under both treaties fall short of judicial enforcement.

2. The OSCE

The OSCE has been active and influential in developing contemporary European international standards relating to the protection of minorities. The 1990 *Document of the Copenhagen Meeting of the*

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[208] See, generally, Section IV, the *Framework Convention for the Protection of National Minorities*, 1 February 1995, Eur. T.S. 5, and Part IV, "Application of the Charter", *European Charter for Regional or Minority Languages*, 5 November 1992, Eur. T.S. No. 148. Under both treaties, a state must submit its initial report within a year of the coming into force of the treaty for the state (Article 25(1), the Framework Convention, and Article 15(1), the Languages Charter), and every five years thereafter under the Framework Convention (Article 25(2), and para. 21, Council of Europe, Committee of Ministers, *Rules Adopted by the Committee of Ministers on the Monitoring Arrangements Under Articles 24 to 26 of the Framework Convention for the Protection of National Minorities*, Resolution (97) 10 (17 September 1997)), and every three years thereafter under the Languages Charter (Article 15(1)).

[209] Para. 30, Council of Europe, Committee of Ministers, *Rules Adopted by the Committee of Ministers on the Monitoring Arrangements Under Articles 24 to 26 of the Framework Convention for the Protection of National Minorities*, Resolution (97) 10 (17 September 1997) provides that the Advisory Committee may receive information from sources other than state reports, and para. 31 provides that the committee may actually invite information from other sources; Article 16(2), *European Charter for Regional or Minority Languages*, 5 November 1992, Eur. T.S. No. 148 provides that bodies or associations legally established in a Party may draw the attention of the Committee of Experts to matters relating to a state's undertakings under Part III and can submit statements concerning the policy pursued by the state in accordance with Part II.

Conference of the Human Dimension of the CSCE[210] (the "Copenhagen Document")[211] was particularly important in expressing general principles relating to the protection of minorities; a number of these made reference to language.[212] The Copenhagen Document and its principles inspired the Framework Convention. The OSCE has continued to play a role in standard setting, most notably through the Office of the OSCE High Commissioner on National Minorities, established in 1993.[213] The High Commissioner's office developed a range of guidelines which have been used to inform the High Commissioner's work as an instrument of conflict prevention. Language issues figured significantly in this. The High Commissioner's guidelines include *The Hague Recommendations Regarding the Education Rights of National Minorities* of 1996 (the "Hague Recommendations"), *The Oslo Recommendations Regarding the Linguistic Rights of National Minorities* of 1998 (the "Oslo Recommendations"), *The Lund Recommendations on the Effective Participation of National Minorities in Public Life* of 1999, and *The Guidelines on the use of Minority Languages in the Broadcast Media* of 2003 (the "Media Guidelines").[214] While the Copenhagen Document and the principles articulated by the Office of the High Commissioner have been significant, they do not create binding international legal obligations, unlike the COE instruments. Nonetheless, they draw on and develop other international standards,

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[210] As noted earlier, the "CSCE", the Conference for Security and Cooperation in Europe, subsequently became the OSCE.

[211] Online: Organization for Security and Cooperation in Europe <http://www.osce.org/documents/odihr/1990/06/13992_en.pdf>.

[212] *Document of the Copenhagen Meeting of the Conference of the Human Dimension of the CSCE*, online: Organization for Security and Cooperation in Europe <http://www.osce.org/documents/odihr/1990/06/13992_en.pdf> para. (32.1) provides that persons belonging to a national minority have the right "to use freely their mother tongue in private as well as in public". Paragraph (32.3) guarantees, *inter alia*, the right of persons belonging to national minorities to conduct religious educational activities in their mother tongue. Paragraph (32.5) guarantees them the right to disseminate, have access to and exchange information in their mother tongue. Paragraph (33) contains a general principle to the effect that the participating states will protect the ethnic, cultural, *linguistic* and religious identity of national minorities and to create conditions for the promotion of that identity. Paragraph (34) is particularly important: it provides that the participating states will endeavour to ensure that persons belonging to national minorities have adequate opportunities for instruction of their mother tongue or in their mother tongue, as well as, wherever possible and necessary, for its use before public authorities, in conformity with applicable national legislation.

[213] See, generally, Walter A. Kemp, ed., *Quiet Diplomacy in Action: The OSCE High Commissioner on National Minorities* (The Hague: Kluwer Law International, 2001).

[214] These are available online: OSCE <http://www.osce.org/hcnm/documents.html?lsi=true&limit=10&grp=45>.

including binding legal ones, and this, together with their political salience, makes them worthy of consideration.

While recognizing that persons belonging to national minorities have a responsibility to integrate into the wider national society through the acquisition of a proper knowledge of the national language, the Hague Recommendations also noted that the right of such persons to maintain their identity "can only be fully realised if they acquire a proper knowledge of their mother tongue during the educational process".[215] The recommendations note that the first years of education "are of pivotal importance in a child's development", and that educational research suggests that the medium of teaching at pre-school, kindergarten and primary school levels should ideally be in the minority language.[216] At the secondary school level, "a substantial part of the curriculum should be taught through the medium of the minority language", and although the number of subjects taught through the national language should gradually be increased, research suggests that the more gradual the increase, the better for the child.[217] While the recommendations suggest that persons belonging to national minorities should have access to tertiary education in their own language, this is subject to the qualification that "they have a demonstrated need for it" and "when their numerical strength justifies it";[218] by implication, minorities would not have to demonstrate either "need" or numerical sufficiency in order to obtain minority-language-medium education at other levels.

Since minority-language education matters were considered in the Hague Recommendations, the Oslo Recommendations focused on other issues; the provisions on the media were further developed in the Media Guidelines, but the provisions on Administrative Authorities, Public Services and the Judiciary represented unique developments in the HCNM's standard-setting. The Oslo Recommendations provided that persons belonging to a national minority shall have a right to acquire civil documents and certificates in both the national language(s) and the

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[215] *The Hague Recommendations Regarding the Education Rights of National Minorities*, 1996, online: OSCE <http://www.osce.org/documents/hcnm/1996/10/2700_en.pdf>, at para. 1.

[216] *The Hague Recommendations Regarding the Education Rights of National Minorities*, 1996, online: OSCE <http://www.osce.org/documents/hcnm/1996/10/2700_en.pdf>, at paras. 11 and 12.

[217] *The Hague Recommendations Regarding the Education Rights of National Minorities*, 1996, online: OSCE <http://www.osce.org/documents/hcnm/1996/10/2700_en.pdf>, at para. 13.

[218] *The Hague Recommendations Regarding the Education Rights of National Minorities*, 1996, online: OSCE <http://www.osce.org/documents/hcnm/1996/10/2700_en.pdf>, at para. 17.

language of the minority, but only from "regional and/or local public institutions" (and not national or central governmental ones), and only where persons belonging to the minority "are present in significant numbers" in such areas and where "the desire for it has been expressed".[219] Such persons shall also have "adequate possibilities to use their language in communications with administrative authorities *especially in regions and localities where they have expressed a desire for it and where they are present in significant numbers*" (emphasis added) and, "similarly", administrative authorities shall ensure that public services are provided also in the language of the national minority — where possible (although the authorities are also required to adopt recruitment and training policies and programs that make this possible).[220]

With regard to judicial authorities, in addition to reiterating the basic ECHR provisions, described above, on the use of minority languages in the criminal context, the Oslo Recommendations provide that in regions and localities where persons belonging to the minority are present in significant numbers and where the desire for it has been expressed, persons belonging to the minority should have the right to express themselves in their own language in all judicial proceedings, and in such regions and localities, states "should give due consideration to the feasibility" of conducting all judicial proceedings in the minority language.[221]

The Media Guidelines express the general principle that the state should support broadcasting in minority languages through, *inter alia*, provision of access to broadcasting, subsidies and capacity building.[222] They go on to specify that states should provide "meaningful access" to minority-language broadcasting through, *inter alia*, the allocation of frequencies, establishment and support of broadcasters and program

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[219] *The Oslo Recommendations Regarding the Linguistic Rights of National Minorities*, February 1998, online: OSCE <http://www.osce.org/documents/hcnm/1998/02/2699_en.pdf>, at para. 13.

[220] *The Oslo Recommendations Regarding the Linguistic Rights of National Minorities*, February 1998, online: OSCE <http://www.osce.org/documents/hcnm/1998/02/2699_en.pdf>, at para. 14.

[221] *The Oslo Recommendations Regarding the Linguistic Rights of National Minorities*, February 1998, online: OSCE <http://www.osce.org/documents/hcnm/1998/02/2699_en.pdf>, at paras. 17-19.

[222] *The Guidelines on the use of Minority Languages in the Broadcast Media*, October 2003, online: OSCE < http://www.osce.org/documents/hcnm/2003/10/2242_en.pdf>, at para. 14.

scheduling.[223] A major consideration with respect to the viability of minority language broadcasting is state financial support for it, and on this, the Broadcasting Guidelines are somewhat less demanding, providing that "states *should consider*[224] providing financial support for minority language broadcasting."[225]

3. The EU

As we have seen, the EU developed a complex legal regime for use of languages within its various institutions. Unlike either the Council of Europe or the OSCE, the EU has very few norms with respect to the management of linguistic diversity. Furthermore, it has created but few rules which impinge on the language policies of its member states; indeed, the EU treaties are virtually silent on this issue. Nor has the EC legislated for managing linguistic diversity within its member states. The silence of the EU treaties explains this. Unless the European treaties empower EU institutions to legislate on a particular matter, they have no authority to do so. Thus, the matter remains within the jurisdiction of member states.

Article 151, found in the part of the EC Treaty dedicated to culture, is a good example. Paragraph 1 of Article 151 provides that the EC shall "contribute to the flowering of the cultures of the Member states, while respecting their national and regional diversity and at the same time bringing common cultural heritage to the fore". Paragraph 2 of this article provides that action by the EC "shall be aimed at encouraging cooperation between Member states" and, if necessary, "supporting and supplementing their action" in a range of areas, including the improvement of the knowledge and dissemination of the culture and history of the European peoples, conservation and safeguarding of cultural heritage of European significance, non-commercial cultural exchanges, and artistic and literary creation, including in the audiovisual

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[223] *The Guidelines on the use of Minority Languages in the Broadcast Media*, October 2003, online: OSCE < http://www.osce.org/documents/hcnm/2003/10/2242_en.pdf>, at para. 15. These commitments are expanded upon in the paragraph. The paragraph also provides that "account should be taken of the numerical size, geographical concentration, and location of persons belonging to national minorities together with their needs and interests"; presumably, the larger the size, greater the concentration, and greater the expressed need and desire, the more significant the state commitment, although the guidelines do not specify how, exactly, account should be taken of these matters.

[224] Note the exhortatory rather than compulsory language.

[225] *The Guidelines on the Use of Minority Languages in the Broadcast Media*, October 2003, online: OSCE < http://www.osce.org/documents/hcnm/2003/10/2242_en.pdf>, at para. 16.

sector. Paragraph 4 of Article 151 provides that the EC shall take cultural aspects into account in its actions under other provisions of the treaty, "in particular in order to respect and to promote the diversity of its cultures".

There are, however, a range of ambiguities and limitations in these provisions which make it unlikely that they could serve as the basis for a minority-language policy for the EU, to say nothing of a minority-language "rights" regime.[226] The concept of "culture" is not defined, and the extent to which it includes languages is not clear. It is, for example, unclear whether the reference to "cultures of the member states" in Article 151(1) includes only the "national" culture of those member states or minority cultures also. The reference in Article 151(1) to the EC "contributing" to the flowering of these cultures may provide a treaty basis for expenditure programs directed at these cultures, but it is unclear that it provides a basis for more assertive and intrusive regulation of language matters, or, indeed, the creation of a rights regime that would impinge on state language policies. Article 151(4) may require more sensitivity to culture — and, arguably, language — in the development of EC legislation; this does not, however, imply any power to affect member state policies in this regard.[227]

The result is that there has been no development of an EU minority-language rights regime. Activity has been limited to a growing number of resolutions of the European Parliament,[228] none of which have binding legal force, the creation of a European Bureau for Lesser-Used Languages ("EBLUL"), which runs a minority-language news service, Eurolang, and which acts as a forum for the exchange of information and experiences between minority-language communities within the EU, and the establishment of three Mercator research centres, one for language legislation (based in Barcelona), one for minority-language broadcasting (based in Aberystwyth), and one for minority-language education (based in Ljouwert, in Dutch Friesland).[229]

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[226] For an excellent analysis of this issue, see Niamh Nic Shuibhne, *EC Law and Minority Language Policy: Culture, Citizenship and Fundamental Rights* (Dordrecht: Kluwer, 2002), particularly ch. 3.

[227] Niamh Nic Shuibhne, *EC Law and Minority Language Policy: Culture, Citizenship and Fundamental Rights* (Dordrecht: Kluwer, 2002), at 152-54.

[228] See European Bureau for Lesser-Used Languages, *Vade-Mecum: A Guide to International Documents on Lesser-Used Languages of Europe*, EBLUL Documents 4 (Brussels: EBLUL, 2003), Part II, at 7-156.

[229] For a useful review of these developments, see Gabriel Toggenburg, "A Rough Orientation Through a Delicate Relationship: The European Union's Endeavours for (its) Minorities", European

Provisions of the EU treaties not directly relating to language do have potential to impact state language policies. Most significant are the EC Treaty provisions which guarantee free movement of goods and services[230] and the free movement of workers within the EU,[231] and the right of citizens of member states to establish themselves in other member states.[232] These freedoms have given rise to EC legislation and case law relating to state requirements for the use of particular languages on product labels and for competence in particular languages. *Groener v. Ireland*[233] is an important case on the free movement of workers. The ECJ showed considerable deference to the language regime of the Republic of Ireland. The applicant was a Dutch national who sought employment at an art college in Ireland. She confronted an Irish Department of Education requirement that persons holding certain teaching posts, including the one she sought, had to demonstrate knowledge of Irish through certification or examination. The applicant did not need Irish for her job at an institution that functioned in English. She challenged the requirements on the basis that they interfered with her EC-protected mobility rights.[234] The ECJ found against her. The ECJ noted the special constitutional status of Irish in the Republic of Ireland as the "national language" and the "first official language", and also that the policy of successive Irish governments was to maintain and promote the use of Irish, which was a legitimate policy under EC law. The Court stated: "The EEC Treaty does not prohibit the adoption of a policy for the protection and promotion of a language of a Member state which is

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Integration Online Papers (EIoP), vol. 4 (2000) no. 16, Parts 2 and 3; online: EioP <http://eiop.or.at/eiop/texte/2000-016a.htm>.

230 EC, *Consolidated Version of the Treaty Establishing the European Community*, [2006] O.J. C. 321E/37, Articles 28 and 29, and 49, respectively.

231 EC, *Consolidated Version of the Treaty Establishing the European Community*, [2006] O.J. C. 321E/37, Article 39.

232 EC, *Consolidated Version of the Treaty Establishing the European Community*, [2006] O.J. C. 321E/37, Article 43.

233 *Groener v. Minister of Education and the City of Dublin Vocational Education Committee*, C-379/87, [1989] E.C.R. 3967.

234 The Council had issued a regulation in 1968, Regulation 1612/68, which had sought to clarify the mobility rights guaranteed in Article 39. It provided that where employment was subject to conditions which applied to nationals as well as non-nationals, but where conditions were imposed whose principle aim or effect is to keep nationals of other member states away from the employment, such conditions could not be applied. The regulation excepted from this conditions relating to linguistic knowledge required by reason of the nature of the post to be filled: EC, *Regulation (EEC) No. 1612/68 of the Council of 15 October 1968 on freedom of movement for workers within the community*, [1968] O.J. L. 257; English Special Edition, Series I, Ch. 1968(II), 475, Article 3.

both the national language and the first official language".[235] The implementation of language policy must be proportionate, and not impose excessive restrictions on fundamental freedoms, such as the free movement of workers. The ECJ found, however, that the requirement challenged was not disproportionate, in light of the importance of teachers, not only in the classroom but in the social context of education, in the achievement of the state language policy.

In some circumstances, EU-guaranteed mobility rights resulted in what might be described as "language rights" for EU citizens working abroad or commuting through another state. For example, certain EU member states have language rights regimes for the benefit of citizens who speak a minority language.[236] The ECJ has ruled that where, for example, a non-citizen is charged with an offence in a state where the special minority-language regime includes the right to use the minority language in the courts, EU mobility rights entitle the non-national to benefit from that regime.[237]

The same effect occurs in the social benefits sector. The right of a citizen of a member state to work in another member state includes the right to participate in the social security programs of that state.[238] The regulation which specifies this grants to such a citizen the right to use his or her own language in documents submitted to officials in the host state, if that language is an EU official language.[239] Another regulation grants a citizen of an EU member state working in another EU member state the right to be notified of certain administrative decisions in his or her language.[240] With regard to education,[241] host states must teach

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[235] *Groener v. Minister of Education and the City of Dublin Vocational Education Committee*, C-379/87, [1989] E.C.R. 3967, at para. 19.

[236] Examples are Italy, which has a regime for German speakers in South Tirol, and Belgium, which has a regime for German speakers in the German-speaking region of Belgium. There are many other examples.

[237] See *Ministère Public v. Mutsch*, 137/84, [1985] E.C.R. 2681; and *Bickel and Franz*, C-274/96, [1998] E.C.R. 1-7637.

[238] By virtue of EC, *Regulation (EEC) No 1408/71 of the Council of 14 June 1971 on the application of social security schemes to employed persons and their families moving within the Community*, [1971] O.J. L. 149; English Special Edition (II) 416.

[239] EC, *Regulation (EEC) No 1408/71 of the Council of 14 June 1971 on the application of social security schemes to employed persons and their families moving within the Community*, [1971] O.J. L. 149; English Special Edition (II) 416.

[240] That is, decisions relating to invalidity, old age and death benefits: EC, *Regulation (EEC) No 574/72 of the Council of 21 March 1972 fixing the procedure for implementing Regulation (EEC) No 1408/71 on the application of social security schemes to employed persons and their families moving within the Community*, [1972] O.J. L. 74; English Special Edition (I) 159, Article 48.

children of citizens of another EU member state working in the state one of the official languages of the host state, and also take "appropriate measures" to "promote the teaching of the mother language and culture of the country of origin".[242] The purpose seems to be the facilitation of the possible reintegration of such children into the member state of origin.[243]

One final area that merits brief consideration concerns policies on enlargement of the EU. At its meeting in Copenhagen in June 1993, the European Council decided that states in Central and Eastern Europe could become members of the EU, subject to the satisfaction of a range of conditions before accession. These conditions were both political and economic. The political criteria established at Copenhagen included four elements: stability of institutions guaranteeing democracy, the rule of law, human rights and, significantly, "respect for and protection of minorities".[244] In assessing applications for accession, the European Commission issues an annual Opinion, in which it analyzes in considerable detail the progress of the applicant states in satisfying all of the so-called "Copenhagen Criteria". While the Commission has not been prescriptive, it has generally noted whether the applicant state had ratified the Framework Convention, suggesting that this would be an important consideration in determining whether the requisite level of respect for and protection of minorities exists. The Commission has also made a large number of comments and has expressed a range of concerns with respect to applicant states' treatment of minorities.[245] The Accession Partnerships which the EU enters into with candidate states include short-term and medium-term priorities for legislative and other policy changes which are required, and some of these have related to the

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[241] EC, *Council Directive 77/486/EEC of 25 July 1977 on the education of the children of migrant workers*, [1977] O.J. L. 199/32.

[242] EC, *Council Directive 77/486/EEC of 25 July 1977 on the education of the children of migrant workers*, [1977] O.J. L. 199/32, Article 3.

[243] EC, *Council Directive 77/486/EEC of 25 July 1977 on the education of the children of migrant workers*, [1977] O.J. L. 199/32, Preamble.

[244] Presidency Conclusions, Copenhagen European Council, 21-22 June, 1993, para. 7(A), *Bulletin of the European Community*, 6/1993, at 1.13.

[245] A closer analysis of the Commission's work, or the impact of the Copenhagen Criteria, is beyond the scope of this paper; see, however, Gabriel Toggenburg, "A Rough Orientation Through a Delicate Relationship: The European Union's Endeavours for (its) Minorities", European Integration Online Papers (EIoP), vol. 4 (2000) no. 16, Parts 2 and 3; online: EIoP <http://eiop.or.at/eiop/texte/2000-016a.htm>, Part 4, and Gaetano Pentassuglia, "The EU and the Protection of Minorities: The Case of Eastern Europe" (2001) 12:1 EJIL 3.

treatment of minorities.[246] In the context of the extremely limited regime for the protection of minorities within existing EU member states, the irony — indeed, hypocrisy might not be too strong a word — of these developments is clear.

IV. CONCLUSION

When discussing language and the regulation of language in a European context, the most useful words are "diversity" and "complexity". With regard to language demographics, diversity and complexity exist within Europe as a whole and within individual European states. Diversity and complexity also exist in the domestic linguistic regimes of individual states. Approaches vary from official bilingualism at the national level[247] to official bilingualism (or occasionally multilingualism) within regional/provincial/devolved or local governments,[248] to special language legislation, which sometimes creates rights and sometimes does not,[249] to "territorial" solutions under which different languages are official in different parts of the state,[250] to unilingual policies in which only a "national" language is recognized and where, in some cases, use of other languages is constrained.[251]

At the international level within Europe, there is a considerable deference to state language policies. This is particularly evident within the EU. At an institutional level, the national language of each EU member state enjoys a formal equality. This has resulted in a language regime of considerable complexity, in which the EU institutions attempt to function in 23 languages. By contrast, other European International institutions such as the COE and the OSCE function with many fewer official languages. In terms of the linguistic impact of these regimes, however, the gap between the two approaches may not be as dramatic as the official institutional regime might suggest. Increasingly, French and, particularly, English are asserting a *de facto* prominence within the

246 Gabriel Toggenburg, "A Rough Orientation Through a Delicate Relationship: The European Union's Endeavours for (its) Minorities", European Integration Online Papers (EIoP), vol. 4 (2000) no. 16, Parts 2 and 3; online: EIoP <http://eiop.or.at/eiop/texte/2000-016a.htm>.

247 For example, Finland.

248 For example, Catalonia, the Basque Autonomous Community, South Tirol, and so forth.

249 For example, in Wales and Scotland (where the language legislation creates few, if any rights, but a range of obligations on governments and other public bodies).

250 Belgium.

251 See, for example, a number of former Soviet Republics, in particular Latvia and Estonia, and Azerbaijan.

internal operations of the EU, thereby mirroring both the *de facto* and *de jure* situation within the COE and the OSCE. The ultimate sociolinguistic consequences of this are unclear, but it is likely that this will continue to enhance the prestige, and therefore the influence, of both languages, particularly English. Equally clear, however, is that the languages of minorities within European states, whether autochthonous or "new" minorities, tend not to be represented at all in the linguistic regime that prevails within these international institutions.

With regard to international principles relating to the domestic language policies of European states, standard-setting has generally taken place where such policies, and wider minority policies, have contributed to ethnic tensions which could lead to breaches of international peace and stability. With the creation of the Framework Convention, a limited but more systematic approach to the management of diversity, including linguistic diversity, is now possible. The COE's Languages Charter is specifically concerned with the preservation and promotion of linguistic diversity, both within Europe as a whole and within European states. The result is that the protection and promotion of linguistic diversity has become a significant objective of international policy-making.

The language regime which applies in Europe is still marked by inconsistencies and gaps. There are now a number of international instruments, but only those of the COE — in particular, the ECHR,[252] the Framework Convention[253] and the Languages Charter[254] — impose legally binding obligations. Even these are hedged with considerable qualifications. Ultimately, they only apply to those states which ratify them. The result is a rather incomplete regime for the management of linguistic diversity, and one which generally fails explicitly to create "language rights". The position of linguistic minorities is undoubtedly strengthened under this emerging regime, but the principal beneficiaries to this point would appear to be autochthonous linguistic minorities. In the most hostile minority linguistic environments, however, there are, as yet, relatively few clear and binding limitations on state policies.

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252 *Convention for the Protection of Human Rights and Fundamental Freedoms*, 4 November 1950, 213 U.N.T.S. 221 at 223, Eur. T.S. 5.

253 Eur. T.S. No. 157.

254 Eur. T.S. No. 148.