

[Working Paper 15

**[The European Charter for Regional or Minority
Languages: Sociolinguistic Particularities and the
French Configuration**

Alain VIAUT

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**[The European Charter for Regional or Minority
Languages: Sociolinguistic Particularities and the
French Configuration**

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0. Introduction

The process of elaboration of the *European Charter for Regional or Minority Languages* (also *Language Charter* or hereafter simply *Charter*) started in the 1980s. Ready for signing in 1992, it appeared to be adaptable to the different linguistic configurations of the member countries of a Council of Europe which has seen recently how its geographic base has extended itself towards the East. Although this text does not exactly propose more favourable measures than those which are already in force in the states which have adopted it or are preparing to do it, it does nevertheless contribute to specifying them, even to readjusting or perfecting them; at any rate, to consolidating them. France belongs to the group of countries which have only signed this *Charter*. The subject regarding the adhesion to this text has provoked a serious debate which has led to the refusal to ratify it justified by a decision of the Constitutional Council. Before entering into this subject which places France in a particular configuration, at least by now, and in order to better understand its specificity, we will first present some distinctive characteristics of the *Charter* taking into account its first applications as they appear when reading the first state surveys and those of the experts.

1. Rules to regulate linguistic coexistence in Europe

Being the first international text devoted to minority languages in general, the *Charter* does not aim to revolutionise the conceptions and practices as regards the protection and the promotion of these languages. Some states have already attained a great amount of experience in the management of them without it. The *Charter* represents nevertheless a minimum guarantee of implementation of some measures which are known and have been validated, elaborated by both specialists and politicians, adequate to ensuring basic linguistic regulation or a more developed one, that is to say, a standard regarding this subject. The underlying question that this text also brings up is perhaps the following: Do we wish in Europe to advocate a real functioning of the cultural heritage that regional or minority languages (from now on, also RML) represent?

1.1. *Origins of the Charter*

The project of establishing international legislation regarding linguistic rights in Europe is not recent, contrary to what poorly informed voices may have expressed in France in the last few years. It is not related to the resolution of current or potential conflicts for the last decade in the Balkan or Eastern regions of the European area. Since its creation in 1949, in the aftermath of the Second World War, the Council of Europe has made the safeguard and development of human rights¹ one of its priority aims. We can trace the origins of the preparation of a more important text devoted to the theme of the contacts between languages with a hierarchical structuring in Europe back to *Recommendation 285 Regarding the Rights of National Minorities* voted for in 1961 by the Parliamentary Assembly of the Council of Europe. The Assembly demanded an article regarding the protection of national minorities to be included in the second additional protocol to the *Convention for the Protection of Human Rights and Fundamental Freedoms* of 1950, better known as the *European Convention on Human Rights* (ECHR), which came into force in 1953. Its formulation foresaw the right for the people belonging to a national minority to make use of their own language and for it to be taught in the suitable schools. In fact, the ECHR, despite not referring to the existence of national minorities, in Article 14 makes language appear among the criteria of non-discrimination together with sex, race, colour, religion, etc.² While awaiting that perhaps one day an additional protocol to the *European Convention on Human Rights* will be adopted in the cultural sphere regarding, among others, regional or minority languages, with provisions guaranteeing individual rights that might be taken into consideration by the European Court of Human Rights, the Council of Europe has finally had a charter with the status of convention accepted, with the obligation of being complied with, in favour of minoritised languages. This form of convention was finally adopted but underwent many difficulties. Before being signed, France, Greece, the United Kingdom and Turkey expected that the *Charter* would only be a

¹ In: Article 1, paragraph b of the statute of the Council of Europe.

² "The enjoyment of the rights and freedoms set forth in this Convention shall be secured without discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status."

Recommendation, the aim of which would therefore only be indicative. For different reasons, these four countries thus expressed their fear that this would not reinforce the emergence of specific cultural bodies, such as national ones. Greece could base its argument on a tradition of ethnic and cultural protection justified by a history of war against Ottoman rule. Turkey, denying the existence and the practice of any socialised cultural difference other than religious, could hide behind a falsely egalitarian and extremely restrictive conception of cultural rights in general and linguistic ones in particular. The United Kingdom, no doubt less negative as regards linguistic rights than the other two, at that time in a context of authoritarian liberalism, developed a distrustful attitude especially in relation to Gaelic in Northern Ireland, assimilated to the catholic revolt. In addition to this, by tradition, the British State clearly favoured recognising more linguistic rights to individuals than to minority groups; this was the reason for its fear, at least at that time, that the *Charter* would contribute even more to favouring the emergence of these communities. Objectively, France accompanied these three countries reasserting by it its usual rejection of everything that according to its point of view could contribute to reinforcing community ties within the context of a nation-state that only had individuals-citizens. The French state tradition of only knowing French for official and public uses was also questioned. As we will see later, the fear of seeing the *Charter* conferring rights to groups of individuals was groundless.

In the framework of the Declarations of the Parliamentary Assembly of the Council of Europe (firstly the so-called Declaration of Galway, from October 16, 1975, and secondly the Declaration of Bordeaux, from February 1, 1978), the *Recommendation 928*, adopted on October 7, 1981, by the same body on the *Educational and Cultural Problems of Minority Languages and Dialects in Europe*, preceded the *Arfé Resolution on a Community Charter of Regional Languages and Cultures and on a Charter of Rights of Ethnic Minorities*, passed on October 16 the same year within the framework of the European Parliament representing the more limited geographical base of the European Community devoted to a wider integration. The Parliament, “having regard to the resurgence of special movements by ethnic and linguistic minorities aimed at bringing about a deeper understanding and recognition of their historical identity”, and interpreting this as a “source of enrichment” for European civilisation, invited its President to “forward this

resolution to the Council and the Commission, to the governments and regional authorities of the Member States and to the Council of Europe”³. The connections between the representative bodies of the European Community with the Council of Europe on the subject of regional languages and cultures and on that of ethnic minorities thus advocated was to be recalled later on in the same terms at the end of the *Kuijpers Resolution on the Languages and Cultures of Regional and Ethnic Minorities in the European Community* adopted on October 30, 1987, by the European Parliament. Having noted that the Commission had not progressed much on this subject since the *Arfé Resolution* of 1981, and “whereas there are still many obstacles to the full development of the specific cultural and social identity among the national and linguistic minorities, and whereas attitudes towards these minorities and their problems frequently reveal a lack of appreciation and understanding and, in some cases, are based on discrimination”⁴, the European Parliament announced that it would support “the Council of Europe’s efforts to draw up a European Charter of regional and minority languages” and formulated six detailed recommendations. In addition to this, it called on the Commission “accord the European Bureau for Lesser Used Languages official consultative status”. The *Arfé Resolution* was at the origins of the establishment of this Bureau that since then has never ceased acting with the financial support of the Commission and of the European Parliament and in relation with the Council of Europe. From then onwards, it became clear that the elaboration of a more important text, suggested in 1981 by the European Parliament in the very same title of the *Resolution* prepared by Gaetano Arfé, was to be started within the framework of the Council of Europe. This process resulted in the writing of two conventions, thus meeting the wishes expressed by the European Parliament in the *Arfé Resolution* of 1981. The *European Charter for Regional or Minority Languages*, which was to be adopted on June 25, 1992, by a large majority of the Committee of Ministers of the Council of Europe⁵ and which was ready to be signed on the following 5th of November, was going to become the first large international text fully devoted to the subject of linguistic rights and to the safeguard of lesser-used

³ (*Arfé*) *Resolution on a Community Charter of Regional Languages and Cultures and on a Charter of Rights of Ethnic Minorities* (O.J. C 287 from 09/11/1981, p. 106).

⁴ (*Kuijpers*) *Resolution on the Languages and Cultures of Regional and Ethnic Minorities in the European Community* (O.J. C 318 from 30/11/1987, p. 160).

⁵ Cyprus, France, the United Kingdom and Turkey abstained. Greece voted against and Bulgaria was not present at the moment of its adoption.

languages. The protection of national minorities, already dealt with though in several texts of this sort, was to become the object of another convention ready to be signed in February 1995: the *Framework Convention for the Protection of National Minorities*.

The contexts in which these two texts appeared were very different. From the beginning of the 1980s, the Council of Europe specified its approaches while the European Parliament tended to link minority languages with national or cultural minorities in the *Kuijpers Resolution* of 1987 and the *Killilea Resolution* of 1994. The first of these resolutions refers to “the languages and cultures of regional and ethnic minorities” and the second one to “linguistic and cultural minorities”. The context in which the *European Charter for Regional or Minority Languages* appeared was that of the revival of these languages in Western Europe at the end of the 1970s. In particular, *Recommendation 928* of the Parliamentary Assembly, mentioned above, and *Resolution 192* of 1988 (cf. *infra*) on *Regional or Minority Languages* taken by the Standing Conference of Local and Regional Authorities of Europe (CLRAE), a body depending on the Council of Europe which was in charge —with a group of independent experts and of politicians representing the Parliamentary Assembly— of elaborating the text of the future *Charter* from 1984 onwards, approached this subject referring to the other international texts and to the context of Western Europe at that time. In fact, at the moment of presenting a first draft of the text which had been established and adopted by the CLRAE —it was to be toned down later— to the Committee of Ministers, it was simply asked to make a convention out of it and to propose its signing to the Central and Eastern European countries which at that time did not yet adhere to the Council of Europe. The *Framework Convention* was conceived within a different international political context. Elaborated at the beginning of the 1990s, one of the concerns of its drafters was that of participating in the solving of tensions and conflicts in Central and Eastern Europe. A first proposal, dated February 8, 1991, evoked this enlarged base of Europe in one of the whereases of its Preamble: “Taking into consideration that there exist minorities in the member states of the Council of Europe and in the states of Central and Eastern Europe”. Two years later, the heads of the states and governments of the member states of the Council of Europe highlighted in the *Vienna Declaration* of October 9, 1993, the

situation in the former Yugoslavia⁶, considering “that the protection of national minorities is an essential element of stability and democratic security in our continent”. At the end of the *Declaration*, this led to a commitment “to draft with minimum delay a framework convention specifying the principles which contracting States commit themselves to respect, in order to assure the protection of national minorities”. This text was also open to be signed by non-member states; the reason for this was to push the countries of this area of Europe which were drastically changing to align themselves with the principles included in this future convention. The latter was to be effectively completed and ready shortly after and signed on February 1, 1995.

These few facts regarding this last convention would not be very important for the present subject if, on the one hand, it had not been associated from the beginning (cf. *supra*, *Arfé Resolution*) with the project which resulted in the *Language Charter*. On the other hand, they are to be related with the confusion maintained in France by the representatives of political or ideological tendencies which claimed a certain conception of laicism and of the fight against the spectre of European federalism as being theirs. One of the ideas developed was —and it still is sometimes— that France would not feel implicated by a convention that had been elaborated “within the context of the fall of the Berlin Wall and with the prospect of the adhesion of the states of Central and Eastern Europe to the Council of Europe”⁷. According to these points of view, it would belong “to a whole series of treaties aiming at offering a peaceful solution to the ‘subject of nationalities’ in accordance with the model of the former Austro-Hungarian Empire”⁸. This results from erroneous information, insofar as the processes of elaboration —as we have already seen— are clearly located in time; in fact, it was not the *Language Charter* which was drafted with a worrying situation as its background in the eastern area of the European Community and of the whole group of member countries of the Council of Europe of

⁶ “We condemn all such aberrations. They are plunging peoples of former Yugoslavia into hatred and war and threatening other regions. We call upon the leaders of these peoples to put an end to their conflicts. We invite these peoples to join us in constructing and consolidating the new Europe.”

⁷ *Combat laïque (Laic Combat)* (Comité Laïcité République Vallée de la Dordogne [Republic Laicism Committee Dordogne Valley]), no. 4 and 5, December 1999, p. 10.

⁸ *Ibid.*

that time but the *Framework Convention for the Protection of National Minorities*. Beyond these considerations of polemic origins, while the declared object of the *Charter* represents in effect the regional or minority languages of Europe, the *Framework Convention* also deals with minority languages insofar as one of the main identifying features of national minorities is linguistic. Articles 10 to 14, that is to say, approximately 15% of all the articles which present the five headings of this text, are devoted to it. Both conventions share a common limit related to their nature: they imply an obligation of compliance accepted by the ratifying states and sanctioned by a political control exerted by the Committee of Ministers through the issuing of information concerning the application of the text and the consequences that may derive from it in the attitude of the people from the countries involved who are responsible for it.

In particular, France does not include groups or minorities in its internal law⁹; but in the *Framework Convention*, the basic aim was to verify their existence and manage it. The fear that the *Framework Convention* would contribute to providing a better visibility to the latter had perhaps some weight as regards the decision of ratifying it; this would also explain at least the limits of the direct influence of this text on the legislation of the ratifying countries. We should recall in this regard that international texts dealing with the protection of minorities do not include collective rights, not even “special” rights, but individual ones instead (Varenes, 1999, p. 129). Related to this, the elaboration and the adhesion to the *Language Charter* are the elements which implied more difficulties before the consensus on its formulations was reached.

⁹ The French Government had given its approval to the text of the *Charter of Fundamental Rights of the European Union* at the moment of its proclamation at the Nice European Summit of December 2000; in it, “national minorities” are clearly evoked in the first paragraph of Article 21 (“Any discrimination based on any ground such as sex, race, colour, ethnic or social origin, genetic features, language, religion or belief, political or any other opinion, membership of a national minority, property (...) shall be prohibited.”); but this text -while waiting for an agreement on the text of a European Constitution- is a great declaration of principles, and France does not recognise the existence of “national minorities” in its territory.

Finally, the *Language Charter* was ready to be signed in 1992, that is to say, about ten years after the beginning of the work needed for its elaboration. As the second reporter of the Parliamentary Assembly of the *Charter* project, Lluís Maria de Puig i Oliver (1995, p. 91), has been able to explain, the first project, elaborated between 1984 and 1988 under the aegis of the CLRAE, had to be cleared of some aspects initially proposed by the most involved drafters. It was mainly about the right to “historical reparation” (Giordan, 1982, p. 47) and about including the possibility for regional or minority languages to be officially recognised. In addition, according to Lluís Maria de Puig i Oliver, the words “ensure”, “guarantee”, were replaced by “allow”, “be able to”, and some normative measures became optional¹⁰. Several amendments were thus made, especially on September 11, 1987, by the Commission, which adopted the text immediately afterwards. On October 21 the same year, the CLRAE sent it to the Commission of Cultural and Social Affairs, which modified it further. Other meetings were held at the beginning of 1988. One version of the *Charter*, proposed by the CLRAE in its *Resolution 192* on the occasion of its 23rd session of March 15-17, 1988, was the first remarkable result of the work started in this perspective since 1984. The Parliamentary Assembly accepted this version in its *Opinion 142* of October 4, 1988, *on Resolution 192 (1988) on Regional or Minority Languages in Europe adopted by the Standing Conference of Local and Regional Authorities of Europe*. According to the recommendations of this *Opinion*, the text was sent to the Committee of Ministers of the Council of Europe to be adopted as a convention. At this stage, some countries represented on the Committee, France among them, rejected this version of the *Charter*. The Committee of Ministers then created the Ad Hoc Committee of Experts on Regional or Minority Languages (CAHLR) which still had to revise some points of the text. The latter was further amended in order to finally reach an agreement of the majority, although still keeping the aim of attaining a convention. We will recall two modifications that witnessed the predictable weight of the governments in this discussion. For instance, the position of official state languages was strengthened in the definitive version of the Preamble. Thus, in the version proposed in *Resolution 192*, their position was approached as follows:

¹⁰ “The words ‘ensure’ (*assegurar*), ‘guarantee’ (*garantir*) were often replaced by ‘allow’ (*permettre*), ‘promote’ (*promoure*), and some of the legally binding norms started to be optional, etc.” (Puig, 1995, p. 92).

“Aware of the fact that the protection and strengthening of regional or minority languages in the different countries and regions of Europe, far from meaning a hindrance to minority languages, represent an important contribution to the building of a Europe based on the principle of democracy and cultural diversity, within the framework of national sovereignty and territorial integrity.”

This subject was made more explicit in the final version with at least one specification added in the terminology used in which “official language” was replaced by “national language”. This allowed them to specify that the aim of this *Charter* was not that of proclaiming the possibilities of making regional or minority languages official, but that other languages could coexist with dignity with official state languages. From this point of view, beyond the statement of the pre-eminence of status as regards linguistic rights, the expression “national language” lacked accuracy. The formulation devoted to ensuring, “far from being a hindrance to national languages”, of the fourth paragraph of the Preamble to the 1988 version that we just quoted, was the object of an entire paragraph in the final version of the *Charter* formulated as follows: “Stressing the value of interculturalism and multilingualism and considering that the protection and encouragement of regional or minority languages should not be to the detriment of the official languages and the need to learn them”. The knowledge, obvious for all, of these official languages is presented as a need, while interculturalism and multilingualism are presented as values, perhaps echoing the substitution of “defence and reinforcement” (of regional languages...) by “protection and promotion” (of regional languages...), the terms of the 1988 text, being more peremptory than those of the definitive text of 1992.

1.2. About some characteristics of the text

The modifications that we have just pointed out, which were in the basis of the *Charter*, clearly included in the final version of the text the distinction between the necessary condition of official state languages and that one, optional, of regional or minority languages, between need and value. The change

which took place in Part II of the *Charter* seems to be equally significant; in it, Article 5.1.a went from:

“In respect of regional or minority languages spoken in their territory, the Parties commit themselves to taking the following aims and principles as the basis of their policy and in their legislation and practice: a. the recognition of the regional or minority languages as an attribute of a community.”

to, in the prologue of Article 7.1 of the 1992 version:

“In respect of regional or minority languages, within the territories in which such languages are used and according to the situation of each language, the Parties shall base their policies, legislation and practice on the following objectives and principles: a. the recognition of the regional or minority languages as an expression of cultural wealth; b...”

Even though the initial text included in some places the words “group” or “minority”, this would not have expressed anything but the context of the fundamental function of communication that any living language is supposed to offer. As had been stated clearly in the *Explanatory statement of the Report Expressing the Opinion on Resolution 192*¹¹, drafted by Lluís Maria de Puig i Oliver, the mention of “cultural wealth” also referred there to one of the fundamental ideas of the *Charter*, and therefore it was logical that it appeared there instead of “community”. The cultural concept of language was thus supported and confirmed in the definitive version of Article 7 (cf. Article 5 in the 1988 version), constitutive of the whole Part II of the *Charter*; the latter, together with the Preamble and Part I, constitutes the whole series of dispositions that the states commit themselves to applying when adhering to the *Charter*, except for the possibility, nevertheless, of

¹¹ “The point of view of the *Charter* is the defence of European linguistic diversity as a cultural dimension. It is not a question of minorities, ethnic groups or communities, but of languages that are so poorly protected that some are even endangered” (*Exposé* written by L.M. de Puig i Oliver. Council of Europe, September 14, 1988, FDOC 5933, p. 1).

reservations as regards paragraphs 2 to 5 of Article 7, in accordance with Article 21¹².

a. To protect languages

The protection of the cultural wealth of language made it possible to highlight the effectiveness of protection and promotion measures, so that it may have access to the largest possible number of social functions. It appears therefore that the starting point is language and not the speaker, and detailed specifications were to be given regarding the access to different uses. From the point of view of linguistic rights and faced with the apprehension of some states, France among them, this made it possible to avoid approaching the subject of collective or individual rights. The *Explanatory Report* is clear in this regard in paragraphs 11 (cf. *infra*) or 17¹³. Nevertheless, these rights are not totally absent, for languages are in fact spoken by speakers who use them to communicate between themselves. But this fundamental linguistic truth is expressed in the *Explanatory Report of the Charter* as follows:

“The charter sets out to protect and promote regional or minority languages, not linguistic minorities. For this reason emphasis is placed on the cultural dimension and the use of a regional or minority language in all the aspects of the life of its speakers. The charter does not establish any individual or collective rights for the speakers of regional or minority languages. Nevertheless, the obligations of the parties with regard to the status of these languages and the domestic legislation which will have to be introduced in compliance with the charter will have an obvious effect on the situation of the

¹² “Any State may, at the time of signature or when depositing its instrument of ratification, acceptance, approval or accession, make one or more reservations to paragraphs 2 to 5 of Article 7 of this *Charter*. No other reservation may be made.”

¹³ “The concept of language as used in the charter focuses primarily on the cultural function of language. That is why it is not defined subjectively in such a way as to consecrate an individual right, that is the right to speak “one’s own language”, it being left to each individual to define that language.”

communities concerned and their individual members.” (*Explanatory Report*, 1993, § 11).

But while the risk of social pressure on the individual should be foreseen and regulated, the “group”, the “community”, or any other body defined with any word whatsoever, though the meaning is truly a whole group of individuals who refer to one and the same linguistic code in order to communicate between themselves, or who at least agree on valuing it in this function, cannot be ignored from a sociolinguistic point of view. Despite the precautions and the commitments of the *Charter* in this regard, both in the Preamble and in the heading of Article 7, France was opposed to that which, according to this country, could allude to the collective rights in this text, by virtue of the principles it traditionally advocates. In addition to the fact that the *Charter* does not establish collective rights but a protection “à la carte” for lesser-used languages, the reference in some places of the text to groups of speakers, basically in Article 7, was nevertheless one of the arguments that this country was opposed to (cf. *infra*).

Unlike it, in other texts of an international scope, published or presently being studied in order to establish supranational regulations, the non-use of the notion of regional language has been purposely included. The idea of protection of linguistic minority groups has been preferred to the previous one, as happens in the *Euromosaic Report* (1996), written and published at the request of the European Commission. In fact, this *Report* does not emphasise the language as such, as the *Charter* does, but the social and economic context in which a language evolves:

“In many aspects, the team has felt that it must move away from the normativeness of sociolinguistic orthodoxy and of the sociology of language. This normativeness expresses itself in a strong tendency towards the reification of language, which results in concepts such as “linguistic change” or “linguistic contact”, which are externally deprived of any social or economic context” (*Euromosaic*, 1996, p. II).

It is a matter of “linguistic groups”. However, the *Language Charter* and the *Euromosaic Report* do not have the same fundamental function. The

Charter, devoted to producing legislation in this field in the member states of the Council of Europe, could only be based on receiving the largest possible number of adhesions. The appeal to the rights of groups is seen by some states —France in particular— as contradictory with their conception of the unity of the nation. The federal structure, or “autonomic” like in Spain, facilitates the legal taking into consideration of the socialisation of linguistic uses. The consideration of this aspect is, nevertheless, almost unavoidable from a sociolinguistic point of view, and a linguistic regulation cannot ignore the reality of the linguistic community, even in the case in which —juridically speaking— the subject of the law is not the group to which the language is nevertheless linked but the language. André Martinet recalled in his time this fundamental truth according to which: “as soon as a language is conceived as a communicative tool adapting itself to the needs of the group which uses it, “communication” implies “community”¹⁴.

b. About public use

One of the characteristics of the *Charter*, remarkable at least from the point of view of France, is found in the assertion, since the very Preamble, on the imprescriptibility of the “right to use a regional or minority language in private and public life”. The guarantee of access of the language to a specific public use, which is found in other texts drawn up by the Council of Europe and the European Parliament¹⁵, was not denied by amendments that could have reduced its

¹⁴ The four nuances that he contributed to this assertion are equally appropriate. We will keep here the first following respective headings: “No community is linguistically homogeneous” (variation from one individual to another as regards a common code), “A great number of speakers belong to two or more than two communities (bilingual regions or tolopectal variety + standard), “A great number of people use concurrently different styles of the same language”, “A great number of people who only use one style or one language do understand however different styles or different languages” (Martinet, 1969, pp. 151-152).

¹⁵ Cf. for instance, as regards the European Parliament, Article 1.c of the *Arfé Resolution* from 1981, Article 6 of the *Kuijpers Resolution* from 1987, Article 4 of the *Killilea Resolution* adopted on February 9, 1994, or, as regards the United Nations, Article 2 of the *Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities* adopted by the General Assembly of the United Nations on December 18, 1992; in it, more than just an access to public administration, as in the *Killilea Resolution*, it is the right to use the minority language “in private and in public” which is evoked.

strength. Three years after the publication of the *Language Charter*, the *Framework Convention* expressed this same guarantee: “The Parties undertake to recognise 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.” (Article 10.1). Some provisions are directly favourable, such as in regard to patronymy, road signs, education and, “as far as possible” (Article 10.2), the relations with the administration. But the European authorities do expect that the future members will agree to this minimum base as they do to other standards.

Parallel to this, other basic principles stand out from the *Language Charter*: the rejection in Part II of the *Charter* (Article 7.2) of “any unjustified distinction, exclusion, restriction or preference relating to the use of a regional or minority language and intended to discourage or endanger the maintenance or development of it”¹⁶, as well as the inclusion of the positive discrimination principle¹⁷, which may correspond in France to that of equality by differentiation (*égalité par la différenciation*)¹⁸; an active support to regional or minority languages; a wide space for

¹⁶ The preceding version of the *Charter* published after Resolution 192 of the CLRAE specified in its Article 1.c at that time what had to be understood as discrimination: “by the expression ‘discrimination’, any kind of distinction, exclusion, restriction or preference relating to the use of a language or the state of belonging to a linguistic minority aiming at -or effectively succeeding in- discouraging, endangering the maintenance or the development of a regional or minority language or committing an outrage against the equality of the rights of the users of these languages compared to the users of more widely-used languages in the spheres of public or private life is pointed to”. Although to be more accurate, this would correspond to the citation we made of Article 7.2. From this parallel analysis it appears that the formulation of Article 7.2 truly refers to the idea of discrimination and that the reference to the notion of linguistic minority has been abandoned for the time being, which, as we have seen, corresponds to the basic decisions of the text which legally applies to languages and not to minorities.

¹⁷ In Article 7.2: “The adoption of special measures in favour of regional or minority languages aimed at promoting equality between the users of these languages and the rest of the population or which take due account of their specific conditions is not considered to be an act of discrimination against the users of more widely-used languages”.

¹⁸ According to our point of view, one of the matters arising as regards regional languages in France is that of the limits (political context, evolution of attitudes, reality and perception of the feasible demand and supply, ...) of the application in their regard of the principle of substantial equality, as complementary to that of formal equality. The Principle of Substantial Equality appeared in France in 1958, especially in jurisprudence, through the principle of equality by “differentiation” (Grau, 1992, p. 99-100). The specific Laws of 1982 and 1991 regarding Corsica were examples of it. See Decision 91 290 DC of the Constitutional Council of May 9, 1991, regarding the Law on the Status of the Territorial Collectivity of Corsica.

the facultative or optional nature of the proposed measures, especially in education. In this last aspect, the different positions specified in Part III, which refer to education, judicial authorities, administration, the media, cultural activities and facilities, economic and social life and transfrontier exchanges, are established on a minimum protection basis. On the one hand, the *Charter* covers several public and formal linguistic uses widely enough. On the other, these provisions make proposals modulated according to the reality of the demand and depending on the possibilities of the services involved.

c. The Charter “à la carte”

In addition to this, in the terms of Article 2.2, outside the Preamble and Part II (Article 7), which apply to “all the regional or minority languages spoken within its territory and which comply with the definition in Article 1”, the state which ratifies it, “undertakes to apply a minimum of thirty-five paragraphs or subparagraphs chosen from among the provisions of Part III of the Charter, including at least three chosen from each of the Articles 8 and 12 and one from each of the Articles 9, 10, 11 and 13”. It is implied that these thirty-five provisions can be applied, according to the terms of Article 3, to a specific number of languages, the list of which is provided by each Party. Provisions considered as being too compelling in the areas of justice and administrative services in the countries where they would never have progressed, or have not progressed at all for a long time, can be removed in the ratification document, or can be kept as an option and translated from French, the sole referential version regarding judiciary matters.

Globally, the large majority of the countries which, as they ratified the *Charter*, did fulfil the conditions foreseen in Article 2.2 (at least thirty-five provisions in Part III) has surpassed the minimum required. We will gather them in four groups. In the first one, three countries, Slovenia, Spain and Finland, are placed at a higher level comprising a whole series of sixty provisions. In the second one, nine others (Armenia, Croatia, Denmark, Hungary, Norway, the Netherlands, Slovakia, Sweden, Switzerland) occupy a level which includes between forty and fifty-nine provisions. In the third one, occupying the space ranging from thirty-five and

thirty-nine provisions, we find Austria. Finally, a fourth group, of a similar kind to the two preceding ones, is characterised by a heterogeneous treatment. Most of the languages protected by Part III belong to the third group, whereas an exceptional treatment which participates in both higher groups is reserved to two languages at the most. In this last group we may find Germany, which constitutes one exception in regard to the two Sorbian languages (forty-seven provisions for Upper Sorbian and forty for Lower Sorbian), and the United Kingdom regarding Welsh (fifty-two provisions); these two countries do not surpass thirty-nine paragraphs in regard to the other languages which they have committed themselves to protect. There are two countries left besides these groups: Cyprus and Liechtenstein. They could be gathered within another group of countries which, for different reasons, are placed at a level below the line of thirty-five paragraphs. In the case of Cyprus (eleven provisions in part III), the concerned language, Armenian, “is a non-territorial language” and does not necessarily fall into the configuration of Article 2.2 (cf. *infra*, in sub-section “Non-territorial languages”). As regards Liechtenstein, ratification has been made purely out of principle and it does not concern any RML.

We wish to recall that this appreciation is very global. Recapitulations and countings have already been carried out (Tichy, 2000, pp. 134-142; Generalitat de Catalunya, 2001, pp. 39-46) and would need to be updated integrating at the same time the lists of the provisions chosen by the last states that have committed themselves to implementing the *Charter*. If we look in detail, the reality is made subtle with nuances, as we will precisely see later on regarding the “non-territorial languages” (cf. Articles 1.c and 7.5), and any country may decide to apply Part III to some languages homogeneously or adjust its decisions case by case, and only Part II to others. The sociolinguistic reality of the languages to be protected and the representations that the societies and states involved make of it are taken into consideration. Finally, it would seem that, as a whole, management concerns largely dominate these decisions.

1.3. Provisional balance

Finally, at the end of 2003, out of the forty-five member states of the Council of Europe today, thirteen had signed the *Charter* and seventeen had ratified it. This convention is presently in force in these seventeen countries. Among the fifteen EU member states (before the enlargement of 1 May 2004), France, Italy and Luxembourg have only signed it. It seems that Italy is ready to ratify it. Meanwhile, eight other member countries of the European Union have already ratified or accepted it: Austria, Denmark, Germany, Spain, Sweden and the United Kingdom have ratified it; Finland and the Netherlands have accepted it. Among them, three are found among the most important ones of the European Union, and the whole group represents half the members of the Council of Europe which have taken this decisive step. Globally, more states —the double— have ratified up to now the *Framework Convention* (seven signatures, thirty-five ratifications)¹⁹. It is true that, in fact, the *Framework Convention* is one of a whole series of commitments which are strongly recommended to be adhered to by the EU candidate states, and not the *European Charter for Regional or Minority Languages*. Therefore, we should not be too surprised to realise that out of the ten countries that have joined the European Union in 2004, all had signed the *Framework Convention* in 1995. Since then, all but Latvia have ratified it. Among them and until today, the adhesion to the *Charter* has not progressed so quickly. Four countries (Hungary in 1995, Slovenia in 2000, Slovakia in 2001, Cyprus in 2002) have ratified it. Malta, the Czech Republic and, recently, Poland have only signed it. From Bulgaria to Romania, candidates on the horizon of 2007, both of which have ratified the *Framework Convention*, only Romania signed the *Charter* in 1995. The non-official state languages undergo difficulties to be recognised and managed, perhaps more than other cultural characteristics which are common to a given population. It is true that language is eminently political insofar as, being used to communicate and to culturally identify a group, it participates in the organisation of life in society, in its conceptions and symbols.

¹⁹ Up to now, Andorra, France and Turkey have not signed this text.

a. A reference for the Council of Europe and beyond

Nevertheless, for its part, the Parliamentary Assembly of the Council of Europe has taken as a rule since 1995 to present the signing and the ratification of the *Language Charter* as a requirement for the countries which are candidates to join the Council of Europe (Jensdottir, 2002, p. 176). But all the countries of Central and Eastern Europe which have joined the Council of Europe since then have not fulfilled this commitment. Of the ten countries involved²⁰, three (Albania, Bosnia-Herzegovina, Georgia) have not yet signed it, and two have already ratified it (Armenia, Croatia). In fact, after a first period in which the adhesions have been quite slow to express themselves, in a second one, between 2000 and 2002, a new group of states presented themselves to sign and ratify it (ten signatures and nine ratifications), which allows this text to attain a reference level which will be unavoidable forever.

Expecting that the base of the *Charter* will be further enlarged, we must realise that it is recognised in particular by the European Union and the Organisation for the Security and Cooperation in Europe (OSCE). Even though this may appear meagre to the Parliamentary Assembly of the Council of Europe which criticises the European Parliament in this regard in its *Recommendation 1492* of January 2001²¹, the General Secretary of the Council of Europe recalled it in her report presented in September 2002 (cf. *supra*) that the European Union is increasingly concerned about the protection of regional or minority languages. As we have previously seen, the European Parliament had fostered in the *Kuijpers Resolution* the process that led in the Council of Europe to the *Language Charter*. After the promulgation of this convention, endorsed this intention by means of the *Killilea Resolution* adopted on February 9, 1994, urging the

²⁰ These ten countries are, in chronological order of their arrival in the Council of Europe: Albania, Moldavia, Macedonia, Ukraine, Russia, Croatia, Georgia, Armenia, Azerbaijan and Bosnia-Herzegovina.

²¹ § 10: "The Assembly notes that the Charter of Fundamental Rights of the European Union, as accepted at the Summit meeting in Nice in December 2000, does not tackle the question of minority rights and limits itself to declaring in its Article 22 that "the Union shall respect cultural, religious and linguistic diversity"".

governments of the state members to adhere to it²². More recently, while waiting for a future Constitution, the European Union has committed itself, in accordance with the terms of Article 22 of its *Charter of Fundamental Rights* (Nice, December 2000), to respect “cultural, religious and linguistic diversity”. This formulation is found again in the project of the European Constitution. With its neutrality, which does not highlight a hierarchical structuring within this diversity, it appears to us to represent a small step forward in comparison with that which appears in Article 128.1 of the Treaty of Maastricht of February 7, 1992: “The Community 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 the common cultural heritage to the fore”.

b. The efficiency of the Charter

As regards the control of the application of the provisions chosen by the ratifying countries, it is a matter that can be mentioned in order to specify the guidelines. Since it cannot be guaranteed by means of eventual appeals to a judiciary body, the follow-up to the *Charter* is no doubt limited to public relations regularly established by the Parties during the first year of the enforcement of the *Charter*, and then every three years by a Committee of Experts appointed for a six-year period by the Committee of Ministers (Articles 15 to 17). At this stage, the Committee of Experts may make proposals to the Committee of Ministers “for the preparation of such recommendations of the latter body to one or more of the Parties as may be required” (Article 16.4). These recommendations are also made public. In addition to this—which is remarkable for this kind of text—, these different reports and recommendations are submitted to the Parliamentary Assembly. The latter can then issue its own recommendations. Thus, those recommendations carrying numbers 1345, from 1997 (on the protection of national minorities), 1383, from 1998

²² “6. Supports the European Charter for Regional or Minority Languages, accorded the legal form of a European Convention as an effective yet flexible instrument for the protection and promotion of lesser used languages; 7. Calls on the Member State governments which have not yet done so as a matter of urgency to sign and their parliaments to ratify the Convention choosing at all times to apply those paragraphs best suited to the needs and aspiration of the linguistic communities in question” ([*Killilea*]

(on linguistic diversification), 1492, from 2001 (on the rights of national minorities), and 1539, also from 2001 (on the European Year of Languages), explicitly invite the member states to protect regional or minority languages, as well as to sign and ratify the *Charter*. Finally, the General Secretary of the Council of Europe submits every two years to the Assembly his/her own report on the application of the ratified provisions (Jensdottir, 2002, pp. 175-176). Two reports have already been issued²³. Therefore, in addition to the theoretical self-control exerted by the states themselves, above all there is the informative power of these different reports, especially those which are written by the Committee of Experts and which are made public by the Council of Europe (Clotet and Miró, 1994, pp. 561-562). This general configuration of the control of the *Charter*, which was both devoted to preserving state prerogatives — with the aim of attracting the adhesion of the largest number of states— and to ensuring a minimum level of efficiency —were it only thanks to the power of information—, is then much more than something only agreed on.

1.4. The languages that the *Charter* protects

What are the languages that the *Charter* can protect? All the languages that can be defined as regional or minority languages, or, with fewer possibilities, as “non-territorial” meeting the criteria defined in Article 1. Before considering in more detail what this definition implies, it is necessary to recall that Article 2.1 indicates that the provisions of Part II of the *Charter*, which in fact enunciates the fundamental objectives and principles, can be applied to the whole series of RML, except for eventual reservations regarding the terms of Article 21 (cf. *supra*), without making it necessary to mention these languages. In fact, we will see later on that a certain number of states have chosen to specify in their ratification instrument that Part II would effectively apply to this or that language. The implementation of Part III, by means of the minimum number of thirty-five provisions (Article 2.2), basically justifies the step towards the adhesion to the *Charter*. But the

Resolution on Linguistic and Cultural Minorities in the European Community, adopted on 09/02/1994 by the European Parliament, PE 179.621).

²³ That of October 18, 2000, and that of September 11, 2002 (<<http://www.coe.int/legal>>).

latter formally implies the specification of which are the languages (Article 3.1) which will be protected by way of this Part.

a. Meaning and use of the reference linguistic designations

The basic terminology is found in the expression “regional or minority language”. The latter is specified in Article 1 of the *Charter* and its definition is constituted in short by the following meanings: language traditionally used within a given country by the citizens which are fewer in number than the rest of the population; language which is different from the official language(s) of the state; language to which a territory corresponds, which reminds us of the notion of territoriality applied to one of both main statuses of the official languages, the other being that of personality. The dialects and languages of migrants are excluded. The “non-territorial” languages can only be eligible to some provisions of the *Charter* “*mutatis mutandis*” (Article 7.5), as far as possible, given their lack of geographical implantation, but also because they are “traditionally” used in the country which is being considered. As regards what should be understood by the adjective “regional”, the *Explanatory Report of the Charter* indicates in paragraph 18 that it “denotes languages spoken in a limited part of the territory of a state, within which, moreover, they may be spoken by the majority of the citizens”. But although a regional language can be spoken there, for the most part this is not always the case. According to this same report, the adjective “minority” only refers to the quantitative aspect of the speakers who are not concentrated “on a specific part of the territory of a state in one specific area of a state”, or who constitute a lower number of individuals in a specific area compared to that of the other individuals who speak “the majority language of the state”. Finally, the texts which accompany the ratifications provide useful indications in order to better perceive the echo provoked by the use of this terminology and, consequently, to start measuring its validation on the spot.

A first analysis of the declarations made at the moment of the signature and of the ratifications/adhesions can provide us afterwards with an interesting piece of information as regards the use made by the states as a response to the expression “regional or minority language”. In these first official reports, the

majority of countries use this expression (Spain, Finland, Slovakia, Slovenia, Sweden). Three other countries use the expression “minority languages” (Germany, Armenia, Austria, Denmark). Sometimes, other expressions appear: “regional language” (Germany, for Low German; France, in the *Declaration* presented at the moment of the signature); “lesser-used official language” (Switzerland, for Romansh and Italian). Returning to the expression of the *Charter*, “non-territorial language” (Article 1.c), it appears in the *Declarations* of Cyprus as regards Armenian, Finland as regards Rom (Romanes) and Sweden as regards Rom (Romani Chib) and Yiddish. The Netherlands, as regards Yiddish and Rom (Romanes), and Slovenia, as regards Rom, do not mention the expression but refer explicitly to it by mentioning the application to these languages of Article 7.5, which is devoted to them.

Other denominations not present in the *Charter* are also used: “principal language” (Denmark, as regards Faroese and Greenlandic), “less widely used official language” (Finland, as regards Swedish), which corresponds to the expression “official language which is less widely used” of Article 3.1. In other places, such as Croatia, Hungary, Norway, the Netherlands and the United Kingdom, the languages are directly defined although their belonging to a specific category is not specified. In the case of Hungary, we may wonder whether this non-use does not show a diminution of the importance as regards the notion of linguistic territory derived from the habit of applying as much as possible a personality regime to minority languages. The *Periodical Initial Report* submitted on September 2, 1999, after having admitted that some minorities were more concentrated in a few geographical areas²⁴, indicated in this sense that “the legal rules in charge of protecting regional or minority languages in Hungary apply to the whole territory” (p. 26). It seems equally obvious that there exist some large configurations regarding the spatial inclusion of minority languages in general, and the one constituting the Hungarian example will be different from the Spanish one.

²⁴ “Most minorities of Hungary are scattered across almost the whole territory. Nevertheless, we may outline some geographical areas in which certain minorities are more concentrated; but there are also minority groups or communities, the linguistic rights of which can be assimilated by those of the minorities living in a neighbouring area” (p. 26).

Germany is the sole country that, up to now, has established a distinction between the notion of “regional language”, applied to Low German, and that of “minority language”, reserved to six other languages (Danish, Upper Sorbian, Lower Sorbian, North Frisian, Saterland Frisian, Romany). These expressions must not only be taken into consideration from their versions in the two official languages of the Council of Europe, English and French, but also with their meanings in the official languages of the contracting states. In this case, the distinction established in Germany between *Regionalsprache* and *Minderheitensprache* seems to meet the specifications provided in the *Explanatory Report of the Charter* (§ 18) regarding the difference established between “regional” and “minority”; in it, the first adjective refers specifically to a restricted area of the territory in which the speakers of the language considered could be a majority, which would not be the case in the second one, unless these differences also indicate that Low German is perceived as being regionally marked as a recognised variant in its sociolinguistic independence of the German linguistic *continuum*.

In this sense, the assessment of Tomasz Wicherkiewicz (2003) is useful to us. In a recent contribution he proposes that by “regional language” we understand a certain number of linguistic entities meeting a maximum of nine distinctive features²⁵. We will highlight here in particular the one about a close genetic relationship to the majority language of the state to the extent of considering that the first one is only a dialect of the second one. That other one which implies the lack of a uniform literary standard, or which has a standard which is only in the planning stage, or which is just emerging, appear to us as being clearly identifiable.

²⁵ The whole series of features is presented as follows: “a. close genetic relationship to the majority language of the state; regiolects are often regarded as being ‘only’ dialects of a majority/state language; b. relatively long history of common development, especially sociopolitical, of the regional and the corresponding majority language; c. lacking or not fully shaped feeling of national separateness within the group of speakers; however, strong regional and/or ethnic identity with the language constituting the main constituent of the identity; d. relatively high dialectal differentiation within the regiolects, which, hence, can be often classified as dialect clusters or L-complexes; e. lacking an adopted uniform literary standard or the standard being in statu nascendi; f. rich, often very ancient literary tradition of dialect/regional literature; g. relatively low social prestige of a regiolect, often lower than in the past; h. underdeveloped status language planning methods; opposition within the group against being perceived and officially treated as national minority group, often a paradoxical resistance against being seen as minority group at all; an ‘embedded’ national/linguistic identity”.

As a result, in the list of outstanding cases presented by the author, we will find Occitan next to Asturian, Aragonese, Kashubian, Scottish (Scots) and Low German. The logic of this classification seems to us to be debatable because a language that was defined a long time ago given its linguistic distance compared to other Romance languages (except for Catalan regarding which a clear distinction was nevertheless made in 1934 based on differentiated evolutions and specific elaboration processes) and the languages committed with the processes of becoming autonomous are found at the same level. According to this approach, “regional language” could thus be an equivalent to the language by elaboration (*Ausbau*) of the Klossian terminology (Kloss, 1987), thus based on former tolopectal varieties more or less distant from the other *continuums* to which they also belong from a descriptive point of view, in the process of being linguified or the process of linguification of which is from now on both equally assumed and recognised. We will keep from this that the first characteristic may at least correspond to the situation of Low German, defined as a regional language by Germany, and that many RML by elaboration could become the target of this definition.

b. The presentation of the languages to be protected

Two general configurations embrace the possibilities of endorsing the *Charter*. The first basic and general configuration aims to apply Part II of the text without making it necessary to name the languages involved. The second configuration, which can be applied to the languages *a priori* named in the ratification instrument, must apply Part III of the text according to the modalities defined in Article 2.2 (cf. *supra*). It has been observed that, when implementing it, the countries sometimes specify or readjust the list of languages to be protected in the follow-up reports. This refers in the first place to the languages eligible in Part II of the *Charter*. For instance, Tatar, a non-territorial language in Finland, appears since the *Initial Report* submitted by this country in 2001. The same happens with Kven/Finnish in Norway. Thus, the “forgotten” languages of the ratification instruments or state reports may finally be indicated in the reports written by the Committee of Experts.

This was the case, for instance, of Bosnian and Slovenian in Croatia²⁶. In the case of Hungary, the *Initial Report* had already mentioned the existence of some languages (p. 16-21) in addition to those that this country was thinking to protect by means of Part III of the *Charter* (cf. *infra*, the case of Hungary). It was specified that the whole group of these languages was the subject of Law LXXVII from 1993 on minorities. In its report submitted on May 2, 2001, the *Charter's* Committee of Experts indicated some languages that had not been mentioned in the Hungarian *Declaration*. They belonged to the group that had been mentioned in the precedent *Initial Report*. It ratified their existence and stated that it would be convenient not to ignore them even if their numerical importance was minor:

“Given the practical impossibility to use these languages (Armenian, Bulgarian, Greek, Polish, Ruthenian and Ukrainian) in education and before public authorities, such reluctance by the speakers of these languages to insist on language rights is understandable. But one should not deduce from such reluctance a lack of will on their part to preserve their cultural and linguistic identity” (*Committee of Experts' Report*, § 20).

In addition, later on the emphasis was put on the Romani and Beas languages of the Gypsies, not mentioned either in the ratification instrument, which on October 4, 2001, were the subject of a *Recommendation* of the Committee of Ministers.

In principle, it is possible that a state is contented with ratifying the *Charter* only retaining Part II of the text, which would not especially meet the spirit of the *Charter* (*Explanatory Report*, § 49) but which constitutes —together with the Preamble— the minimum that a state must endorse. No country has ratified the *Charter* up to now according to this modality. The case of

²⁶ As an example of this possibility, § 11 of the *Report* of the Committee of Experts submitted in September 2001 starts as follows: “ In addition to the languages covered by Part III of the Charter, the Committee also has to consider other languages that should be covered by Part II”. Except for the non-territorial languages (cf. Article 7.5), regarding which Croatia had formulated a reservation, the Committee indicated the case of Slovenian and Bosnian to which would correspond some geographical areas in accordance with Part II of the *Charter*.

Liechtenstein is unique insofar as this country ratified the *Charter* in 1997 specifying that at that moment there was no RML within its borders.

The country that ratifies the *Charter* may choose a unique regime which can be applied to all the languages that it mentions in the title of Part III of the *Charter*, or else it chooses to diversify its approach towards the protection which it foresees to guarantee to its RML, treating each case in a specific way (*Explanatory Report*, § 46). Some states have specified that they would apply Part II to some languages named by them, even though *a priori* the latter regards all the RML without discrimination, eventually adding some provisions of Part III, fewer than those which are included in the previously mentioned second configuration. As we will see later, this involves necessarily at least the “non-territorial” languages. These same countries announce at the same time that, according to the modalities foreseen in Article 2.2, they keep Part III for other languages.

c. About some official languages

According to Article 1, official state languages are not included in the RML category. Nevertheless, a little further on, Article 3.1 specifies that an “official language which is less widely used on the whole or part” of the state territory can also be taken into consideration. It turns out that the determinant criterion is not that of the official status, but that of the real use and vitality of the language: “because it is used by a group numerically smaller than the population using the other official language(s)” (*Explanatory Report*, § 51). But it may affect lesser-used official state languages such as Irish in particular or Italian in Switzerland. In the last case, at the Swiss federal level, Italian is equally recognised as official; however, this situation, as it is the rule for the other official languages at this level, is applied afterwards according to a territoriality status. In the case of Finland, Swedish is also a minority language equally recognised as official, but in this case according to a personality status. Moreover, the official language at a regional or local level and not at a state one, like Galician or Occitan in the Val d’Aran (Pyrenees, Catalonia) —just to mention these cases—, enters into the area of application of the *Charter*.

d. Dialects and “emerging” languages

The dialects of official state languages are not taken into consideration by the *Charter* (Article 1.a.ii). Moreover, the *Explanatory Report* provides a wide interpretation of this provision, specifying that it concerns “local variants or different dialects of one and the same language” (*Explanatory Report*, § 32); consequently, this does not refer only to the dialects of official state languages, but also to those of any other language liable to be covered by the *Charter*. The question raised here by Article 1 includes that of the recognition of the dialect as a linguistic expression that deserves or not an appropriate treatment within a language conceived in a unitary form. Furthermore, the fact of not including protection of dialects could also favour their recognition as languages in order to make them eligible to the measures resulting from a ratification of the *Charter*. The presence of a suitable form, which integrates a positive approach to the diatopic variation of each language —minority or not—, could perhaps be considered, thus allowing the “dialects” mentioned in the *Charter* to have another way out than that of not being taken into consideration or the access to the linguistic or sociolinguistic status of the language. And perhaps with the aim of avoiding them —when recognising variants— to contribute to weakening the languages which are mostly less widely spread or undervalued, or else the state languages that their institutional defenders could have believed were threatened, the writers of the *Charter* have risked to indirectly favouring the promotion to the rank of “languages” of some primary (Cosseriu, 1988) or historical dialects. This may have contributed to confirming their identity or emergence. The notions of “polyelaboration” (Muljacic, 1986, p. 57), of “polycentric standardisation” (Stewart, 1968, pp. 534-535), of “pluricentric” or “polycentric” languages (*Pluricentric Languages*, 1992; Kloss, 1978, pp. 66-67), for instance, illustrate the extreme position that is more prone to integrating the linguistic variation in its drawing near standardisation, with nevertheless an eventual slipping towards the idea of a group of languages genetically originated in one whole, but separated in autonomous or independent entities from a sociolinguistic point of view. The notion of “linguistic modality”, flexible and wide, which appears in Article 3.3 of the Spanish Constitution

of 1978²⁷, has allowed to meet incidentally some expectations regarding the variants of the Castilian *continuum* such as Andalusian Castilian or “Andalusian modality of Castilian”²⁸. These matters imply that of protection, even of promotion, of the dialect so that —as a possible way out— the latter will end up being elevated to the rank of autonomous language thanks to valuing measures. According to the formula chosen, the fact of taking the variation into consideration —no doubt, something which is delicate— can obviously favour some forms of complementariness, such as simply integrating the sociolinguistic reality of “new” languages, the intergenerational transmission of which is carried out through inherited, dialectal forms²⁹. Be that as it may, the passage to modernity of minority languages in general that the *Charter* may accompany includes all by itself a positioning faced with the question of standardisation according to general or specific varieties.

The languages that are related to the large field of variation may also be the target of different qualifications among which are those used in the text of the *Charter* (regional, minority, ...). In the present situation of the adhesions, some examples may already be openly mentioned. This is the case of Low German, *Niederdeutsch* or *Plattdeutsch* in relation to German in Germany, of Scots and Ulster Scots in the United Kingdom in relation to English, of Meänkieli (variety of Finnish from the Torne Valley or Tornedalian Finnish) in relation to Finnish in Sweden, of Ruthenian in relation to Ukrainian in Croatia and Slovakia, of Yezidi in relation to Kurdish in Armenia. The same happens more implicitly regarding Spanish with Asturian and Aragonese, for they were not mentioned in the ratification instrument

²⁷ “*La riqueza de las distintas modalidades lingüísticas de España es un patrimonio cultural que será objeto de especial respeto y protección*” (“*The wealth of the different linguistic modalities of Spain is a cultural heritage that will be the subject of special respect and protection.*”)

²⁸ Andalusian, the emergence of which as a dialectal whole is secondary from the historical point of view compared to the older and original characterisations of Asturo-Leonese or Aragonese, *a priori* presents less distance than these two linguistic entities in relation to common Spanish.

²⁹ In this regard, *Recommendation 928* of the Parliamentary Assembly of the Council of Europe had evoked in 1981 the use of the dialect in pre-school education: “With regard to the human aspect, the gradual adoption of children’s mother tongues for their education (use of dialects as the spoken language in pre-school education, and use of standardised mother-tongue language forms in primary education, the prevailing language of the country being then progressively introduced along-side the mother tongue)” (Article 4.b).

presented by Spain on April 9, 2001, although they have been recently confirmed in the *Initial Periodical Report* submitted by this country on September 23, 2002. In fact, the case of the language which is defined as “Aranès” must be commented on in depth. Answering the reference texts on this matter in Catalonia, the last important one being the so-called Law of the Val d’Aran passed on July 13, 1990, this language is presented in the Spanish *Initial Report* (p. 11) as follows: “Aranese, a variety of Gascon, is a variant of Occitan spoken in the Aran Valley”. However, nothing is said regarding the participation of Valencian in the same linguistic entity as that of the Catalan of Catalonia and the Balearic Islands. But in this case also, despite the data of the debate on this subject in Spain, the definition “Valencian” is very much used officially as such in this country by the appropriate institutions. But those referring to the inside of the region involved in this linguistic field interpret it as regionally defining—in the Valencian Country—the same language as the one from further North with its own characteristics which express the usual diatopic variation of a language that, despite being a minority language, is nevertheless well standardised. The sociolinguistic autonomy acquired by these languages is only sometimes explained or justified briefly in the follow-up reports of the *Charter*. For instance, let us mention the development which appears regarding Meänkieli in the *Committee of Experts’ Report* for Sweden passed in December 2002 in which its linguification is only verified:

“It is not until recently that Meänkieli has been recognised as a separate language from the Finnish language. The Meänkieli language derives from the same roots as Finnish but has evolved mainly as a spoken vernacular and still lacks a standardised written code although it has been used in writing since the early 20th century” (§ 14).

and the descriptive one which appears in the *Initial Periodical Report* of Germany regarding the application of Article 10.1.a.v on the use of Low German with the administrative authorities and in public services in Schleswig-Holstein:

“Following this commentary, though, Low German would not be considered a language in its own right, but a dialect - and as such would not come under the Regional/Minority Language Charter. Linguistically, however, it is an

established fact that Low German is an independent language differing from standard (High) German” (p. 134).

Nevertheless, we may see that the language by elaboration can be recognised as such, but also be liable to hesitancy as regards its status. But as regards the *Charter*, in order to be taken into consideration, it must be a language. It may appear in the follow-up reports through formulations which highlight the lack or the weakness of its normalisation or standardisation. On the one hand — and this would not enter into this configuration—, the reports may present the words “dialects” or “variants of” with the obvious aim of carrying out the regular and necessary study of the language through its natural variation, but in such a way that the awareness and importance given to its unity are questioned within the framework of the application of the *Charter*. The dialect remains the subordinated variant in the name of the language. Later on we will see that the same thing happens in the example of the “variants of Low Saxon” or the “Low Saxon dialects of the Veluwe” (cf. *infra*). Another example which belongs even more to a general configuration typical of every language regardless of its status, that is, the *Initial Report* of Germany, informs us that education in Mecklenburg-Western Pomerania includes among its priorities “the Low German dialects and the specific particularities of the German language spoken” in this *Land* (p. 123, regarding Article 8.1.e.ii of the *Charter*, on education). On the other hand, the name of the language may also appear in plural, which can also express a still intermediary phase, or a phase which is under debate in which this expression may also be found, or a heavy tendency towards the sociolinguistic emergence of a group with several languages. This is obvious regarding the “Low Saxon languages” and the Romani languages. The case of the latter should be treated separately. They have their own linguistic and sociolinguistic peculiarities and we will only deal with them superficially later on in the separate section on the “non-territorial languages”.

The Low Saxon languages appear thus defined in plural in the instrument of acceptance of the Netherlands of May 2, 1996. They combine the issue regarding the use of plural and that of the passage from the status of dialect, linguistically and sociolinguistically perceived as such, to that of sociolinguistic language, that is to say, by elaboration. The Low Saxon languages are found in the

continuum of the Dutch side of Low German (in German, Low Saxon is also called *Plattholländisch* in the Netherlands). The Netherlands specified that the provisions of Part II of the *Charter* would apply to these languages. By the way, as it is possible (Article 3.2), the “language of Limburg”, or Limburger, another emerging language in relation to Dutch, is named in a subsequent *Declaration* dated March 18, 1997, attached as such to the ratification instrument of this country. There it is stated that Part II of the *Charter* will also be applied to this language. In the *Initial Periodical Report* submitted on March 5, 1999, essentially devoted to Frisian, the “languages of Low Saxony” (p. 3), only delimited by this formula, “Stellingwerf” —which is a variant of Low Saxon (p. 11)— and “Bildts” (p. 11) are dealt with, although it is not specified —but we may infer it— whether it is or not Low Saxon, both in the Friesland Province, in addition to Frisian and Dutch. But here appears the first nuance in the linguistic denomination: the first *Committee of Experts’ Report* made public on February 20, 2001, had sometimes mentioned the “Low Saxon language” in singular, and some other times the “Low Saxon languages” in plural, even specifying once the “Low Saxon language of the Gelder Province” (p. 11). This hesitancy between two perceptions, an unifying one and a plural one, appeared in more detail in the second state *Report* made public on May 26, 2003. The introductory part (pp. 99-100) contains the phrase “several variants of Low Saxon” (§ 1.1), followed further on by “one or the other variant of Low Saxon” (§ 1.2), by the “linguistic area of Low Saxon” (§ 1.2), by “the whole Low Saxon linguistic region” (§ 1.3), and then by “Low Saxon linguistic region” (§ 1.4), and finally by the “Low Saxon languages” (§ 1.5). Later on, the “Low Saxon” signifier used in singular is found in the same paragraph 1.8 next to that of “Saxon languages” in plural. “Low Saxon” in singular appears again in the “Saxon languages” paragraph in plural. “Low Saxon” in singular is found in paragraph 1.10, while in the last paragraph, “each Low Saxon dialect” is replaced two sentences further with “Low Saxon” with a unifying determinant. The words ‘Low Saxon languages’ in plural gather, according to the provinces, the following realities: Drents, Stellingwerfs, “Achterhoek and Liemers dialects”, “Low Saxon dialects of the Veluwe”, “Gronings variant of Low Saxon”, “Sallands and Twents varieties of Low Saxon”.

Another configuration can also be extracted from this: that of the languages with an autonomy that is not clearly recognised. We believe that this is something underlying the existence of “Burgenlandcroate” (*sic* in the French translation of the ratifying instrument) or Burgenland-Croatian, “Burgen-landkroatisch” in relation to Croatian in Austria. The *Initial Report* submitted by this country on February 14, 2003, mentions especially —by way of the provisions included in the different articles of Part III— the use and protection of the Burgenland-Croatian. However, it is on the basis of the local dialects and of a regional regulation that a linguistic plan has been developed favouring this linguistic expression for several decades, even though this has been done without separating it from the Standard Croatian of Croatia. In the light of reports presently available, it seems that the Kven/Finnish (*sic*) in Norway could also join this category. It was already mentioned in the first report presented by this country and thus named because its status had not been clearly defined. Does it have to be considered as Finnish or as the Kven language, a since now “self-linguified” variety? After two *State Reports* and two *Committee of Experts’ Reports*, the matter has not yet been resolved. The last *Recommendation* of the Committee of Ministers of September 3, 2003, urges the competent authorities to “quickly solve the situation of the Kven language/Finnish and to consult the representatives of the Kven language in this regard before a decision is taken”. In both cases, the Burgenland-Croatian and Kven/Finnish, the principle of protection is not questioned. We will always have to deal with a language that is at least a minority language. The matters concerning linguistic identity and the denominations accompanying it will remain. Between these two cases, there is at least a difference that could have an influence later on and which is related to the degree of normalisation. The Burgenland-Croatian seems to be more normalised than Kven. It appears to be closer to standardisation and therefore to linguistic autonomy than Kven; however, it does not claim a dissociation from the Croatian linguistic group. It is also better protected and for a longer time. Could it be regarded as an example that nourishes a polyelaboration process which is under way?

The adherence to the *Charter* also contributes indirectly to allow for these linguistic entities —because this is the responsibility of the states (Article 3.1)— to have access to the status of language, in this case “regional or minority”, “non-territorial” or defined in some other way (cf. *supra*). These languages

which we define as “emerging languages”, for they result from a linguification process or because they are involved in it, can thus be supported in this dynamics thanks to the diffusion of the *Charter*. The latter may also act as a mirror and as an element which clearly shows the tendencies and helps to distinguish the different types of these languages by elaboration. We observe that these processes are sometimes still in intermediary phases which are marked by hesitancy as regards the denominations, for instance, at least until now, of Kven and Finnish, of Low Saxon(s). Even in the follow-up reports of the *Charter*, the categories “dialect” and “variant” are used, despite being implicitly gathered under the signifier which embraces or guides the “language” (sometimes in singular and sometimes in plural). Frequently, some of these languages define themselves in relation to another language identified through its standard variety. This would be the case of Meänkieli, Kven/Finnish, Low German, Low Saxon(s), Limburger, Burgenland-Croatian, Asturian or Aragonese. Among them, other languages may already be engaged in standardisation. For us, Asturian seems to be an example of this. Self-linguification can also take place within the same *continuum*, without becoming autonomous in relation to a genetically close standard because the latter is lacking, even within one of its large variants. Kurdish has not yet developed a common standard variety for its whole area. Nevertheless, generally speaking, it is admitted that two common written literary varieties exist on the bases of the Kurmandji and Sorani dialects. In this category, Yezidi could appear separated from the Kurdish of Armenia, both in the area of Kurmandji. The only thing that may be said about Low Saxon languages is that in fact they can identify themselves doubly: in relation to a non-standardised *continuum* —that of Low German— and in relation to a historical part of the latter, monostandardised for centuries through Dutch.

At the same time, we notice that among the basic parameters which have favoured some developments towards linguistic individuation (Marcellesi and Gardin, 1974, pp. 231-247), some have had the chance of playing a determining role; in other words, their existence has been able to favour this kind of configuration. At least, the state borders and the religious group to which they belong are part of it. In the case of state borders, the link of which with the languages which have become official state languages in time (Dutch, Norwegian, Croatian, Serbian, Macedonian, Bosnian, ...) we know, we will recall for the moment Meänkieli,

Kven/Finnish, the Low Saxon languages or the Burgenland-Croatian. The borders between the Scandinavian countries, between Germany and the Netherlands, or even more in the last case (Austria shares no borders with Croatia, for Slovenia creeps between both), have contributed to isolating from a physical and sociolinguistic point of view these linguistic expressions of groups to which in fact they still belong. In the extensive paradigm of the borders, the internal administrative limit can also play a similar role; Asturian such as it is presently perceived and managed follows the limits to the South and East of the Autonomous Community of Asturias, while its western strip belongs to the area of Galician. Religion may also have been another dividing parameter. We should mention especially the case of Ruthenian linked to the Uniate Greco-Catholic rite, generally included in the references and/or notorious cultural practices of its speakers who thus distinguished themselves in relation to the Ukrainophones, or of the Yezidi speakers to differentiate themselves from other Kurdophones given their syncretic religion of the same name based on beliefs which are close to Zoroastrianism.

From the selection made by the states in their ratification instruments, there appears a tendency to only apply the general provisions of Part II of the *Charter* to this category of languages. This is the case, for instance, of Limburger and the Low Saxon languages in the *Declaration* of the Netherlands, of Scots and Ulster Scots in that of the United Kingdom. The basis of the recognition, which is grounded on the application of Part II to the language involved, is sometimes completed, as we have globally presented above, with some provisions kept in Part III. These are fewer than those corresponding to the second configuration of adhesion to the *Charter* that we have specified above. The case of Low German in the *Länder* of Brandenburg, North Rhine-Westphalia and Saxony-Anhalt may illustrate this outstanding example insofar as the provisions of Part II are applied to it in the whole federal territory, while between fourteen and nineteen provisions chosen from Part III are devoted to it, *Land by Land*, according to the administrative organisation of this country.

e. “Non-territorial languages”

We have seen that the *Charter* gives priority to a fundamental link between the notions of territory and regional or minority language. The “non-territorial languages” mentioned in Article 1.c “are excluded from the category of regional or minority languages because they lack a territorial base” (*Explanatory Report*, § 36). Some provisions of the *Charter* can nevertheless be applied to them because they are “traditionally used within the territory of the State” (Article 1.c). Therefore, there seems to be a difference between the territoriality of a language within a specific area, with elements of historicity, tradition and “Europeanity” which would be linked to it, and the fact of belonging to the national patrimony of a language which is spoken traditionally with no link whatsoever to a geographical area of the state territory. On the contrary, there would be a recognised relationship with the whole undivided area of this territory. Such are the languages of nomad populations or also Yiddish, or even the languages spoken by small scattered groups, with no tradition of a specific territorial rooting.

To take the important case of the Rom (Rom, Romani, Romanes...) language —or languages—, which is common to several countries, of the gypsies, the countries which have specified in their ratification instrument that they would protect it are, until today, Germany, which includes it in the group of “minority” languages, Austria, Finland, the Netherlands, Slovakia, Slovenia and Sweden. Be these specifications as they may, it is mostly Part II of the *Charter* that will apply to these languages, nevertheless, with the regulations foreseen in Article 7.5³⁰; therefore, as far as possible. Indeed, while most provisions of Part III depend on a territorial inclusion, Part II can already imply also territorialised measures which are difficult to implement given the lack of a territorial base (*Explanatory Report*, § 37). As in the previous case, the ratifying state has been able to add some provisions chosen from Part III without either entering in this case in the second configuration foreseen

³⁰ “The Parties undertake to apply, mutatis mutandis, the principles listed in paragraphs 1 to 4 above to non-territorial languages. However, as far as these languages are concerned, the nature and scope of the measures to be taken to give effect to this Charter shall be determined in a flexible manner, bearing in mind the needs and wishes, and respecting the traditions and characteristics, of the groups which use the languages concerned.”

in the terms of Article 2.2 (cf. *supra*). Austria and Germany have dealt with Rom as follows: eight provisions as regards the first country, between three and nineteen according to the *Länder* involved as regards the second one, all taken from Part III. In comparison, Cyprus has chosen eleven provisions from Part III as regards Armenian, defined as a non-territorial language, in its ratification instrument presented on July 26, 2002.

At least until now, one country, Slovakia, has announced that Rom would also be protected by means of Part III of the *Charter* within the framework of the second protection configuration (cf. *supra*) derived from Article 2.2. The protection of Rom has been brought into line with other RML, Bulgarian and Croatian, with forty-nine provisions chosen from Part III. *A priori*, this is logical insofar as this language, quite often “non-territorial”, is nevertheless very present sometimes or is traditionally implanted in some specific areas (which is also the case of Rom, for instance, in Burgenland, although in Austria it is only the target of seven provisions of Part III), which makes its linguistic regulation easier. We have already seen that a minimal territorialisation was useful for the implementation of Part II. And although this “maximal” option exists, as we see in the Slovakian case, in the range of lists of commitments which accompany the ratifications, restricted options also exist. Until now, two countries, Hungary and Croatia, illustrate these restrictions.

Rom is not mentioned in the Hungarian instrument. We know that, normally, Part II can at least be applied to it as to any other language meeting the elements of the *Charter* definition of Article 1, independently of the fact of being included or not in a geographical area. It is nevertheless mentioned in the *Initial Report* among other languages, some of which are non-territorial. It is more purposely mentioned in the *Committee of Experts’ Report* (§ 34). The forms it takes are Romani and Beas, the latter being a variety of the archaic Romanian spoken by some groups. These two languages were highlighted by the experts who made recommendations in their regard. These recommendation were reinforced later on by those adopted on October 4, 2001, by the Committee of Ministers of the Council of Europe, so that this country “establish a policy for developing the Romani and Beas languages, with the aim of facilitating their use in public life, and respond to the needs of the users of these languages, in particular in education”. In the future, the

outstanding Spanish case could appear as being close to that of Hungary. In its *Initial Report* submitted in September 2002, this country indicates that Romani could be classified within the category of the non-territorial languages, but given the fact that the number of its speakers is only about a hundred, this does not justify its taking into account. We will see how the Committee of Experts has reacted to this information when it publishes its conclusions in the near future, and it will make some observations regarding the linguistic practices of the Spanish gypsies —we are thinking about Caló—, especially those of Andalusia. The configuration of the Spanish Caló, an expression which mixes a Castilian base with the lexical characteristics of Romani origin, is it not close to that one of Beas (on a Romanian base) in Hungary (cf. *supra*)? Therefore, this case could be similar to that of Hungary that we have just mentioned.

In the terms of the reservation that it had formulated in paragraph 5 of Article 7 regarding the “non-territorial languages”, as it was authorised by Article 21.1, Croatia had specified in its *Initial Periodical Report* submitted on March 19, 1999, that the non-territorial languages were German, Hebrew and Rom (pp. 10-11). This reservation indicated that these languages could not be included in the application field of Part II of the *Charter*. In its own *Report* adopted on December 2, 2000, the Committee of Experts of the *Charter* expressed its hope that “the Croatian authorities, will nevertheless strengthen efforts to promote these languages, and will especially take into consideration the needs of the Romany language.” (§ 46). Contrary to this, the Committee of Ministers did not reflect this recommendation among the ones it made public on September 19, 2001.

In the first case, the follow-up process has led to a recommendation of the Committee of Ministers, while in the second one, the latter has not reacted to the remarks formulated by the Committee of Experts. But in this case, a limitation which refers to the flexibility of the *Charter* had already been admitted in this sense with the reservation issued by Croatia in Article 7.5.

f. Migrants' languages

The languages so-called “of migrants” are excluded from the *Charter* for the same reason as dialects. The *Explanatory Report* provides complementary information by indicating that “The CAHLR took the view that these problems deserved to be addressed separately, if appropriate in a specific legal instrument” (§ 15). This subject had been approached in 1989 by the CAHLR during its first meeting. In order to agree on a limit regarding the meaning of the word “migrant”, the use of the word “autochthonous” was suggested and the number of generations of migrants who have lived in the member country of the Council of Europe and who have kept an effective link (for instance, use, awareness of the language and the demand for learning it, ...) with their own language was mentioned³¹. This subject was nevertheless postponed for a subsequent debate. In fact, the *Charter* and its *Explanatory Report* are not clear regarding these aspects and we may expect that practical use will contribute in the future to cast light on this matter. However, it would be useful to recall that the Preamble clearly related the “historical” RML with Europe and that the *Explanatory Report* interprets the adjective “historical” as applying to languages “spoken over a long period in the state in question”³². What sense should we attribute to the adverb “traditionally” in Article 1.a.i (“the languages traditionally used”) of the *Charter*?

³¹ “Taking into account the difficulties that we may encounter when determining if some languages are ‘traditionally spoken in a given territory’, some members of the Committee (CAHLR) propose to use the word ‘autochthonous’. Or else, it is proposed to specify the meaning of the word ‘traditionally’, adding, in brackets, the words ‘at least ... generations’.” (*Ad Hoc Committee of Experts on Regional or Minority Languages [CAHLR]. Report, 1st meeting, October 2-3, 1989. Strasbourg: Council of Europe, 1989, p. 6.*)

³² The expressions “historical regional or minority languages of Europe” (see second paragraph of the preamble) and languages “traditionally used” in the state (Article 1, paragraph a) show clearly that the charter covers only historical languages, that is to say languages which have been spoken over a long period in the state in question. ” (*Explanatory Report of the European Charter, § 31*).

g. The open nature of the categories of languages which are the target of the Charter

From the point of view of this “tradition”, the Austrian *Declaration* provides an interesting example about Czech, Slovakian and Hungarian in the *Land* of Vienna. These languages have a *de facto* sociolinguistic status of European languages effectively spoken “for a long period” and implanted outside their original area taking advantage of the part of former imperial capital and centre of attraction presently played by this city. In a similar way to the “emerging” languages and to the “non-territorial” ones mentioned above, it is specified that Part II of the *Charter* will be applied to them in addition to some provisions of Part III (eight for Czech and Slovakian, and twelve for Hungarian). Originally, they were the languages of the migrants who had come to Vienna which were reinforced by a more recent and present-day immigration given the attraction of this city, and they have been traditionally spoken (as non-territorial languages, cf. Article 1.c) —despite being implanted sometimes for several centuries— in Vienna and even beyond it (as is the case of Slovakian, mostly in the past, in Lower Austria).

Very interesting as well is the case of Armenia, which specifies in its *Initial Periodical Report* submitted in June 2003 regarding the “minority” languages that it wishes to protect that they are neither regional nor non-territorial in the sense of Article 1 of the *Charter*. It is specified in the *Initial Report*, submitted in June 2003 (p. 7), that they are “minority languages”. The same document informs us that, in addition to Russian, included to be protected by the *Charter* and which can also be spoken by a large number of non-Russian people given the inclusion until recently of Armenia in the block of the Soviet Union, “None of these national minorities is autochthonous, and traditionally and historically they are not connected with the area”. It is merely indicated that “only the representatives of the relevant national minorities have spoken the traditionally used languages and have brought them to Armenia” (p. 7). In fact, they are migrants’ languages. The languages of the national minorities protected by this country, except for Russian which is also included in the list, are Assyrian, Yezidi, Greek and Kurdish, spoken by migrants who have settled for the most part for several generations since the beginning of the nineteenth century. Russian itself is also spoken as their own

language by the former migrants who were members of orthodox sects exiled from Russia (Molocs, ...). The Azerian speakers did not leave the area as a consequence of the Azero-Armenian conflict after 1993; in fact, they are probably for the most part still the representatives of the first minority language, perhaps the most traditional and “historical” one of Armenia (the traditional Armenophones of Azerbaijan remain essentially grouped in High-Karabagh, a region that is theoretically located under Azerbaijanian sovereignty but which in fact is an independent region).

In relation to the case of migrants’ languages, let us recall that the ratifying states are free to keep the languages they wish in the case they would commit themselves to making them benefit from Part III of the *Charter*, despite the fact that the basic provisions of Part II regard all the languages which meet the definition elements included in the Preamble, Article 1 and the *Explanatory Report*. One of these elements is their “Europeanity”. But until now, the ratifying states have limited themselves to the defining framework proposed by the *Charter*. *A priori*, they have not integrated any non-European language.

Armenia has thus included Assyrian (Aramean) without placing it in the category of the non-territorial languages, as it could also have been the case of Yezidi and Kurdish. On the one hand, in the light of the fact that the Council of Europe includes Turkey and, over these last few years, the Caucasian states, this expresses the reality of a large geographical Europe of human rights, for Aramean, mainly spoken by the Assyrio-Caldeans of different Christian rites (at a minority level, there exist also the Aramean speakers of Mandeian, Jewish or Muslim religion), is a historical language from south-east Turkey, therefore of Europe. Quantitatively speaking, Kurdish —and its variants— is really the second traditional language of this country. On the other hand, as we have seen above, the Armenian example leads us to specify that the “historical regional or minority languages of Europe” (cf. Preamble) can also be languages that, despite being little or at least less “historical” than others of this wide group of languages, are nevertheless equally spoken and transmitted in one way or another in some specific geographic areas. In its *Initial Report*, Armenia has used (p. 7) in this regard the adverb “traditionally” (cf. *supra*), which is present in Article 1 of the *Charter* (1.a.i.: “(languages) traditionally used within a given territory of a State...”). The tradition of use and the Europeanity of

the languages qualified in Armenia as “minority” are not gauged here according to the measuring rod of their historicity but that of their reality, even though collective memory would still identify them for what they were some generations ago, that is to say, migrants’ languages. These languages are not really non-territorial, despite what this country states in its *Initial Report* (cf. *supra*), because “traditionally and historically they are not connected with the area, though there are separate small areas (villages), where mostly these minorities inhabited” (*Initial Report*, p. 7). In fact, they are declared as “minority” languages in connection with Article 2.2 of the *Charter*, that is to say, with the minimum of thirty-five provisions of Part III (Armenia has kept thirty-nine). Thus, we have here additional information available which is useful for understanding both the adjective “historical” and the adverb “traditionally” used in the Preamble and in Article 1 of the *Charter*, as well as the expression “long period” of the *Explanatory Report*.

The *Initial Report* of Armenia also makes another new element emerge to be added to the chapter on the different types of languages concerned by the *Charter*. Indeed, one of the reasons proposed to protect the languages that despite not being “autochthonous” have nevertheless been spoken for a century or a century and a half in this country is “especially since three of them (Assyrian, Yezidi and Kurdish) are not state languages in any country” (p. 8). The protection principle stated in the Preamble of the *Charter* has been used there in an autonomous way with all its strength. In fact, it reinforces the legitimacy of the languages declared minority in Armenia according to the *Charter*.

The different preceding examples remind us why the use of the *Charter* will always be open to completing or specifying the contents of the text and its perimeter. Especially, what is understood by “dialect” in the *Charter*, the expressions “non-territorial language”, “migrants’ language” hide, if we look closely, variable and evolutionary realities according to each different place. The classification of these languages in such or such a category may result from a linguistic approach, but it is also the fruit of representations. The latter play a determining role and are the result both of the voluntariness of the speakers concerned and their representatives and of the will of a state to meet these tendencies, sometimes even to anticipate them. Finally, it is interesting to verify the presence of a possible plan according to

which this or that migrants' language may become over a relatively recent period of history a traditionally spoken "non-territorial language", and then a regional or minority language (cf. *supra*, the "minority languages" of Armenia).

2. France and the *Charter*

France signed the *Charter* in 1999, but it did not ratify it, for this was stopped by a decision of the Constitutional Council (*Conseil constitutionnel*). We have seen that France was among the countries which were reticent to the qualification of the *Charter* as an international convention. This reticent attitude corresponds to some currents of opinion traditionally implanted in France for which this matter is either a minor or an inopportune one. To approach it openly and make hypotheses on the answers of the same kind has been regularly suspected of implying the risk of opening the Pandora's box of ethnic communitarianism. Nor should we ignore here the importance —at least the potential one— of this subject in France, given the number of languages involved and the geopolitical implications. In metropolitan France, Occitan, German/Alsatian-Lorrain, Breton, Basque, Catalan and Dutch/Flemish come immediately to mind. In the 1970s, Corsican was added to this list. Franco-Provençal, the *langues d'oïl* have also been progressively taken into consideration to different degrees. The large number of languages from overseas, among which the Creole of French or Anglo-Portuguese bases must also be taken into account. These languages are not very much spoken today and their intergenerational transmission has very much diminished in the mother country. Nevertheless, these languages are vindicated and can create. Overseas languages are better maintained and transmitted. The whole group makes up a reality which is alive and which keeps inquiring about its present and its future. In addition to it, Occitan, although very much reduced, remains the very much identified linguistic benchmark which spreads itself across thirty-two departments in the South of France, from the Alps to the Atlantic Ocean. In this regard, the knowledge and use of Standard French are almost total and fully admitted. All the same, it is a language with a prestige integrated by everybody. The question is therefore not found here, but in the possibility of protecting and promoting the other languages of France —the use of which is continuously diminishing— in order to create the normal conditions,

at least the minimum ones, to favour a development on updated bases of their living presence next to the official state language.

2.1. The French position

The position of France, through the orally favourable commitments of its political authorities, the reports that were written with the aim of signing and ratifying the *Charter* and later on its refusal to sign it, as well as the debates which have accompanied these different stages, have originated further knowledge useful for examining this text closely as well as some positions that could arise. In order to summarise the present impasse, which results from the unfavourable decision of the Constitutional Council of June 15, 1999, we will mention the jurist Jacques Caillousse, for whom this decision was grounded more on a position of principles, not sufficiently connected with a reality which in addition was devaluated, than on a juridical impossibility³³. In a recent survey, another jurist, Florence Benoît-Rohmer (2001, pp. 23-26), observed that the French attitude regarding the *Charter*, and in general regarding regional languages, did not respect too much European standards. Other jurists, such as Michel Verpeaux or Ferdinand Mélin-Soucramanien, who have devoted themselves to explaining the legitimacy of the decision of the Constitutional Council, have nevertheless admitted that it was based on a restrictive interpretation. Mélin-Soucramanien has seen in the *Charter* a differential logic³⁴, while a sociolinguistic —but, as it seems, also juridical—

³³ “The point is mostly to reactivate the founding and constitutive discourse of the Republic and not to repress regional or minority languages. And the fact is that, by confirming the inconsistency of their juridical status, the Constitutional Council strengthens an imaginary representation of the world about which we may ask ourselves to what extent it really contributes to the reinforcement of social ties. The way in which the decision was received by all those who wanted to be its defenders proves how difficult it is not to see therein an effective devaluation of the minor languages, minor because of their being marginal” (Caillousse, 2000, p. 108).

³⁴ Where the justification does end and where does an unreasonable fear begin -even the amalgamation- when we read the following comment inspired -we must admit it- by the decision of the Constitutional Council as regards the *Charter*: “Without changing the point of view and breaking with a strong interpretation of the principles of indivisibility of the Republic and of unity of the French people shared by the State Council, the Council could hardly ignore the differential logic expressed by the *European Charter for Regional or Minority Languages*. Indeed, we must be well aware of the possible consequences of a juridical acknowledgement of the link between language and territory. The examples of the

approach can all the same find in it a consensual logic, both mindful of the cultural wealth of Europe and of a controlled management of it, without detriment to the positions acquired by the official state languages or the widely spread languages.

In the beginning, the *Charter* provoked favourable proclamations. In order to prepare what appeared to be a ratification project, two reports were written at the request of the socialist Prime Minister, Lionel Jospin; one by Bernard Peignant (1998), the mayor of Quimper, in Brittany, in July 1998, and another by Guy Carcassonne (1998), jurist, in September 1998. The following year, the linguist Bernard Cerquiglini (1999b), Director of the National Institute of the French Language (*Institut national de langue française, Centre national de la recherche scientifique* [National Centre for Scientific Research]), presented a third one in April 1999 to the Ministry of National Education, Research and Technology (*Ministère de l'Éducation nationale, de la Recherche et de la Technologie*). Afterwards, France signed the *Charter* on May 7, 1999, in Budapest, on the occasion of the fiftieth anniversary of the Council of Europe. The person who signed on behalf of France was Pierre Moscovici, Delegated Minister in charge of European Affairs. The signature was accompanied by an *Interpretative Declaration* devoted to accompanying a future ratification instrument. This *Declaration* presented some limitations, mainly regarding the use of the term “group”, on the obligation of using French in the relations with public administrations and services, on the optional nature of the teaching of regional or minority languages and on the fact that only the French versions of legislative texts —otherwise accessible in the regional languages— would be legally valid. Then followed the list of the thirty-nine provisions of Part III of the *Charter* that France would commit itself to applying at the moment of a future ratification. The options chosen, framed by the flexible obligations included in Article 2.2, appeared mainly in the fields of education (Article 8), the media (Article 11), “cultural activities and facilities” (Article 12) and “economic and social life” (Article 13). On May 20 that same year, the right-wing President of the Republic (*Rassemblement pour la République*), Jacques Chirac, appealed to the Constitutional Council in application of Article 54 of the Constitution in order to know whether

armed conflict in the former Yugoslavia or the identity crisis that Belgium is undergoing at present best exemplify that linguistic differentiation contains the germ of the segregation and fragmentation of the state” (Mélin-Soucramanien, 1999, pp. 994-995).

“taking into consideration the commitments that France intends to endorse in Part III of this convention, the ratification of the *European Charter for Regional or Minority Languages*, signed in Budapest on May 7, 1999, should be preceded by a revision of the Constitution”. It is true that, at that moment, the debate about the *Charter* was becoming increasingly important between the regionalists who considered that France was committing itself too little and the sovereignists from all political ideologies that were claiming the betrayal of national unity and “go away!” to the “Balkanisers” of eternal France. Whether this situation did or did not urge the President of the Republic to appeal to the Constitutional Council (Benoît-Rohmer, 2003, pp. 9-10), the fact is that on the following June 15, the Constitutional Council, in its Decision 99-412 DC, issued a decision in favour of the sovereignists by considering that the *Charter* implied clauses that were against the Constitution. This body did not ground its rejection on the appropriateness of the commitments chosen by the government in Part III of the *Charter* —at least, a minimum of thirty-five were necessary, and the jurist Guy Carcassonne had proposed to keep fifty-two, which corresponded to the average number of the provisions admitted by the Parties—, but considered that some included in the Preamble and Part II could not be duly established in French law. A revision of the Constitution seemed to be necessary.

From the very beginning, France inherits a position of mistrust, or even opposition, regarding the languages of France other than French, consecrated for a long time as the sole national and official language, and the trend towards a single language in this field aims to protect the country from strange separatist fancies³⁵. The use of so-called regional languages, perceived as an eventual breeding ground for the development of centrifugal or irredentist tendencies and not as cultural wealth, expresses, in addition —as happens with religion—, the private exercise of a public freedom. Juridically, only French has access to public use. Outside education, in which efforts have been tolerated over the last two decades, only symbolic or scarcely important planning, as well as tolerance or derogation, seem to be feasible. We must recall that, over the last two decades, the government has ratified twice international agreements accompanying them with

³⁵ The most convinced opponents of the ratification of the *Charter* by France, among whom the Minister of the Interior, Jean-Pierre Chevènement, saw a risk of Balkanisation in any attempt aiming at conferring a legal status to regional or minority languages.

reservations regarding the articles in which the notion of minority was mentioned and, as regards this particular case, that of minority language. We are referring here to the *UN International Covenant on Civil and Political Rights* from 1966, for which one of the reservations was issued regarding Article 27 (Grau, 1985, pp. 166-171) at the moment of the adhesion in 1981, and to the *UN Convention on the Rights of the Child* from 1990, for which another reservation was issued regarding Article 30 at the moment of the ratification that same year. Two years later, the Constitutional Law of June 25, 1992, foreseen to protect French from English competition before the ratification of the Maastricht Treaty³⁶, stipulated that “The language of the Republic is French”. No amendment recognising regional languages and ensuring them a minimum degree of protection was kept, and the minister at that time asserted furthermore during the debates that this law could not harm them. From its inclusion in the body of the Constitution, in which it heads new Article 2, this provision has continuously been invoked by the higher jurisdictional bodies of the state, the State Council (*Conseil d’État*) and the Constitutional Council, especially against the access of regional languages to public use.

a. Public use

As regards the *Charter*, and without letting this background have a necessarily determining influence on the whereases of the Constitutional Council (Carcassonne, 1998, pp. 46-48), the latter has based itself on its own jurisprudence and on that of the State Council. This one, appealed to by Alain Juppé, the minister at that time, had already issued on September 24, 1996, *Opinion 359461*, unfavourable to the adhesion of France to the *Charter* (Schoettl, 1999, p. 574). Without denying the interest of protecting these languages and recognising that most provisions did not imply problems regarding the Constitution, this negative *Opinion* had been essentially motivated by the impossibility of fitting the first section of Article 2 of the Constitution and the provisions making the access of the RML to justice (Article 9 of the *Charter*), administrative authorities and public services (Article

³⁶ It was signed on February 7, 1992, in Maastricht, and it was ratified by France on the following 20th of September.

10) possible. The jurisprudence of the Constitutional Council based itself on three decisions issued in 1991, 1994 and 1996. Decision 91-290 DC of May 9, 1991, “on the law referring to the status of the territorial collectivity of Corsica”, had rejected the notion of Corsican “people” and the compulsory teaching of the Corsican language in the name of the principles of the indivisibility of the Republic and of the equality of the citizens before the law. On the other hand, Decision 94-345 DC of July 29, 1994, “regarding the law on the use of French” had confirmed the use of regional languages as well as the possibility of using translations for legal and administrative texts (Whereas 7). Decision 96-373 of April 9, 1996, applying to the organic law referring to the status of autonomy of French Polynesia had defined, applying Article 2, section 1 of the Constitution, the rules of linguistic use in the relations with public administrations and services. In these cases, the individuals can neither “appeal to a right to the use of a language other than French, nor be forced to such a use”; but it was recalled that (cf. *supra*, Decision 94-345 DC) “Article 2 of the Constitution does not forbid the use of translations”. Nevertheless, in the third whereas of the part of its decision of June 15, 1999, regarding the compliance of the *Charter* with the Constitution, the Constitutional Council declared that the provisions of the Preamble of Part II of the *Charter* were “contrary to the first section of Article 2 of the Constitution in that they tend to recognise a right to speak a language other than French not only in ‘private life’ but also in ‘public life’, to which the *Charter* incorporates justice and the administrative authorities and public services”. This regarded the imprescriptible right to speak a regional or minority language in private or public life, enunciated in the Preamble and recalled in a subtle way in its Article 7.1.d, as well as the reference made to groups of speakers of these languages and to the territories in which they are used (Article 7.1.b)³⁷ as many sufficiently identifiable entities; therefore, from an administrative point of view and in order to justify measures of linguistic regulation. Were there any grounds for the danger that these provisions meant for the Constitutional Council on such an important point “in that they tend to”? The irrevocability of a conclusion, at least in this whereas, based on what was equivalent to an assumption, seems to be really based on a position of principle, according to the view of Jacques Caillosse mentioned above.

³⁷ “the respect of the geographical area of each regional or minority language in order to ensure that existing or new administrative divisions do not constitute an obstacle to the promotion of the regional or minority language in question.”

Admitting implicitly the applicability of the *Charter* in France, perhaps the Council believed that it would weaken some principles built like walls. Guy Carcassonne had nevertheless recalled in his report that, in international law, the Preamble is an explanation of the reasons and that therefore “it is not binding, but constitutes at most an interpretative element of the treaty or of the convention” (Carcassonne, 1998, pp. 45-46). This reduced the strength of this imprescriptibility which was nevertheless obvious in a sociolinguistic approach to linguistic regulation. The imprescriptibility of such a use is declared in the Preamble of the *Charter* according to two fundamental texts on this matter. The first one, the *UN International Covenant on Civil and Political Rights* was the target of a reservation (cf. *supra*). The second one, the *European Convention on Human Rights* of the Council of Europe, received the adhesion of France without any reservation regarding Article 14 (non-discrimination due to race, colour, sex, language, religion, ...). But as regards the *Language Charter*, its Preamble, the scope of which is limited, refers to an imprescriptible right. It expresses the wish and the thoughts of the legislator but it does not produce direct obligations. In Article 7.1.d, in which the notion of public use is recalled in an obviously more specific way, there is already a difference as regards the enunciation of the Preamble: “in speech and writing, in public and private life”. The imprescriptibility is not recalled as such. Furthermore, even if Article 7.1 cannot be the target of the reservations foreseen in Article 21.1, this use can be modulated according to the different provisions which may be kept in this sense. The very same beginning of Article 7 is clear in this regard: “the facilitation and/or encouragement of the use of regional or minority languages...”. On the one hand, the Constitutional Council believes that this right defined as imprescriptible is intangible and is liable to carry out all its virtualities; on the other, it is made more subtle within the *ad hoc* and circumscribed framework of the implementation of the *Charter* to the benefit of that of adaptability. Obviously, between imprescriptible public use (Preamble) and the use in public life (Article 7.1.d) there is certainly a difference. There is no more eventuality of an appropriation of the public arena; instead, there is the promotion of the presence at this level —moreover, an unspecified level— of social life.

b. Groups

Furthermore, the Constitutional Council had feared that the adhesion to the general principles of the *Charter* included in its Preamble and in Part II would imply a recognition that linguistic groups existed, even though it is clear that for the *Charter* they are not considered as juridical entities. In addition, the opposed argument of the unity of the French people included in Article 1 of the Constitution must be approached taking into consideration that this kind of declaration also exists in other constitutions of European countries. As Michel Verpeaux (1999, pp. 599-600) recalls, the Constitution of Germany, a federal country, refers to only one German people. That of Spain, a unitary country widely decentralised in a so-called state “of autonomies”, recognises in its Preamble the peoples that make it up, but specifies in Article 1 that “Spanish national sovereignty belongs to the Spanish people”. Let us recall: the *Charter* follows a tradition that has already existed for half a century since the *Convention for the Protection of Human Rights and Fundamental Freedoms* (cf. *supra*) which made “individuals” become the subject of the law. What the *Charter* does is give priority to languages.

The Constitutional Council thought that it was not appropriate to base itself on the *Interpretative Declaration* which accompanied the French signature of the *Charter* and which, according to the law, can only limit itself to specifying the meaning that the state attributes to the text it signs or ratifies. However, replying to some passages of the Preamble, of Articles 1 (a.i and b) and 7 (1 and 4) —which it thought contravened some of the principles of French law and which had been the target of the *Interpretative Declaration*—, it did not appeal to Article 21 of the *Charter* that allowed it to “formulate one or several reservations to paragraphs 2 to 5 of Article 7”. In his report, Guy Carcassonne (1998, p. 128) indicated that if an interpretative declaration specified that the use of the word “group” did not refer at all to a legal entity, there was no reason for issuing the reservations foreseen by this Article 21.1. This *Declaration* conveyed at the moment of the signature in 1999 contained the following formulation: “the use of the word ‘groups’ of speakers does not confer any collective rights on the speakers of regional or minority

languages³⁸. Therefore, the Constitutional Council found it insufficient. In Article 7 of the *Charter*, the notion of group had been appealed to, moderated by the *Explanatory Report*, as we have mentioned above. The appeal to Article 21.1, which only one country, Croatia, has already used (for Article 7.5), could have then regarded section 4 of Article 7 thus drafted: “In determining their policy with regard to regional or minority languages, the Parties shall take into consideration the needs and wishes expressed by the groups which use such languages. (...)”

The opinion expressed by Alain Renaut regarding the *Charter* in the journal *Comprendre* brings to mind a relation which is nevertheless essential between the individual, the language and the group. It corresponds to the liberal traditional approach to human rights, both in regard to the priority of individual rights and to validate the linguistic rights of the individuals “considered in their situation of belonging to a cultural and linguistic space which—in the representation they make about their own identity—they consider that they share with other individuals” (Renaut, 2000, pp. 395-396). In addition, Alain Renaut recalls that “the recognition of linguistic rights interpreted in this way could then be fully included in the framework of a wider attempt to attach to the *Universal Declaration of Linguistic Rights* a clause regarding the cultural rights of the individual” (ibid., p. 396). Florence Benoît-Rohmer (2001, pp. 28-29) goes in the same direction by considering that human rights and the rights of the citizens cannot be reduced anymore to their political dimension and must be enlarged to the cultural field, which includes linguistic uses.

A language exists as such through the group to which it provides an essential link for its coherence, and the individual, choosing to adhere or not to it, goes through the language or through the acceptance of referring to it as one of his/her values. But the groups and the uses are not always monolithic. They can be like that through the representations or the conceptions that some individuals make of them. One and the other are increasingly more and truly interwoven. The *Charter* can precisely contribute to the management of this kind of reality. From it,

³⁸ In: *Déclaration formulée par la France lors de la signature de la Charte européenne des langues régionales ou minoritaires (Declaration formulated by France at the moment of signing the European Charter for Regional or Minority Languages)*, I.1.

this linguistic identity can be perceived according to a unitary and all-embracing conception, or else according to a derivation or a structuring of the uses and the linguistic and cultural adhesions.

c. The impasse attained

The decision of the French Constitutional Council does neither express a political unanimity nor has it provoked important public reactions from representative party or trade union organisations. Nevertheless, it has been interesting because it has indirectly approached the matter of the minimum domain of the acceptability of a linguistic regulation oriented towards lesser-used languages in a country such as France. This regulation is apparently grounded —as it could be inferred from *Carcassonne's Report*— on the lack of discrimination, on the optional nature of the measures chosen in education and the public administrations and services, and on a minimum access to the official uses, at least through the translations of texts into French which are the only ones considered to be legally valid. To conceive that a language must be restricted to private use and establish this as a republican principle is the same as denying its access —regulated if need be (Article 7.1.d)— to formal uses which provide the minimum prestige that any language must benefit from in a democratic context. But the legal recognition of a language, global and not only including education, constitutes a significant source of prestige so that positive representations provoke the emergence of, the maintenance or the development of a conscious loyalty in its regard (Viaut, 1999). The efficiency of a dynamic link between prestige and loyalty represents one of the favourable conditions for the use of a language. The proposals made by the *Charter* tend precisely to ensure a minimum limit within which endangered languages would not benefit from the sufficient number of conditions created by this link.

Beyond the unappealing nature of that which can be inferred from the Constitutional Council, we must observe that this decision questions one of the bases of the *Charter*. Hitherto, that which could have appeared —at the scale of the large references— as a positive contribution to the debate on linguistic rights, presenting a revised conception of universalism in the French style, more integrating

than levelling, and suspicious as regards cultural individualities, has not taken place. This reaction is and will remain a minority one within the Council of Europe, and even more among the countries which are also members of the European Union. The social importance —which carries a heavy meaning— of the French position was clarified by Jacques Caillosse as follows:

“It is basically a matter of revitalising the founding and constitutive discourse of the Republic and not of repressing regional or minority languages. Nevertheless, by corroborating the inconsistency of their juridical status, the Constitutional Council reinforces an imaginary representation of the world regarding which we may ask ourselves to what extent it really contributes to draw the social bond tighter. The acceptance of the decision by all those who wanted to become its defenders proves how difficult it is not to see that there is a true devaluation of minor languages due to their peripheral nature” (Caillosse, 2000, p. 108).

The indications recalled in the report written by Guy Carcassonne on the optional nature of an access to public use and the *Interpretative Declaration* accompanying the signature of the *Charter* by the government³⁹ did therefore not influence it at all. After the decision of the Constitutional Council, the President of the Republic refused to start the revision requested by the Prime Minister. Since then, it appeared to be unlikely to launch another revision process in relation to Article 89 of the Constitution. At that time, there was in France a cohabitation government (*gouvernement de cohabitation*). Although Article 54 of the same fundamental text says that, in the light of such a decision by the Constitutional Council, the ratification or the approval could only operate after a revision of the Constitution, other ways could be possible (Pinto, 2000, pp. 40-43). These formulas, although theoretically possible, are not usual. They range from the President of the

³⁹ “The Government of the Republic interprets Article 7.1, paragraph d [‘the facilitation and/or encouragement of the use of regional or minority languages, in speech and writing, in public and private life’], as well as Articles 9 and 10, as establishing a general principle which does not go against Article 2 of the Constitution, according to which the use of French is imposed on the moral persons of public law and to the individuals of private law in the exercise of a public service mission, as well as to the users in their relations with the public administrations and services” (*Declaration formulated by France at the moment of signing the European Charter for Regional or Minority Languages*, I. 2).

Republic's decision to ratify by expressing the reservations imposed by the decision of the Constitutional Council to the presentation of an instrument of approval by the government (Article 52.2 of the Constitution), with or without submitting it to the Parliament. The approval procedure would already have been difficult to implement at the time of the cohabitation government due also to other foreseeable obstacles above the State Council (*ibid.*, p. 42). It is possible as regards the *Charter*. In addition to its ratification, its Article 2.2 foresees its acceptance or approval. Thus, of the seventeen states which until now have been applying the *Charter*, two, Finland and the Netherlands, have adopted the acceptance procedure; the others, the ratification one. The approval procedure has not been used yet. To sum up, the ratification principle was rejected by the President of the Republic, and the approval has not been officially evoked as yet. In fact, as it happens with the ratification one, it would depend on an absent political will, although it would be easier for it to be implemented given the fact that the majority of the Parliament suits the President's political tendency. Meanwhile, the sole step forward after this episode is the determination notified in September 1999 by the Prime Minister, Lionel Jospin, to meet the commitments taken by the government at the moment of signing the *Charter*⁴⁰. Nevertheless, this decision was not communicated to the Secretary General of the Council of Europe. According to the jurist Roger Pinto (*ibid.*, pp. 43-44), this decisive step could have been the basis of a procedure allowing to bypass the decision of the Constitutional Council and to attain the adhesion, which does not require particular forms. To sum up again: given the fact that the application of the text was conditioned by the ratifications or the adhesions, France could have thus attained a status identical to that of the other countries which already applied this text with a sometimes even lower number of provisions than the thirty-nine France was ready to sign. This argumentation was supported by the verification made by this same jurist regarding the evidence that the decision of the Prime Minister was constitutionally based on the fact that the commitments made by France met the

⁴⁰ "Given the fact that they are regional languages, I reiterate my determination to implement the whole series of commitments taken by the Government at the moment of signing the *Charter of Regional or Minority Languages*, which I regret has not been ratified" (Lionel Jospin at the Parliamentary Conference of the Socialist Group, September 27, 1999).

objections raised by the Council⁴¹. Would this have been enough without parliamentary support (at least one resolution)? Finally, Jospin did not try this procedure until his departure in 2002; since then, nothing has been attempted.

For some people, this “French style” configuration has closed on itself. The French debate has revitalised in the public arena some matters which had already been recognised when the *Charter* was being elaborated. The analyses and the discussions which resulted from it are such that they may allow us to be even more specific regarding the terms of this convention; therefore, in this aspect they are no doubt useful. While we hope that, one day, the most determined opponents to the *Charter* will make their positions more flexible, we may see that in France they have tended to become more rigid, as we have already mentioned, and they have let themselves mix with the amalgams⁴². They link their fight against the *Charter* to their fight against a development of European integration and against a Europe of the Regions which they consider could gain more weight than the states⁴³. One and the other are on the right or on the left of the political stage, and the values of eternal France are as much appealed to as the conceptions —which belong to them— of laicism and equality of the citizens against what is perceived as an antire-

⁴¹ “Such a decision is constitutionally grounded. Indeed, the commitments taken by France at the moment of signing the *Charter* are limited by the *Interpretative Declaration* which accompanies it containing the list of obligations to which it means to adhere. Their analysis allows us to verify that they are more restrictive than the clauses seen as being opposed to the Constitution by the Constitutional Council. In these conditions, the government goes beyond the objections raised by the Council” (Pinto, 2000, p. 43).

⁴² Thus, the two following citations attribute disastrous intentions to the new enemies of a France prosecuted by a Europe of the Regions under a Germanic influence: “If France were to ratify the *Language Charter*, it would finally offer to its ethnist adversaries the sign of surrender for which they have been waiting for such a long time”; “Because this text is a war machine, the main target of which is France, and its non-ethnic conception of citizenship. The wish to ignore it is the equivalent to exposing oneself to it without any self-defence. It is as simply reproducing today in another shape or form the French pacifist trend of the inter-war period, which unveiled its lack of realism in June 1940” (Bollmann, 2001, p. 39 and p. 64).

⁴³ Two polemical essays, published in 1999 and 2001, express the radicalisation of some positions as regards the *Charter* in France. Their titles are expressive enough, with “feudalities” and “a war of languages”, which would evoke a risk of going back to French-German relationships like those that existed at some dark moments in history. These are works by René Andrau (1999) and Yvonne Bollmann (2001).

publican obscurantism. Beyond these partisan considerations, we may ask ourselves whether the French decision will be seen as a model by other partners of the Council of Europe or if it resumes —or perhaps puts an end to— a rearguard fight. The French refusal was communicated in 1999, but the number of ratifications of the *Charter* increased notoriously over the following three years (cf. *supra*). Another piece of information also went against the French position: in July 20, 1999, that is to say, about a month after the decision taken in June 15 in France, the Romanian Constitutional Court issued a decision on the compatibility of the *Charter* with its own Constitution; however, the basis of it was different to that of the decision taken by the French Constitutional Council a month earlier. Romania defined itself as a unitary country, and Romanian is the sole official language of the state. Concerned about the fact that the *Charter* would not contravene the main principles which were close to those chosen as references by the French Constitutional Council, the Romanian Court simply admitted that the text of the *Charter* was meeting its expectations (Benoît-Rohmer, 2001, pp. 14-15). We end up asking ourselves whether the position taken by the French Constitutional Council was only reacting to the contents of the *Charter* or also to the fact of approaching publicly a matter which was taboo. It is thus surprising to find out that one of the differences between the declarations accompanying the ratifications —with a neutral and managerial tone— and that which France presented at the moment of the signature comes from the appeal to some republican principles by France in order to fulfil a protectionist function regarding French. Therefore, there exists a gap between the reticence or the pusillanimity of a section of the politicians and public opinion if we are to believe the results of the IFOP polling institute⁴⁴ which indicate the existence of a majority tendency in favour of the *Charter* in France.

⁴⁴ The Alsace-Lorraine Committee of the European Bureau for Lesser-Used Languages commissioned on April 6-7, 2000, to the IFOP a survey on the point of view of the French population as regards the ratification of the *Charter*. It appeared there that 82% of the people questioned declared they were in favour of the adhesion. This percentage was distributed as follows: 27%, “totally in favour”, and 55%, “quite in favour”. In comparison, the IFOP had carried out in April 1994 an opinion poll entitled *Les Français et les langues régionales (The French People and Regional Languages)*, in which the last question regarded also the adhesion to the *Charter*. Four possible answers had been proposed: “quite in favour”, “rather opposed”, “neither” and “no opinion stated”. 77% of the people questioned declared themselves “quite in favour”.

An excessive fear or what could risk to be assimilated to dishonest purposes may have been interpreted as a hindrance to democracy or as a biased position given a partial knowledge of the issue. To consider it as a restrictive interpretation of the *Charter* may be understood as a euphemism or as an awkward justification. The fact is that the decision has led to an impasse regarding a matter that did not justify it, which is now difficult to overcome. The well-founded nature of the arguments employed by the Constitutional Council has been criticised by well-known jurists. For linguists and sociolinguists —except for those who are against a protection of minority languages or indifferent in this regard—, this is a matter to be debated.

2.2. The French contribution to the debate on the Charter

In France, the expression “regional language” started to appear openly in the middle of the 1960s. The Ministerial Circular 66-361 of October 24, 1966, foresaw the setting-up of academic commissions on regional studies and referred to the regional languages spoken in France. The regionalisation of France was being debated and started to provide the first elements of some institutional responses, as proven by the Decrees of January 7, 1959, and June 2, 1960, establishing the subdivisions of regional action, and of March 14, 1964, setting up the regional prefects. These regional languages were the ones that the Deixonne Law of January 11, 1951, on the teaching of local languages and dialects had listed — without defining them as “regional”— with some others, such as Corsican, which were recognised about twenty years later. These languages, regardless of whether the respective unity of each one implies or not the identification of dialectal variants, presupposes obviously a traditional territorial location which has clearly marked the culture of an area of the national territory. When speaking about regional languages in France, we cannot isolate this institutional approach —which will have its effects on everyday language— from others coming from other places of conceptual elaboration.

a. *About the notion of “regional or minority language”*

In France, the expression “regional language” is the subject of debate. In his report to the Minister of Culture, published in 1982, *Démocratie culturelle et droit à la différence (Cultural Democracy and the Right to Difference)*, Henri Giordan had considered it inadequate, because these languages do not correspond to the French administrative regions. In fact, this situation constitutes the general rule to which only a few exceptions do not comply with. In addition, these languages are located in areas that may overcome country borders. They can also be used far from the territory where they are traditionally located, especially in urban sprawls (Giordan, 1982, pp. 50-51). Henri Giordan advocated the designation “minority language”, which for him was more neutral, because it represented, among other arguments, that of being more widespread at an international level and because it could suit both the languages which are established in a specific area and those which are not (*ibid.*, p. 52). The defenders of these languages generally regret the meaning linked to a secondary position which the expression “regional language” conveys. Locally, the paradigm that derives from the notion of region is sometimes the target of a critical reflection within today’s Occitan movement. A large number of its representatives declare that they are anti-regionalists, “anti-roots” (“*anti-racines*”), both due to a rejection of the idea of subordination contained in the adjective “regional” and of that of ending up being closed in a particularism⁴⁵. In this regard, they identify themselves with the French framework insofar as this combines the tradition of universalism which they have been part of with its original multiculturalism. In their opinion, this implies rethinking a French project in which universalism would tend towards something else than a reductionist and monolithic abstraction.

Meanwhile, Guy Carcassonne approached the very same expression “regional language”, the only one acknowledged until now in France, as follows:

⁴⁵ This discourse has been -and still is- especially expressed by writers and artists such as Félix Castan, Bernard Lubat, Marnard Manciet, Claude Sicre and others.

“Unlike it, the denomination of *regional* languages itself and the idea according to which they would be linked to specifically determined geographical areas are more debatable. The conception according to which a language is compulsorily attached to a land and only to this one can be judged both as erroneous and dangerous” (Carcassonne, 1998, p. 5).

As in the *Giordan Report* of 1982, a contradiction between the regional nature claimed for these languages and the fact that social mobility makes them present in the capital or in large urban areas, outside their original ones, was also highlighted there. Thus, if Guy Carcassonne admits for instance that there are more chances of hearing someone speak Alsatian in Alsace than in Provence, that means that the language belongs primarily to its speaker. According to this point of view, the latter is mobile and the language belongs more to those who speak it than to a specific region. This view, which states that it does not oppose the spirit of the *Charter* (it protects languages and not linguistic communities), considered as a text open to amendment, presents basically a different option regarding the perception of linguistic communication. This happens in a space which, according to the approach made by the two reporters, Guy Carcassonne and Bernard Cerquiglini, is not limited. Although for them a regional language may have a reference territory, a historical one, but also one where it is more present than in others, distance is nevertheless clearly expressed and given priority regarding the idea of linguistic territorialisation. Guy Carcassonne clearly specifies his approach as follows:

“Because this conception, that of a regional localisation of a language is also dangerous, for it suggests that there would be a unity —soon to become an identity— between these three notions that must remain very distinct, which are a home area, a language and a people.”⁴⁶

⁴⁶ What derives from this citation also deserves to be mentioned in order to continue clarifying this reasoning which is one of the examples of the French position in regard to “regional” languages: “Insofar as it could be admitted -to take another example- that Breton is the language of Brittany, rather than that of those who speak it, wherever they may be, then the proposition could be logically reversed: the language of Brittany is Breton, from which it could be inferred that those who live there should speak it. Languages and their temporary location are the result of history, not of nature. Therefore, they are linked to mankind, eventually to their institutions, and not to land – nobody has ever heard a patch of ground speak French – Not more than blood – a new born child has

Bernard Cerquiglini goes in the same direction by asserting that, according to Article 3⁷ of the Constitution of the Fifth Republic, a “regional” language could not be owned by only one section of the national territory⁴⁸. Even more fundamentally, he suggests: “When signing and ratifying the *Charter*, in its *Declaration*, the French Republic should then be interested in insisting on the cultural vocation of the *Charter*, underestimating the tendency towards territorialisation” (Cerquiglini, 1999b, under “Territory”), even if the definition of regional or minority language (Article 1.b of the *Charter*) implies the existence of a geographical area or a sufficient number of inhabitants who would be affected by the measures of linguistic protection. The kind of subject which is the target of the *Charter* is clearly the external language, the cultural dimension of which is precisely inseparable from a specific historical and social context (Oyharçabal, 1999, pp. 119-121). Primarily, the latter corresponds to a space (territory, area of dispersion) and to a group of intercommunication, even if, secondarily, the language involved can be conceived as a common good which deserves to be protected by an enlarged society. And if this language cannot be automatically attributed to (a) speaker(s) it is because the measures advocated for by the *Charter* foresee an “active support” (*Explanatory Report*, § 10) for the languages and not the individuals or the groups as such. Beyond these considerations, which could be the subject of an exhaustive debate, we will nevertheless observe that what could go in this case in the direction of a personality status as regards these languages is not clearly expressed, as in the case of Hungary (cf. *supra*) in the legal texts containing the provisions regarding their rights. It is more the territorial aspect which stands out in France by means of the very same notion of regional language, the only one used in the French administrative

no language, it only possesses the faculty of speech, characteristic of human species, which makes him/her suitable for acquiring any mother tongue whatsoever” (Carcassonne, 1998, p. 6).

⁴⁷ “No segment of the population and no individual can confer him/herself the exercise (of national sovereignty).”

⁴⁸ “This wish of a geographical base for regional languages is somehow contradictory with the cultural aim of the *Charter*. We may argue that systematic territorialisation, which emerged from the German romanticism which inspired the linguistics of the nineteenth century, opposes, among others, the French republican principles which maintain that language, a cultural element, belongs to national heritage; Corsican does not belong to the Corsican Region, but to the nation” (Cerquiglini, 1999b, under “Territory”).

and political context. It is also the one prevailing in the *Charter*, except precisely for the “non-territorial languages” (Article 7.c).

b. History and tradition

The territory and what is linked to the idea of regional are related to history. But the use of “minority” (adjective, “minority language”) may recall in France the notion of minority (substantive) and thus be scarcely accepted. The neutrality of statistics and a universalist openness were invoked by Guy Carcassonne in the distinction that he proposed between “regional language” and “minority language”:

- by considering as a so-called regional language every language historically and geographically spoken by the French people in the national territory, both in the mother country and overseas, and up to the present stage there has been no reason for attaching too much importance to the number of today’s speakers;
- by considering as minority language every language spoken by a significant number of French speakers, provided that it is not an official language in a foreign country and that it is not an endangered one” (Carcassonne, 1998, p. 129).

Meantime, the *Cerquiglini Report* does not insist on these qualifiers. It prefers to use the expression “regional language”, and its list of the seventy-five languages proposed for the ratification of the *Charter* by France is preceded by the following heading pervaded with neutrality: “Languages spoken by French citizens in the territory of the Republic”. Based on the use of the adjective “historical” in the Preamble (“Protection of the historical regional or minority languages of Europe”) and of the adverb “traditionally” in Article 1.a.i of the *Charter*, Bernard Cerquiglini proposed to consider among these languages Yiddish, Chib Romany and Western Armenian as “non-territorial languages”. The reference to “traditionally” in Article 1.c, which can be applied to this category of languages, is argued as follows: “This ‘tradition’ may be recent, but this does not mean a reference

to a situation of immigration” (Cerquiglioni, 1999b, under “Traditionally”). “Tradition” is related here to “history”, given the fact that it is assumed that regional or minority languages are the “historical” languages of Europe (cf. Preamble). Therefore, not only traditional but also historical. This argumentation met the definition given by Guy Carcassonne of regional language. He estimated that the languages spoken (Berber, dialectal Arab) in the former French *départements* of Northern Africa and spoken today in the mother country, especially by the Harkis, but also by recent immigrants coming from the Maghreb, could be lowered to the category of migrants’ languages, normally excluded from the field of application of the *Charter*, and be given the regional or minority status of languages of France, as other autochthonous ones in today’s French territories. Although traditional location in some specific areas cannot be mentioned here, some groupings which may in fact correspond—for management reasons—to some territorial collectivities (Parisian area, Marseilles, ...) must be taken into consideration. The two reporters ended up pointing out that the difference between a non-territorial language—according to the meaning of the *Charter*—and an migrants’ language was to be found in the fact that what distinguished the first from the second was its category of migrants’ language which had become or was recognised as “historical” because it was spoken in France (included in the former *départements* of Northern Africa) for that “long period” mentioned in the *Explanatory Report* (§ 31). It is added that these languages are not protected in other places, which is not the case for instance of Spanish or Polish, etc., which in addition are taught as living foreign languages. We have observed previously that this argument was also used four years later, in June 2003, by Armenia in its *Initial Report*.

In the case that a project of ratification would be again present with a top priority position on the agenda on the basis of the above-mentioned relations and/or others, the French argument could consequently imply to recall, at that moment or at the moment of the *Initial Report*, that Berber, dialectal Arab and Western Armenian correspond to that which must be understood with the expressions “long period” and “historical regional or minority languages of Europe” (cf. Preamble of the *Charter*).

One of the arguments presented in France by the people opposing the *Charter* had precisely been that the latter did not take into consideration migrants' languages. Besides the fact that the states are free to protect and promote migrants' languages resulting from "the recent migratory flows which often have an economic motivation" (*Explanatory Report*, § 15), eventually being inspired by the measures described in the *Charter*, the French position was nevertheless interesting in that it contributed with a supplementary element of evaluation as regards the limits of the field of application of the *Charter* to "the historical regional or minority languages of Europe".

c. From variation to linguistic autonomy

Among the languages on his list, Bernard Cerquiglini also proposed to keep eight *langues d'oïl* as other regional or minority languages although they could equally have been interpreted as being French dialects. In short, this is another example of the confirmation of linguistic emergence within the perspective of a more complete adhesion to the *Charter*. Bernard Poignant had already identified *langues d'oïl* with the same hesitancy as the one we may have found in Low Saxon languages or Kven/Finnish. The following formulations bear witness to it: "regional forms of French", "The *langues d'oïl* have become French regional languages" (Poignant, 1998, pp. 8-9). The argument proposed by Bernard Cerquiglini in his *Report* (1999b, under '*Les dialectes de la langue officielle*' ["*The Dialects of the Official Language*"]) was the increase of the distance between Standard French and its dialectal bases over history: "...the gap has been continuously widening between French and the varieties of the *langues d'oïl* which we could not regard today as 'dialects of French'". Then followed a series of languages that should be added to the other "regional languages of France" like the "*langues d'oïl*"; that is to say: Franc-Comtois, Wallon, Picard, Normand, Gallo, Poitevin-Saintongeais, Bourguignon-Morvandiau and Lorrain. This plural also brings to mind that one used regarding the Low Saxon languages, the sociolinguistic position of which regarding Standard Dutch and, in a more complex way, regarding Standard German, we have previously mentioned. Simply, in the case of the Netherlands, what perhaps will materialise in the future as names designating different Low Saxon languages (for instance, cf.

supra Drents, Stellingwerfs) has only appeared in a scarcely formal way—which perhaps shows that the linguification process is still active, even at the level of the representations—in the follow-up reports of the *Charter*. Contrary to the verification of the existence of centrifugal tendencies regarding the *langues d'oïl* in relation to “National Standard French”, the same *Report* proves that Occitan could not be divided into several languages. It is nevertheless present in the list in brackets followed by the names of the dialects which make it up. In fact, the typographical presentation of the *langues d'oïl* and of Occitan in this *Report* is an example of two standard patterns and it has the advantage of being clear regarding the information about the Low Saxon languages already mentioned. The use “*langues d'oïl*” in the plural is followed by denominations which correspond to each one of them in an egalitarian way, one after the other and after the colon. The brackets used for the presentation of the functional diversity of Occitan express the subordination of the parts to the unity. These details regarding the presentation have their *raison d'être* in a strategy of linguistic naming, for naming a language is the same as establishing it in the social and political background in which it evolves. The details related to this naming, both in oral and here written form, express the formal framework which we attribute to this language and the limits of the sociolinguistic field in which an autonomous possibility of practise is offered to it.

The argument regarding the addition of these *langues d'oïl* to the list to be presented if France ratifies the *Charter* was based on the notion of linguistic distance. The reality on which this justification is grounded is no doubt at least as obvious as that which exists between Meänkeli and Standard Finnish, or between Limburger and Dutch. This argumentation is in fact more accurate than those which appear—when it is the case—in the follow-up reports of other countries affected by this kind of languages (cf. *supra*, regarding Meänkeli or Low German). However, as it appears in the follow-up reports of the ratifying countries or of the countries which accept the *Charter*, the indications regarding the sociolinguistic autonomy, in this case, of these expressions are missing. In order to clearly differentiate between the languages which have emerged from primary dialects (Coseriu, 1988), the dialects in the sense of the *Charter* and which are consequently left outside its field of application, are for Cerquiglini the “regional French

languages”⁴⁹. The latter would correspond to tertiary dialects in Coseriu’s approach (*ibid.*). But although things are not very accurate in the *Explanatory Report* of the *Charter*, which states that the “local variants or different dialects of one and the same language” (§ 32) are not affected by this, we may infer from it that this affects both the tertiary languages (cf. the “regional French languages” of the *Cerquiglioni Report*) and the traditional or primary geographical varieties or dialects. The sole difference is found in the sociolinguistic apprehension of these realities, and, in this respect, the *Explanatory Report* is clearer: “This question [language or dialect] depends not only on strictly linguistic considerations, but also on psycho-sociological and political phenomena which may produce a different answer in each case (§ 32). The “strictly linguistic considerations” correspond to those which were stated in the *Cerquiglioni Report* as regards the *langues d’oïl*. The “psycho-sociological and political phenomena” refer to the representations and the voluntariness which accompany the processes of the emergence of languages by elaboration; they could have also been mentioned to explain what the situation of these very same languages was.

2.3. The political parameter

The results presented in the linguistic section of the *Famille* (*Family*) survey related to the census of March 1999 entitled ‘*Étude de l’histoire familiale*’ (“*Study of Family History*”) carried out by the Insee (*Institut national de la statistique et des études économiques* [National Institute of Statistics and Economic Surveys]) and undertaken with the collaboration of the Ined (*Institut national d’études démographiques* [National Institute of Demographic Studies]) show that the intergenerational transmission of regional languages in France has regularly diminished over the twentieth century and it is now a minority phenomenon in the regions involved (Clanché, 2002). Alsatian/German is the regional language that apparently resists better this trend but with an erosion in the intergenerational

⁴⁹ “The result of this is that the different ‘regional variations of French’ will be considered as the sole ‘dialects’ according to the meaning of the *Charter*, and therefore excluded from it; that is to say, the unending variety of ways of speaking this language (pronunciation, vocabulary, etc.) in each point of the territory” (Cerquiglioni, 1999b, under “Les dialectes de la langue officielle”, “The Dialects of the Official Language”).

transmission chain of about 47%, 58% regarding Basque and 66% regarding Corsican, while this may exceed 90% for the other regional languages (Héran *et al.*, 2002). We should not forget that we are talking about the transmission from the people of the preceding generation which had received it in this way. These figures represent percentages of natural competent speakers who today are constantly decreasing in number and who are growing older. The graph by ranges of age that we can extrapolate from the partial sociolinguistic polls that are available to us do not show, as it happens in Spain or Great Britain, a recovery provoked by the new types of acquisition of these languages, especially as regards education and the media. The latter are still too scarcely developed.

Undoubtedly, if the progression of European integration continues, nothing is *a priori* closed, but it may take some time. Meanwhile, the idea has spread —since the period of the publication of the preparatory *Reports* for the signature of the *Charter*, and after, when the decision of the Constitutional Council was known— that the measures of Part III that France had announced that it would keep at the moment of signing the *Charter* were more or less being applied already, especially in education. It is true that the demand is increasing in this field, especially since there is an offer available. In this regard, “the need for resolute action to promote regional or minority languages” included in Article 7.1.c should appear in the field of education, which is the only one really taken into consideration in France, by means of the development of the educational proposal. Opposite to what it said, the latter is too scarce (Woehrling, 2003, p. 64). Thus, the point would be not to guarantee collective and individual rights to the learning of the minority language and education in the minority language, but to protect it by making it available in an egalitarian way. Given the fact that a law that would go beyond the field of education alone —obviously a very important one— is still lacking, things have not changed much. And although the Constitutional Council wrote that France was already implementing the provisions which it might ratify⁵⁰, after reading the already published state and experts’ reports, we may wonder which recommendations of the Commit-

⁵⁰ The last whereas of the Decision was written as follows: “Taking into account their nature, no other commitments adhered to by France, most of which, after all, only limit themselves to recognise practices already implemented by France in favour of regional languages, are considered as being against the Constitution”.

tee of Ministers of the Council of Europe would be issued from the observations of the experts who examined the implementation of the *Charter* in this country. We may suppose that a ratification would at least have offered some guarantees when faced with stagnation or the risk of regression. All the same, the basic information on the matter is not always clearly expressed, as happens with the demand. A generalisation of the educational provision based on basic information would express a true institutional interest and would allow the people interested to define their positions more accurately and to have the guarantee of regular courses.

Confronted with the French situation, we will mention just one comparison: the existence in Great Britain, since September 2002, of a basic teaching in the national school curricula thanks to which every student learns a minimum of the cultural and linguistic aspects of this country with the obvious aim of encouraging the development of the spirit of tolerance.

Outside the private field and that of the associations, the fields which depend on public service and which are truly involved in regional languages are still education and, in a marginal way, the audio-visual media. These sectors are shared by the state and the territorial collectivities. The *départements* and regions intervene in this area, but with means which are relatively limited as regards this last level. The state still occupies this field for the most part and any important evolution in this matter still goes through its laws and regulations, as well as its administration. Without examining it in too much detail, the few known advances made in the privately managed education by immersion and public bilingual education for the last two decades, and with the establishment of the regional language *CAPES* at the beginning of the 1990s, have not been replaced over the last years by a true development of the provision. The general framework is a series of texts, of which the most important ones are Articles L. 312-10 and L. 312-11 from the *Code of Education (Code de l'éducation)* which reiterate the essential parts of the Deixonne Law of 1951 (cf. *supra*) after its abrogation by the Ordinance of June 15, 2000 (Article 51), and the Circulars 82-261 of 1982, 83-547 of 1983, 95-086 of 1995, and 2001-166 of 2001. The positive aspects cannot be presented in detail here but they are nevertheless distinctive. They show a positive evolution over the last ten

years. Some figures show some real achievements. At present, about 500 qualified teachers are teaching permanently regional languages; over 250,000 students — outside associative education— were affected in one way or another by a regional language in 2000-01 (Ministry figures) over the whole French territory; that same year, over 11,000 students registered for the bilingual option with an equal amount of hours (both public education and state-assisted private education) in Germanic Alsace and Lorraine. A global and regular increase in the number of teachers and students mentioned in the past by the preceding Minister of National Education⁵¹ is worth mentioning in this regard. All the same, in general, some improvements have been attained thanks to the inclusion of these issues in the State-Region plan contracts, as, for instance, in Alsace or in Aquitaine in the specific aspect regarding the Basque Country. In addition to this, other figures can also prove that these measures sometimes only affect a small number of students, as it appears in the following example: less than 1.5% of the students in secondary education (high schools and colleges) in Aquitaine are involved in the learning of Occitan in some way or another, mostly in a very partial way (one or two hours per week in only one part of a normal course in one of the two series of courses involved), with a slight decrease observed, for instance, between 1995-96 and 2000-2001; during this period, this percentage increased as regards primary education (Viaut, 2002, pp. 393-395). These figures were higher in relation to Basque. Globally, close to 26% from all branches of primary and secondary education have been involved in the learning of Basque and/or education in Basque in 1999-2000; this is the result of a more motivated and better structured demand and of a better co-ordination of the institutional provision expressed by a more important implementation of bilingual education with the same amount of hours. Obviously, from this point of view, each regional language has its own configuration, and the degree in which they are taken into consideration may also vary from one school to the other, even within the same school. The lack of harmonisation is increasingly and frequently highlighted as regards Occitan in which about ten schools are involved.

⁵¹ Cf. the figures provided by Jack Lang, Minister of National Education on April 25, 2001, regarding “The new orientations in the development of the teaching of regional languages” (Internet web site: <http://www.education.gouv.fr/discours/2001/region_lang.htm>). Among other figures, he pointed out that of an increase over the last two years of 25% in the number of pupils taking bilingual education French/regional language in the first grade, and of 100% in the second one.

Seen from the outside, this situation gives the impression more of maintenance than of progression. The field of action is strictly delimited with markers given the interpretations without any concession of the legal and regulatory apparatus regarding this matter by the higher jurisdictional bodies. Thus, the series of texts taken by the Minister Jack Lang devoted to updating and improving the mechanisms in the teaching of regional languages in France in 2001-02⁵² were the subject of incapacitating decisions⁵³ by the State Council granting some appeals lodged by several teachers' trade unions and associations of students' parents. These decisions affected especially some provisions on bilingual education "with an equal number of hours" ("*à parité horaire*") of which they demanded a restructuring, and in particular the immersion method considered incompatible with the Law of August 4, 1994, on the use of French which establishes that the language of education is French (recuperated by Article L.121-3 of the Code of Education). Article 2.1 of the Constitution was then mentioned once more. The demand of the public status for the privately managed schools practising immersion in Diwan Breton was rejected in the course of the debate because it was considered that there was not enough room for French. The Order of May 12, 2003, made the situation to comply again with the law as regards the teaching with an equal amount of hours. Thus, as it is specified in Article 2: "no subject or field of any subject-matter other than the regional language can be taught exclusively in the regional language". The situation remains vague as regards teaching by immersion where nothing as yet has been essentially determined.

⁵² The Decree 2001-733 of July 31, 2001, on the establishment of an Academic Council of Regional Languages; the Order of July 31, 2001, regarding the establishment of a bilingual education in regional languages in the "regional language" schools, high schools or colleges or in the "regional language" sections in schools, high schools and colleges; the Order of April 19, 2002, regarding the establishment of an education by immersion in regional languages in the "regional language" schools, high schools and colleges.

⁵³ The Ordinance of the *juge des référés* of the State Council of October 30, 2001, on the "suspension of the texts on bilingual education by immersion"; the Ordinance of the *juge des référés* of the State Council of July 15, 2002 (suspension of the Order of April 19, 2002, of the Minister of National Education regarding the establishment of a bilingual education by immersion in regional languages in "regional language" schools, high schools and colleges and of the Circular 2002-103 of April 30, 2002, with the same aim); Decision of the State Council of October 28, 2002 (annulment of the Order of July 31, 2001, of the Circular 2001-168 of the protocol of an agreement with Diwan regarding the new public status of the Diwan educational institution [immersion school in Breton]).

Several lessons can be learnt from the role of censors played by the Constitutional Council and the State Council. In particular, from the whereases and decisions issued by these higher bodies we will retain that the regional languages in France should be the target of a stronger legal framework and not remain exclusively at the level of circulars and decrees. Perhaps we may conclude from it that more clarity should be good for them because of being grounded without ambiguities on the Constitution and the laws. Obviously, this could be difficult because, in the course of the debate, the main principles have been restated and the reading of them determines interpretations which do not leave enough room for semantic developments. It is now the turn of the politicians: on November 21, 2002, on the occasion of the debate at the National Assembly on the constitutional bill on decentralisation, an amendment project was presented by about twenty deputies of the presidential majority (UMP), with the support of the leftist opposition parties. This project aimed at adding to Article 2.1 of the Constitution (“The language of the Republic is French”) the clause: “respecting the regional languages, which are part of its heritage”. The Minister of Justice (*Garde des Sceaux*), Dominique Perben, opposed it, as did the President of the Law Commission, Pascal Clément (UMP), who recalled that the Constitutional Council had issued reservations regarding the *European Charter for Regional or Minority Languages* of the Council of Europe. We retain the documentary value of such a fact. One final observation: one of the articles —L.121-3— of the Code of Education invoked by the State Council to support its interpretation foresees some important derogations in its last section regarding the obligation to use French at all levels of education for foreign schools and international courses⁵⁴. Within the framework of the reciprocal adaptation between the founding principles and the legal regulations, on the one hand, and the French society, on the other, should this last one submit more to the first ones than these ones should adjust to it? All the same, could we infer from it —despite the information which in fact is partial and which is available thanks to the polls mentioned here— that this society, even considered as a whole, considers as being negligible the linguistic wealth and potential of its citizens to such

⁵⁴ “Foreign schools or those especially open to receiving foreign students, as well as the educational institutions providing international education, are not subject to this obligation.”

an extent that a legal expression of the social evolution regarding this matter is not considered as being necessary? However, if the adaptation of the law is possible for foreign languages, could it be also possible for the languages of France other than Standard French?

From the present analysis of the position of France regarding the *Language Charter* we may infer that, in fact, the sole hindrance to the adhesion of France to this text is not found in the bodies or in the principles by which the regulations are inspired, but in the representations that the politicians make about these linguistic situations and in the legitimacy which is conferred on them to make their discourses become decisions. In the wide range including from management attitudes to those ideologically marked, France remains an example of the ideological position, locked in a linguistic unitary position erected as a wall. Last question: Which factors —in the field of information— determine the orientations taken for the most part by the politicians and which are the deep issues that influence their decisions in this matter?

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4. Appendixes

- 1) Text of the *Charter*

<<http://conventions.coe.int/treaty/en/Treaties/Html/148.htm>>

- 2) Text of the *French Declaration* recorded in the full powers delivered to the General Secretary at the moment of signing the instrument on May 7, 1999

<<http://conventions.coe.int/treaty/Commun/ListeDeclarations.asp?NT=148&CM=1&DF=&CL=ENG&VL=1>>

- 3) Text of the Decision of the Constitutional Council 99-412 DC of June 15, 1999, *European Charter for Regional or Minority Languages*

<<http://www.conseil-constitutionnel.fr/decision/1999/99412/99412dc.htm>>



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