

## REPORT

# Sign languages in the European Charter of Regional or Minority Languages (ECRML)

EUD  
19-02-2025





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Working group mandate:

- i) Preparation of a proposal for a document/declaration clarifying the different terms and how we should understand them.
- ii) Clarification of the different scopes of the European Charter and CRPD (and others) and how they can interact with each other
- iii) Development of a strategy for political work



## EXECUTIVE SUMMARY

1. **Interpretation of the European Charter for Regional or Minority Languages (ECRML):** The Working Group (WG) recognizes the need for a dynamic and flexible interpretation of the European Charter to cover European sign languages, given their linguistic-cultural character. There may be some challenges in applying the Charter framework to sign languages due to differing concepts and definitions of sign languages in law from those of regional or minority languages. For example, the legal distinction between legally recognized official sign languages and officially recognized sign languages is not evident.
2. **Recognition Criteria for Sign Languages:** The WG recognizes that sign languages may meet criteria set out in the ECRML. They are traditional use within the member state, being a numerically smaller group than the rest of the population, and legal recognition as a language other than the official language of the member state. However, how these criteria apply to European sign languages must be clarified.
3. **Protection and Promotion of Sign Languages:** The WG emphasizes the necessity to protect and promote European sign languages as part of Europe's linguistic and cultural heritage. This requires express language policies aimed at preserving and developing sign languages, and removing any obstacles that can threaten their continuity.
4. **Approach to the ECRML:** While the Charter has primarily spoken languages in mind, the group advocates a flexible and modality-inclusive reading of the Charter to encompass sign languages. This involves a careful analysis of the definitions and criteria set out in the Charter to determine that sign languages with rich linguistic and cultural features are indeed encompassed and protected.

## RECOMMENDATION:

**The WG recommends a holistic approach that recognizes European sign languages as languages with linguistic and cultural features and ensures their protection and promotion as part of linguistic-cultural diversity in Europe within the framework of the European Charter of Regional or Minority Languages. This will require a careful review of existing legislation and the development of appropriate language policies in response to the needs of sign language communities in Europe.**



## **PART I**

### **European Charter for Regional or Minority Languages (ECRML): Conceptual Understanding and their implications for European Sign Languages**

## A. GENERAL CONSIDERATIONS: CONCEPT OF REGIONAL OR MINORITY LANGUAGE

- 1) The ECRML **adopts terminology regarding the categories of languages that meet the necessary criteria to be qualified as such.**<sup>1</sup> Article 1 of the ECRML defines the objectively distinct characteristics of regional or minority languages:

*Article 1 – Definitions*

*For the purposes of this Charter:*

*a. «regional or minority languages» means languages that are:*

- i. traditionally used within a given territory of a State by nationals of that State who form a group numerically smaller than the rest of the State's population; and*
- ii. different from the official language(s) of that State; it does not include either dialects of the official language(s) of the State or the languages of migrants;*

*b. «territory in which the regional or minority language is used» means the geographical area in which the said language is the mode of expression of a number of people justifying the adoption of the various protective and promotional measures provided for in this Charter;*

*c. «non-territorial languages» means languages used by nationals of the State which differ from the language or languages used by the rest of the State's population but which, although traditionally used within the territory of the State, cannot be identified with a particular area thereof.*

- 2) The conceptual criteria for regional or minority languages follow factual and general criteria and do not correspond, as such, to legal definitions. **The ECMRL does not explicitly identify which languages existing in Europe correspond to regional or minority languages in Europe.** This treatment is deferred to national legal systems. **The ECRML aims to focus on linguistic-cultural diversity and heritage**, valuing existing languages recognized by the respective States, which declare, at the time of ratification, which languages are included in the protection of the ECRML.
- 3) The concept of a **regional language** implies that it is a language designated in a specific part of the territory of the respective State, which is used by the majority of citizens using the recognized language.
- 4) In contrast, for a **minority language**, this qualification does not necessarily have a specific territorial basis, as is the case with regional languages. However, to determine the nature of the minority language, it requires compliance with the requisites provided in sub-paragraphs (i) and (ii). Such a language implies that it is numerically smaller than the population of the State's territory in general or in a specific part of that state territory that uses a distinct language from the majority language of the State.

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<sup>1</sup> Explanatory Report to the European Charter for Regional or Minority Languages



- 5) This *Regional vs minority languages* distinction doesn't hold, in fact. Only two of 25 state parties make the distinction in their instrument of ratification, and the truth is that the Committee of Experts treats all the protected languages in the same way. **Sign Language will not benefit by engaging in such a conceptual argument. The case should be based on the premise that Sign Language are "regional or minority languages" within the ECRML and not because they are "minority languages" or "regional languages".**
- 6) Regional or minority languages are primarily those languages covered by the ECRML that consider the basic premise of being “traditionally used within a given territory of a State,” pursuant to Article 1(a)(b). **The criteria for territorial basis under the ECRML are broad and flexible, depending on the sociolinguistic circumstances in their respective State territories.** Furthermore, the ECRML aims to encompass regional or minority languages, beyond the territorial basis, that have a justified need for the adoption of various measures for the protection and promotion of these languages under Article 1(b). However, the same ECRML seeks not to exclude those regional or minority languages that do not have a territorial basis; they may be protected by the same ECRML but with their own applicable framework, *mutatis mutandis*, as non-territorial languages, according to Article 1(c).
- 7) **The concepts established by the ECRML are flexibly based on the cultural approach to language and do not correspond to socio-political or socio-ethnic definitions.** These matters are addressed within their respective national legal systems, and the ECRML does not encompass or define such issues.
- 8) **It is particularly emphasised that one should not confuse issues related to regional or minority languages as a cultural matter of the language itself with issues of linguistic minorities as an inherent socio-political matter.** For example, language officiality is not, as previously mentioned, a fundamental issue under the ECRML, and this legal category falls within national legal treatments.
- 9) **The fundamental objective of the ECRML is, above all and strictly, the protection and valorisation of these languages as such, not linguistic minorities.** Legal treatments for linguistic minorities are referred to other legal instruments, notably the Framework Convention for the Protection of National Minorities of the Council of Europe, among other



international legal instruments, which are not addressed in the scope of this study. They are legally distinct with different scopes and assumptions.

- 10) **The legal treatment of regional or minority languages under the ECRML is particularly focused on their linguistic-cultural functions, which value and promote the functions of these languages as such.** The ECRML itself does not aim to attribute or define the set of subjective rights of language users; on the contrary, from a cultural perspective, the ECRML defines particularly objective prerequisites to ensure the vitality of these languages as such, fulfilling their necessary functions.
- 11) **Indeed, the obligations defined by the ECRML have essential implications for users who may use the respective protected and promoted languages in accordance with the binding parameters of the ECRML and, not only that, but also with their respective national legislations that apply to public authorities committed to adopting the necessary measures to ensure the protection and promotion of these languages.**
- 12) **The linguistic-cultural approach of the ECRML is intended, particularly, to protect and promote those languages that contribute to avoiding their endangerment or threats to European cultural heritage, through the *minimum* identification of necessary measures to protect and promote regional or minority languages in various domains,** including education, public services, media among other public spheres. In other words, the linguistic-cultural approach of the ECRML seeks the essential normative instruments to ensure that these languages have their rightful place, valuing European cultural diversity and heritage.

## **B. COMPARATIVE PERSPECTIVES : POSSIBILITIES OR OBSTACLES**

- 13) Timmermans (2005), in his study *“The status of sign languages in Europe,”* identifies some aspects related to sign languages in the ECRML. Krausneker (2008)<sup>2</sup> further delved into the legal status of sign languages. Napier and Leeson (2016) write, advocating through efforts of the European Union of the Deaf, for the expansion of the ECRML to include sign languages.<sup>3</sup> Later, Tupi (2019) presented a study to the Council of Europe titled *“Sign Language Rights in*

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<sup>2</sup> Krausneker, Verena (2008). *Report on the protection and promotion of sign languages and the rights of their users: needs analysis.* Council of Europe. [https://www.ecml.at/Portals/1/documents/CoE-documents/The\\_protection\\_and\\_promotion\\_sign\\_language\\_eng.pdf.pdf](https://www.ecml.at/Portals/1/documents/CoE-documents/The_protection_and_promotion_sign_language_eng.pdf.pdf)

Krausneker, Verena (2009). On the legal status of sign languages: a commented compilation of resources, *Current Issues in Language Planning*, 10:3, 351-354, DOI: [10.1080/14664200903154858](https://doi.org/10.1080/14664200903154858)

<sup>3</sup> Napier, Jemina & Leeson, Lorraine (2016). *Sign languages in action.* London: Palgrave Macmillan, 28-29.

the Framework of the Council of Europe and its member States.”<sup>4</sup> The Working Group particularly identify the recommendations under the ECRML:

*“At the Council of Europe, few human rights mechanisms have addressed sign language issues and this is mostly done from the disability perspective. The Committee of Experts of the European Charter for Regional or Minority Languages (COMEX) does not have the mandate to consider sign language issues in country reports (...) (page 1)*

*“Recommendation 2: See sign languages as part of a multilingual Europe. All stakeholders should view sign languages beyond the disability lens to also be considered as minority languages that deserve specific attention, protection and support in all areas.” (page 2)*

*“The Council of Europe should be proud of its rich linguistic cultural heritage consisting of different sign languages. The European Centre for Modern Languages of the Council of Europe (ECML) has allocated resources for projects on sign languages to support the status of sign languages in the member States. High-level political signals from the Council of Europe to consider sign languages as minority languages can attract the interest of national governments to understand the paradigm change from the disability perspective to a linguistic perspective. Based on information collected from interviewing national associations of the deaf in the region, only a few member States have adopted the linguistic minority view on sign language in the whole society. The ECML is already offering resources on sign language for the use of member States but a stronger message from the Council of Europe would further strengthen the understanding of sign languages as minority languages and part of the European linguistic and cultural heritage among national governments.” (page 14-15)*

*“To date, sign languages have not been part of the application of the European Charter for Regional or Minority Languages. The reason is apparently the misunderstanding that sign languages would not be fully-fledged natural languages but related to disability only. Another reason is that deaf people using sign language live scattered across countries instead of in the same geographical areas, unlike many other users of minority languages. However, it should be noted that there are other users of minority languages who do not inhabit the same area. However, the awareness on sign languages has increased significantly since the drafting took place. The work of the COMEX focuses on traditional regional and minority languages. Sign languages have never been part of its monitoring processes. In this situation it can be questioned why sign languages are not considered as traditional languages despite being used for decades and centuries. Another aspect is that approximately 90 % of deaf children are born to hearing families, the vast majority of which do not know sign language. Hence sign language is often not transmitted over generations. Unfortunately, a high number of hearing families never learn sign language. Considering the aforementioned circumstances, there should be understanding that sign languages deserve specific attention, protection and support. If sign language issues were included in the mandate of the COMEX to require States to provide information about sign languages in their country reports and during monitoring visits, this would be a useful channel to remind national governments of their obligation to preserve and support national sign languages. The inclusion of sign languages in the work of the COMEX might have a positive influence on deaf individuals in practice. (page 17-18)*

14) In case it is of interest, Fernando Ramallo's article about the ECRML on its 25th anniversary published in 2017: <sup>5</sup>

#### *Sign languages*

*One of the main shortcomings of the Charter concerns the non-inclusion of sign languages used throughout Europe. This 'omission' is unjustifiable and represents an affront with lamentable consequences for the entire European population that uses sign languages in their daily lives. Sign languages are historically documented minority languages in all Council of Europe member states. Each one has a national sign language with different varieties, and in some countries, there is more than one. All are minority languages, meaning languages used by a group of individuals who are numerically inferior*

<sup>4</sup> Tupi, Eeva. (2019). *Sign language rights in the framework of the Council of Europe and its member states*. Ministry for Foreign Affairs of Finland. <https://rm.coe.int/168093e08f>

<sup>5</sup> Ramallo, Fernando (2017). La Carta Europea para las Lenguas Regionales o Minoritarias en su 25 aniversario. [https://www.researchgate.net/publication/318793052\\_La\\_Carta\\_Europea\\_para\\_las\\_Lenguas\\_Regionales\\_o\\_Minoritarias\\_en\\_su\\_25\\_aniversario](https://www.researchgate.net/publication/318793052_La_Carta_Europea_para_las_Lenguas_Regionales_o_Minoritarias_en_su_25_aniversario)



*to the main group of the population of a State. Although several countries have legally recognized national sign languages in different laws, constitutions, disability laws, educational legislation, and language laws (Wheatley & Pabsch 2012), most lack a structured language policy aimed at their protection and/or promotion. For this reason, it is urgent to safeguard these languages in the same way as other minority languages, as demanded by sign language user associations throughout Europe. In fact, for over a decade, the European Union of the Deaf has called on the Council of Europe to extend the scope of the Charter to include sign languages (Napier & Leeson 2016).*

*As has been commented on various occasions, the Charter is an international treaty whose main objective is to protect and promote historically documented regional or minority languages in Europe. Although there is nothing in the Charter that formally excludes sign languages, since its entry into force, the Charter has focused exclusively on oral regional or minority languages. This is largely due to an interpretation of the Charter, which since its creation has implicitly established an exclusive identification between spoken languages and linguistic minorities. Therefore, the Council of Europe has chosen to interpret sign languages not as minority languages but through the stigma of disability (Quer & de Quadros 2015) and therefore protected by other Council of Europe treaties, such as those related to the Rehabilitation and Integration of Persons with Disabilities. This has led to the invisibility of many minority languages in Europe.” (our translation) (pages 7-8)*

- 15) And, likewise, the same author reinforced this point in his study on compliance with the ECRML (2022: 38-39):<sup>6</sup>

*“(…) The interpretation of what it means to understand a language as regional or minority reveals another evident contradiction. We refer to the non-consideration of sign languages as protected languages by the Charter. While it is true that all languages related to the deaf community are minority languages, it is also true that the Council of Europe does not accept their inclusion among the languages protected by the Charter. In the text that determines the scope and coverage of the Treaty, there is nothing that excludes these languages, but the stigmatisation suffered by signing communities demonstrates (...) In recent years, there have been some advances in this regard. For example, Finland included in its last two periodic reports (2010 and 2017) specific sections related to the two sign languages used: Finnish Sign Language and Finnish-Swedish Sign Language. The relevant aspect is that for the Finnish authorities, both languages should be protected by the Charter as non-territorial languages (...) In its Follow-up Report, the COMEX overlooks this demand and does not acknowledge the socio-linguistic, legal, and political evidence regarding sign languages. However, to reinforce their demand, in 2019, the Finnish Ministry of Foreign Affairs published a very clarifying report advocating for the recognition of sign languages as languages covered by the Charter (Tupi 2019) as languages that undeniably meet the requirements outlined in Article 1. To further strengthen this demand, in July 2021, the Spanish Senate unanimously approved a motion urging the Government to request from the Council of Europe, among other issues, 'its pronouncement on the incorporation of Spanish and Catalan sign languages into the European Charter of Regional and Minority Languages', in line with a request from the National Confederation of Deaf People (CNSE).” (our translation)*

<sup>6</sup> Ramallo, Fernando (2022). O cumprimento da Carta europea para as linguas rexionais ou minoritarias. València, Universitat de València. <https://www.uv.es/cadrelin/doc/quaderns/libro20.pdf>

Original text in Galician: “(…) Á parte desta problemática, a interpretación do que supón entender unha lingua como rexional ou minoritaria revela outra contradición evidente. Referímonos á non consideración das linguas de signos como linguas protexidas pola Carta. Se ben é certo que todas as linguas relacionadas coa comunidade xorda son linguas minoritarias, tamén o é que o Consello de Europa non acepta a súa inclusión entre as linguas protexidas pola Carta. No texto que determina o alcance e a cobertura do Tratado nada hai que exclúa estas linguas, mais a estigmatización que sofren as comunidades signantes manifesta (Esteban e Ramallo 2019). Nos últimos anos houbo algúns avances neste sentido. Por exemplo, Finlandia incluíu nos seus dous últimos informes periódicos (2010 e 2017) sendos apartados especificamente relacionados coas dúas linguas de signos usadas: a lingua de signos finesa e a lingua de signos sueco-finesa. O relevante é que para as autoridades finesas, ambas linguas deben ser protexidas pola Carta como linguas non territoriais. (...) No seu Informe de seguimento, o COMEX obvia esta demanda e non asume as evidencias sociolingüísticas, xurídicas e políticas en relación coas linguas de signos. Porén, para reforzar a súa demanda, en 2019, desde o Ministerio de Asuntos Exteriores de Finlandia publicouse un informe reivindicativo moi clarificador da necesidade do recoñecemento das linguas de signos como linguas cubertas pola Carta (Tupi 2019) en tanto que linguas que responden, indiscutibelmente, aos requisitos recollidos no artigo 1. Para fortalecer aínda máis esta demanda, en xullo de 2021 o Senado español aprobou, por unanimidade, unha moción pola que se insta ao Goberno a solicitar ao Consello de Europa, entre outras cuestións, «su pronunciamiento acerca de la incorporación de las lenguas de signos española y catalana en la Carta Europea de las Lenguas Regionales y Minoritarias»<sup>6</sup>, en consonancia cunha solicitude da Confederación Estatal de Personas Sordas (CNSE) (...)”

16) We observe the positions adopted at the governmental level, understanding, and justifying their arguments.<sup>7</sup>

Switzerland <sup>8</sup>	<i>"(...) To date, no signatory state has recognized one or more sign languages under the Framework Convention for the Protection of National Minorities or the European Charter for Regional or Minority Languages. However, the Council of Europe has repeatedly examined the recognition of European sign languages since the beginning of this century: research reports including recommendations on sign language promotion have been produced under its</i>
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<sup>7</sup> Original texts in their respective languages

<sup>8</sup> Regula, Rytz; Lohr; Romano; Reynard (2019). Rapport du Conseil fédéral «Possibilités de reconnaissance juridique des langues des signes suisses.» <https://www.news.admin.ch/news/message/attachments/68325.pdf>

Original text in French: «La Suisse, qui a ratifié la Charte en 1997, reconnaît comme langues régionales ou minoritaires les quatre langues nationales dans les régions où elles sont minoritaires, l'italien et le romanche comme langues officielles moins répandues, et le yiddish et le yéniche comme langues minoritaires sans territoire. En 2018, le francoprovençal et le franc-comtois ont également été reconnus comme des langues minoritaires à part entière par la voie des rapports étatiques.

À ce jour, aucun État signataire n'a reconnu une ou plusieurs langues des signes en vertu de la Convention-cadre pour la protection des minorités nationales ou de la Charte européenne des langues régionales ou minoritaires. Le Conseil de l'Europe s'est néanmoins penché à plusieurs reprises sur la reconnaissance des langues des signes européennes depuis le début de ce siècle : des rapports de recherche incluant également des recommandations sur la promotion des langues des signes ont été produits sous sa conduite en 2005, 2008 et 2019. Le Centre européen pour les langues vivantes de Graz, cofinancé par le Conseil de l'Europe, a également mené plusieurs projets de recherche et organisé plusieurs rencontres consacrées à la recherche sur la langue des signes.

L'Assemblée parlementaire du Conseil de l'Europe a adopté en 2001, 2003 et 2018 des recommandations relatives à la reconnaissance et à l'encouragement des langues des signes dans le cadre de la Charte européenne des langues régionales ou minoritaires. Le Comité des Ministres n'a cependant pas donné suite à la recommandation de 2003 d'ajouter un protocole additionnel à la Charte portant sur la prise en compte des langues des signes, donnant plutôt la priorité aux efforts visant à améliorer l'accessibilité. En 2019, en réponse à une autre recommandation, le Comité des Ministres a déclaré que la Charte n'avait pas été élaborée afin d'assurer la protection des langues des signes et que cette protection ne faisait dès lors pas partie du mandat de son Comité d'experts. À l'heure actuelle, une mise en œuvre rapide dans le cadre d'un protocole additionnel pourrait se révéler assez difficile, notamment pour des raisons financières. À ce jour, la Finlande est le seul État signataire à faire le point de la reconnaissance et de l'encouragement de la langue des signes dans le cadre de ses rapports périodiques relatifs à la Charte européenne des langues régionales ou minoritaires. (pages 18-19)

« Au sens de la Charte, les langues régionales ou minoritaires sont des langues qui sont pratiquées traditionnellement sur un territoire d'un État par des ressortissants de cet État constituant un groupe numériquement inférieur au reste de la population et qui sont différentes de la (des) langue(s) officielle(s) de cet État (art. 1(a)). La Charte s'applique également aux langues dépourvues de territoire (art. 1(c)). Les dialectes des langues officielles et les langues des migrants ne sont en revanche pas considérées comme des langues régionales ou minoritaires. Comme indiqué plus haut, aucun État signataire n'a pour l'instant reconnu une ou plusieurs langues des signes en vertu de la Charte européenne des langues régionales ou minoritaires. Le Comité des Ministres du Conseil de l'Europe a déclaré en 2019 que la protection des langues des signes ne faisait partie ni de l'objectif initial de la Charte, ni du mandat du Comité d'experts. Une reconnaissance des langues des signes par analogie avec d'autres langues n'est donc pour l'heure pas possible. La Finlande est à ce jour le seul État partie à considérer sa langue des signes dans ses rapports, ce qui a avant tout une portée symbolique. Tout comme la Convention-cadre pour la protection des minorités nationales, la Charte européenne des langues régionales ou minoritaires a un caractère fortement programmatique. Elle ne fonde pas de droits individuels ou collectifs des personnes utilisant une langue régionale ou minoritaire. La prise en compte des langues des signes dans le cadre de la Charte européenne des langues régionales ou minoritaires n'est possible que par le biais d'un protocole additionnel qui reste à créer. De plus, la reconnaissance des trois langues des signes suisses aurait avant tout une valeur symbolique. Sans une inscription dans le droit national, on peut douter, comme dans le cas de la Convention-cadre pour la protection des minorités nationales, que des améliorations réelles pour les personnes sourdes puissent être obtenues par ce biais. La Charte européenne des langues régionales ou minoritaires visant davantage à préserver les langues régionales ou minoritaires (et non les utilisateurs) que la Convention-cadre pour la protection des minorités nationales, de nouvelles mesures à cette enseigne paraissent toutefois plus indiquées. Ce point de vue reflète également l'opinion dominante au sein du Conseil de l'Europe.

« La Suisse accorde une certaine place à ce sujet dans ce cadre, dans la mesure où le rapport relatif à la mise en œuvre des deux accords – il s'agit pour la première fois d'un rapport groupé pour ces deux objets – qui sera adopté par le Conseil fédéral en automne 2021 abordera également la discussion actuelle sur la reconnaissance et l'encouragement des langues des signes suisses. » (page 44)

« La Charte européenne des langues régionales ou minoritaires et, dans une moindre mesure, la Convention-cadre pour la protection des minorités pourraient offrir un cadre possible pour une reconnaissance à l'enseigne du droit international. Une reconnaissance des langues des signes suisses et de la communauté sourde dans le cadre de ces accords soulève cependant diverses questions. Sans mesures d'accompagnement dans le droit national, la reconnaissance resterait déclaratoire et ne fonderait pas des droits légaux supplémentaires. De plus, le cas échéant, la Suisse jouerait un rôle de pionnier au sein du Conseil de l'Europe, puisqu'aucun État signataire n'a encore reconnu une ou plusieurs langues des signes nationales par ce biais. Le Comité des Ministres du Conseil de l'Europe a récemment déclaré que la reconnaissance dans le cadre de la Charte européenne des langues régionales ou minoritaires ne serait possible que par le biais d'un protocole additionnel qui reste à créer. Les discussions relatives à un tel protocole additionnel pourraient durer un certain temps. La Suisse fait une place à ce sujet dans ce cadre, dans la mesure où le rapport concernant la mise en œuvre des deux accords – il s'agit pour la première fois d'un rapport groupé pour ces deux objets – qui sera adopté par le Conseil fédéral en automne 2021 abordera également la discussion actuelle sur la reconnaissance et l'encouragement des langues des signes suisses. » (pages 55-56)

guidance in 2005, 2008, and 2019. The European Centre for Modern Languages in Graz, co-financed by the Council of Europe, has also carried out several research projects and organised several meetings dedicated to sign language research. The Parliamentary Assembly of the Council of Europe adopted recommendations on the recognition and encouragement of sign languages within the framework of the European Charter for Regional or Minority Languages in 2001, 2003, and 2018. However, the Committee of Ministers did not follow up on the 2003 recommendation to add an additional protocol to the Charter concerning sign languages, prioritising efforts to improve accessibility instead. In 2019, in response to another recommendation, the Committee of Ministers stated that the Charter was not designed to ensure the protection of sign languages, and therefore, the protection of sign languages was not part of the mandate of its Expert Committee. At present, rapid implementation within the framework of an additional protocol could prove quite difficult, particularly for financial reasons. To date, Finland is the only signatory state to report on the recognition and encouragement of sign language in its periodic reports on the European Charter for Regional or Minority Languages." (our translation)

"(...) In the sense of the Charter, regional or minority languages are languages that are traditionally practised in a territory of a State by nationals of that State who constitute a numerically smaller group than the rest of the population and which are different from the official language(s) of that State. The Charter also applies to languages without territory. Dialects of official languages and migrant languages, on the other hand, are not considered regional or minority languages. As indicated above, no signatory state has so far recognized one or more sign languages under the European Charter for Regional or Minority Languages. The Committee of Ministers of the Council of Europe stated in 2019 that the protection of sign languages was neither the initial objective of the Charter nor within the mandate of the Expert Committee. Therefore, recognition of sign languages by analogy with other languages is not currently possible. Finland is to date the only party state to consider its sign language in its reports, which has primarily symbolic significance. Like the Framework Convention for the Protection of National Minorities, the European Charter for Regional or Minority Languages has a strongly programmatic character. It does not establish individual or collective rights of persons using a regional or minority language. The consideration of sign languages within the framework of the European Charter for Regional or Minority Languages is only possible through an additional protocol yet to be created. Moreover, the recognition of the three Swiss sign languages would primarily have symbolic value. Without inclusion in national law, it can be doubted, as in the case of the Framework Convention for the Protection of National Minorities, that real improvements for deaf people could be achieved in this way. The European Charter for Regional or Minority Languages aims more at preserving regional or minority languages (rather than the users) than the Framework Convention for the Protection of National Minorities; therefore, new measures in this regard appear more appropriate. This view also reflects the prevailing opinion within the Council of Europe. Switzerland gives some consideration to this issue in this context, as the report on the implementation of the two agreements - for the first time a joint report on these two subjects - to be adopted by the Federal Council in autumn 2021 will also address the current discussion on the recognition and encouragement of Swiss sign languages." (our translation)

"The European Charter for Regional or Minority Languages and, to a lesser extent, the Framework Convention for the Protection of National Minorities could offer a possible framework for recognition under international law. However, the recognition of Swiss sign languages and the deaf community within the framework of these agreements raises various questions. Without accompanying measures in national law, recognition would remain declarative and would not establish additional legal rights. Moreover, if applicable, Switzerland would play a pioneering role within the Council of Europe, as no signatory state has yet recognized one or more national sign languages in this way. The Committee of Ministers of the Council of Europe recently stated that recognition under the European Charter for Regional or Minority Languages would only be possible through an additional protocol yet to be created. Discussions on such an additional protocol could take some time. Switzerland gives some consideration to this issue in this context, as the report on the implementation of the two agreements - for the first time a joint report on these two subjects - to be adopted by the

	<i>Federal Council in autumn 2021 will also address the current discussion on the recognition and encouragement of Swiss sign languages." (our translation)</i>
Spain <sup>9</sup>	<i>Motion urging the Government to request the Council of Europe for its ruling on the incorporation of Spanish and Catalan sign languages in the European Charter for Regional or Minority Languages (2021)<sup>10</sup></i> <i>Strategic Framework for the Protection, Promotion and Revitalization of the Spanish Sign Language 2023-2030. (...) 5.1. Objectives and action measures. The action measures (M) develop and specify each of the indicated objectives (O) and strategic challenges (R). (...) O7. Seek maximum legal protection from the LSE to guarantee the rights of deaf and deafblind signatories, including their linguistic rights. (...) M15. Incorporation of sign languages in the European Charter for Regional or Minority Languages. (...)” (our translation)<sup>11</sup></i>
Norway <sup>12</sup>	<i>“(...) In principle, the national sign languages in Europe, including Norwegian Sign Language, meet the requirements of Article 1 of the Minority Language Charter: Norwegian Sign Language is used within the state of Norway by a minority. The language is different from the administrative language in Norway. Moreover, the language has enough users to justify government measures to protect and promote it. Norwegian Sign Language cannot be linked to a specific geographic area within Norway's borders, making it a non-territorial language. (...) In connection with Sweden's accession to the Minority Language Charter, the question arose as to whether Swedish Sign Language should be covered by the Charter. It was argued that sign languages initially meet the criteria for non-territorial minority languages. Central to the rationale for the Charter is precisely that languages are central cultural expressions. In a report on Swedish accession to the Minority Language Charter, it was expressed that Swedish Sign Language was primarily considered a means of communication for the deaf and not as a language with a cultural function. The Swedish Sign Language report from 2006 partially rejects that view and emphasises that all languages are both a means of communication and a means of creating cultural community. The report points out that Swedish Sign Language meets the basic criteria for being considered non-territorial minority languages. At the same time, the report still sees relevant differences between spoken minority languages and Swedish Sign Language because the bilingualism of the deaf can be said to be more monocultural, and Swedish Sign Language largely conveys the same culture as the Swedish language. From the Norwegian side, the Stoltenberg II government in the language report no. 35 (2008–2008). A comprehensive Norwegian language policy expressed interest in giving sign languages international recognition, but it was pointed out that the current Minority Language Charter is poorly suited for the purpose, as it is tailored to spoken languages. Instead, it was argued that Norwegian Sign Language should have an international legal status that is not identical to, but equivalent to, that of the languages of national minorities." (...) (our translation)</i>

<sup>9</sup> Sixth compliance report of the ECRML (2017-2021). The Spanish sign language (LSE) is included: [https://mpt.gob.es/dam/es/portal/politica-territorial/autonomica/Lenguas-cooficiales/Consejo-Europa-Carta-lenguas/Informes/Sexto\\_informe.pdf#page=1](https://mpt.gob.es/dam/es/portal/politica-territorial/autonomica/Lenguas-cooficiales/Consejo-Europa-Carta-lenguas/Informes/Sexto_informe.pdf#page=1)

“Por primera vez en este informe se incluye un apartado sobre la lengua de signos, que se refiere a su regulación y a su tratamiento en la enseñanza, la investigación y los medios de comunicación.” (page 6)

“La Resolución 2247 (2018) de la Asamblea Parlamentaria del Consejo de Europa sobre la protección y promoción de las lenguas de signos en Europa, exhorta a los Estados miembros, si así lo desean, a proporcionar información sobre el uso y la protección de las lenguas de signos al Comité de Expertas/os de la Carta Europea de las Lenguas Regionales o Minoritarias (COMEX).” (page 170)

<sup>10</sup> Moción por la que se insta al Gobierno a solicitar al Consejo de Europa su pronunciamiento acerca de la incorporación de las lenguas de signos española y catalana en la Carta Europea de las Lenguas Regionales y Minoritarias. <https://videoserivlet.senado.es/web/actividadparlamentaria/iniciativas/detalleiniciativa/index.html?jsessionid=VhrTgySLysGR2lhnyp8gsLr4rnTt3MlccYbzGyQCmQ3f1mGMjYcq!917228468?id1=661&id2=000995&legis=14>

<sup>11</sup> Resolución de la presidencia del Consejo Nacional de Discapacidad por la que se da publicidad al acuerdo del Pleno del Consejo Nacional de Discapacidad por el que se aprueba el Marco Estratégico para la Protección, Promoción y Revitalización de la Lengua de Signos Española 2023-2030: <https://cnlse.es/es/recursos/publicaciones/resolucion-marco-estrategico-lengua-de-signos.pdf>

It's a roadmap of public policies to promote and protect the LSE. This document was prepared based on the CNLSE report published in 2020 on the vitality of the LSE: <https://www.sjis.net/documentos/ficha/561950.pdf>

<sup>12</sup> NOU 2023: 20 Tegnspråk for livet — Forslag til en helhetlig politikk for norsk tegnspråk. <https://www.regjeringen.no/no/dokumenter/hoering-nou-202320-tegnspak-for-livet.-forslag-til-en-helhetlig-politikk-for-norsk-tegnspak/id2991466/>

Original text in Norwegian: (...) 9.4.1 Minoritetsspråkpakten

(...) Norge ratifiserte minoritetsspråkpakten i 1993, og den begynte å gjelde i 1998. Norge er ett av 25 land som har ratifisert minoritetsspråkpakten. Minoritetsspråkpakten definerer i artikkel 1 regions- og minoritetsspråk som språk som tradisjonelt er brukt innenfor et bestemt territorium i en stat, av statsborgere som utgjør en historisk gruppe som er i mindretall i befolkningen. Det åpnes



Germa ny <sup>13</sup>	<p>TEXT 1<sup>14</sup>:</p> <p><i>"(...) According to a list published by the Council of Europe entitled "Contracting Parties to the European Charter for Regional or Minority Languages and their Regional or Minority Languages," it can be seen that sign language is not listed as a minority language in any of the European countries listed there. Instead, the list clearly shows that in all EU countries, in addition to the official national languages, many other languages are traditionally spoken. These languages are referred to as "minority languages." They are languages that often do not enjoy legal protection or the legitimacy of official national languages. Minority languages are typically spoken not only by a particular, often smaller group but are increasingly among those languages that are used less and less, falling into the category of "endangered languages." (...) In contrast to regional and minority languages, sign language is already recognized as an independent language in Germany (and other European countries). However, the European Charter for Regional and Minority Languages aims to protect languages traditionally used in a</i></p>
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også for å anerkjenne «ikke-territoriale språk» som minoritetsspråk. I utgangspunktet tilfredsstiller de nasjonale tegnspråkene i Europa, norsk tegnspråk inkludert, kravene som stilles i minoritetsspråkpakten artikkel 1: Norsk tegnspråk blir brukt innenfor staten Norge av et mindretall. Språket er forskjellig fra administrasjonsspråket i Norge. Språket har dessuten så mange språkbrukere at det rettferdiggjør statlige tiltak for å verne og fremme språket. Norsk tegnspråk kan ikke knyttes til et spesielt geografisk område innenfor Norges grenser, og er med det et ikke-territorielt språk. Minoritetsspråkpakten skiller mellom to grader av vern. Ifølge artikkel 2 er alle stater som er tilsluttet pakten, forpliktet til å la bestemmelsene i paktens del II gjelde for alle regions- eller minoritetsspråk i landet. Del II består bare av artikkel 7 «Mål og prinsipper», som forplikter statene på et overordnet plan til å anerkjenne språkene som kulturuttrykk, til å verne og fremme dem, og til å fjerne eventuelle hindringer som kan være egnet til å motvirke opprettholdelsen av språket eller til å sette det i fare. (...) I forbindelse med at Sverige sluttet seg til minoritetsspråkpakten, oppsto spørsmålet om svensk tegnspråk skulle omfattes av pakten. Det ble vist til at tegnspråkene i utgangspunktet oppfyller vilkårene for ikke-territoriale minoritetsspråk. Sentralt i begrunnelsen for pakten står nettopp at språk er sentrale kulturuttrykk. I en utredning om svensk tilslutning til minoritetsspråkpakten ble det uttrykt at svensk tegnspråk først og fremst ble betraktet som et kommunikasjonsmiddel for døve og ikke som et språk med en kulturell funksjon (SOU 1997:192). Den svenske tegnspråkutredningen fra 2006 (SOU 2006:54) avviser delvis det synet, og framhever at alle språk både er et kommunikasjonsmiddel og et middel for å skape kulturelt fellesskap. Utredningen påpeker at svensk tegnspråk oppfyller de grunnleggende vilkårene for å kunne regnes som ikke-territorielle minoritetsspråk. Samtidig ser utredningen likevel relevante forskjeller på talte minoritetsspråk og svensk tegnspråk, fordi døves tospråklighet i større grad kan sies å være monokulturell og det svenske tegnspråket i det store og hele formidler samme kultur som det svenske språket. Fra norsk side ble det av Stoltenberg II-regjeringen i språkmeldingen St.meld. nr. 35 (2008–2008) *Mål og mening. Ein heilskapleg norsk språkpolitikk* uttrykt interesse for å gi tegnspråkene folkerettslig anerkjennelse, men det ble påpekt at den gjeldende minoritetsspråkpakten er lite egnet til formålet, ettersom den er tilpasset talte språk. I stedet ble det argumentert for at norsk tegnspråk burde få en folkerettslig stilling som ikke er identisk med, men som tilsvarer det som gjelder språkene til nasjonale minoriteter. (...)”

<sup>13</sup> The German Association disagrees with the opinion of the government study. Statement issued by German NAD: Stellungnahme 02/2023: "Der Status der Deutschen Gebärdensprache muss systematisch und nachhaltig geschützt und gefördert werden! Erforderlich ist die Schaffung eines neuen eigenen Gebärdensprachgesetzes!" <http://www.gehoerlosen-bund.de/presse/stellungnahmen>

<sup>14</sup> Original text in German language: TEXT 1: "Gebärdensprache als Minderheitensprache?" <https://www.bundestag.de/resource/blob/691852/0de8b0fef05ad2f3e50d5e0612596450/WD-10-006-20-pdf-data.pdf>

"(...) Einer vom Europarat veröffentlichten Liste: „Vertragsstaaten der Europäischen Charta der Regional- oder Minderheitensprachen und ihre Regional- oder Minderheitensprachen“ (...) ist zu entnehmen, dass in **keinem** der dort aufgelisteten europäischen Länder die Gebärdensprache als Minderheitensprache aufgeführt ist. Vielmehr macht die Liste deutlich, dass in allen Ländern der EU neben den offiziellen Landessprachen, die Schutz und Anerkennung erfahren, viele andere Sprachen traditionell gesprochen werden. Diese Sprachen bezeichnet man als „Minderheitensprachen“. Es sind Sprachen, die oft weder einen rechtlichen Schutz genießen noch die Legitimation offizieller Landessprachen haben. Minderheitensprachen werden in der Regel nicht nur von einer besonderen, oft kleineren Gruppe gesprochen, zunehmend gehören sie auch zu denjenigen Sprachen, die immer weniger genutzt werden, die zu den sogenannten „gefährdeten Sprachen“ gehören.

„Regional- oder Minderheitensprachen“ im Sinne der Charta sind außerdem Sprachen, die traditionell in einem bestimmten Gebiet eines Staates von Staatsangehörigen dieses Staates verwendet werden, die eine Gruppe bilden, die zahlenmäßig kleiner ist als der Rest der Bevölkerung des Staates. Sie unterscheiden sich von den Amtssprachen des Staates, in dem sie anzutreffen sind und enthalten weder Dialekte der Amtssprache(n) des Staates noch die Sprachen von Zu- oder Einwanderern.

Im Gegensatz zu Regional- und Minderheitensprachen ist die Gebärdensprache in Deutschland (und anderen europäischen Ländern) bereits als eigenständige Sprache anerkannt, (...). Die Europäische Charta der Regional- und Minderheitensprachen zielt jedoch auf den Schutz von herkömmlicherweise in einem bestimmten Gebiet eines Staates gebrauchten Sprachen ab, Sprachen, die vom „Aussterben“ bedroht sind, da sie immer weniger verwendet werden. Auch wenn die Gruppe der Gehörlosen eine eigenständige Bevölkerungsgruppe mit identitätsstiftender sprachlicher Tradition und Kultur bilden, sind sie doch keine „Minderheit in einem Staatsgebiet“ im Sinne der Charta. Der von der Charta für Regional- und Minderheitensprachen garantierte „Schutz von herkömmlicherweise in einem bestimmten Gebiet eines Staates gebrauchten Sprache“ entfällt damit.

Mit einer Petition aus dem Jahr 2011 wurde beantragt, die deutsche Gebärdensprache als Minderheitensprache anzuerkennen. Der Petitionsausschuss hatte dies jedoch abgelehnt unter anderem mit der Begründung, dass die Gebärdensprache nicht als Minderheitensprache im Sinne der Europäischen Charta der Regional- und Minderheitensprachen zu qualifizieren sei. Mit der Charta sollten die traditionell in einem Vertragsstaat gesprochenen Sprachen als Teil des europäischen Kulturerbes bewahrt und gefördert werden. Weiter heißt es in der Begründung, die Gebärdensprache sei „keine Lautsprache, sondern eine spezielle Hilfs- und Ausdruckssprache, die neben Mimik und Körperhaltung auch Handzeichen verwendet. In den Anwendungsbereich der Sprachencharta fallen jedoch lediglich Lautsprachen.“

	<p><i>specific area of a state, languages that are threatened with "extinction" as they are used less and less. Although the deaf community constitutes a distinct population group with an identity-forming linguistic tradition and culture, they are not a "minority within a state territory" within the meaning of the Charter. The protection guaranteed by the Charter for Regional and Minority Languages for languages traditionally used in a specific area of a state therefore does not apply. In a petition from 2011, it was requested to recognize German sign language as a minority language. However, the petitions committee rejected this, among other reasons, on the grounds that sign language does not qualify as a minority language within the meaning of the European Charter for Regional and Minority Languages. The Charter aims to preserve and promote languages traditionally spoken in a contracting state as part of Europe's cultural heritage. Furthermore, the justification stated that sign language is "not a spoken language but a special auxiliary and expressive language that uses hand gestures in addition to facial expressions and body posture. However, only spoken languages fall within the scope of the language charter." (our translation)</i></p> <p>TEXT 2:<sup>15</sup></p> <p><i>"2.2. Minority Language</i>  <i>In current legal practice, minority languages are understood as spoken languages of a national minority, which typically resides in a specific territory and is traditionally located within the area of the present-day Federal Republic of Germany. These identity-affirming, historically developed languages may be threatened in their existence.</i>  <i>The Scientific Services of the German Bundestag discussed the question of whether sign language can be considered a minority language in 2020. Regarding the details and context, reference is made to this brief information. In principle: The starting point is the definition of</i></p>
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<sup>15</sup> Original text in German language: TEXT 2: Gebärdensprache Titel: Gebärdensprache als Amts- oder-Minderheitensprache oder Minderheitensprache <https://www.bundestag.de/resource/blob/914250/8943af0b2ee6b0633d84fce754b353e6/WD10-025-22-pdf-data.pdf>

#### „2.2. Minderheitensprache

In der derzeitigen Rechtspraxis werden Minderheitensprachen als Lautsprachen einer nationalen Minderheit verstanden, die in der Regel in einem bestimmten Territorium wohnt und traditionell auf dem Gebiet der heutigen Bundesrepublik Deutschland beheimatet ist. Diese identitätsstiftenden, geschichtlich gewachsenen Sprachen können in ihrer Existenz bedroht sein.

Die Wissenschaftlichen Dienste des Deutschen Bundestages haben die Frage, ob die Gebärdensprache eine Minderheitensprache sein kann, im Jahr 2020 erörtert.<sup>9</sup> Hinsichtlich der Einzelheiten und des Kontextes sei auf diese Kurzinformation verwiesen. Grundsätzlich gilt:

Ausgangspunkt ist die Definition der „Regional- oder Minderheitensprachen“ in der Europäischen Charta der Regional- oder Minderheitensprachen<sup>10</sup>, die in der Präambel anerkennt, „daß der Schutz der geschichtlich gewachsenen Regional- oder Minderheitensprachen Europas, von denen einige allmählich zu verschwinden drohen, zur Erhaltung und Entwicklung der Traditionen und des kulturellen Reichtums Europas beiträgt.“ (page 7)

Das damalige Ministerium des Innern, für Bau und Heimat konkretisierte dies folgendermaßen: „Die Bundesregierung sieht als nationale Minderheiten jene Gruppen der Bevölkerung an, die folgenden Kriterien entsprechen: ihre Angehörigen sind deutsche Staatsangehörige, sie unterscheiden sich vom Mehrheitsvolk durch eine eigene Sprache, Kultur und Geschichte (eigene Identität), sie wollen diese Identität bewahren, sie sind traditionell (also in der Regel seit Jahrhunderten) in Deutschland heimisch, sie leben innerhalb Deutschlands in angestammten Siedlungsgebieten. Während die dänische Minderheit, die friesische Volksgruppe und das sorbische Volk traditionell in bestimmten, geografisch fest umrissenen Regionen Deutschlands siedeln, leben die deutschen Sinti und Roma – meist in kleinerer Zahl – nahezu in ganz Deutschland. Das Merkmal der traditionellen Ansiedlung auf dem Gebiet der Bundesrepublik Deutschland unterscheidet die nationalen Minderheiten von Zuwanderergruppen, die nicht traditionell in Deutschland gelebt haben. Die jüdische Gemeinschaft in Deutschland betrachtet sich – anders als in einigen anderen Staaten – nicht als nationale Minderheit, sondern als Glaubensgemeinschaft.“ Es folgert: „Für die Menschen, die eine Regional- oder Minderheitensprache sprechen, ist diese identitätsstiftend. Der Verlust ihrer Sprache bedeutet gleichsam den Verlust ihrer Identität.“ (page 8)

Aus der Verwendung des Begriffs „Mehrheitsvolk“ durch das damalige Bundesministerium des Innern, für Bau und Heimat kann umgekehrt geschlossen werden, dass aus Sicht des Ministeriums Minderheiten ein „Minderheitenvolk“ sein müssen. Dies bedeutet, dass eine bestimmte Anzahl von Menschen mit bestimmten Charakteristika grundsätzlich keine Minderheit in diesem Zusammenhang ist. Es müssen vielmehr Eigenschaften hinzutreten, die charakteristisch für ein Volk sind. Der Petitionsausschuss des Deutschen Bundestages interpretierte die Europäische Charta der Regional- und Minderheitensprachen – ohne nähere Begründung – dahingehend, dass in den Anwendungsbereich der Charta lediglich Lautsprachen fielen. Ebenfalls ohne nähere Begründung wird in der Literatur teilweise die Auffassung vertreten, dass durch die Anerkennung der „Deutschen Gebärdensprache“ in § 6 BGG die Betroffenen in einer „politisch zweifelhaften“ Weise diskriminiert würden: Durch diese „besondere Minderheitensprache“ würden die „Nutzer quasi zu Fremdsprachlern“.

#### „3. Deutsche Gebärdensprache als Minderheitensprache?

Die Deutsche Gebärdensprache ist nach der derzeitigen Rechtspraxis keine Minderheitensprache. nach den Kriterien der bisherigen Rechtspraxis kann sie als solche auch nicht anerkannt werden. Eines der zentralen Kriterien ist u.a. ein – nicht näher ausgeführter – ethnischer Bezug (s. dazu 2.2 auf S. 7 ff [8]). Dieser ist bei der Gruppe derjenigen Menschen, die die Deutsche Gebärdensprache verwenden, nicht ersichtlich.“ (page 10)

	<p><i>"Regional or Minority Languages" in the European Charter for Regional or Minority Languages, which recognizes in the preamble "that the protection of the historically developed regional or minority languages of Europe, some of which are gradually disappearing, contributes to the preservation and development of Europe's traditions and cultural richness." The former Ministry of the Interior, Building and Homeland specified this as follows: "The Federal Government regards as national minorities those population groups that meet the following criteria: their members are German nationals, they differ from the majority people by their own language, culture, and history (own identity), they want to preserve this identity, they are traditionally (thus usually for centuries) indigenous to Germany, they live within Germany in traditional settlement areas. While the Danish minority, the Frisian ethnic group, and the Sorbian people traditionally settle in certain, geographically well-defined regions of Germany, the German Sinti and Roma - mostly in smaller numbers - live almost throughout Germany. The characteristic of traditional settlement in the territory of the Federal Republic of Germany distinguishes the national minorities from immigrant groups that have not traditionally lived in Germany. Unlike in some other states, the Jewish community in Germany does not consider itself a national minority but a religious community." It concludes: "For the people who speak a regional or minority language, this language is identity-affirming. The loss of their language is tantamount to the loss of their identity." From the use of the term "majority people" by the former Federal Ministry of the Interior, Building and Homeland, it can be concluded conversely that from the ministry's point of view, minorities must be a "minority people." This means that a certain number of people with certain characteristics are not fundamentally considered a minority in this context. Rather, additional characteristics characteristic of a people must be added. The Petitions Committee of the German Bundestag interpreted the European Charter for Regional and Minority Languages - without further explanation - to mean that only spoken languages fell within the scope of the Charter. Also, without further explanation, some literature partially holds the view that the recognition of "German Sign Language" in § 6 BGG would discriminate against those affected in a "politically questionable" manner: Through this "special minority language," the "users are quasi made into foreign language speakers."</i></p> <p><i>"3. German Sign Language as a Minority Language?</i></p> <p><i>German Sign Language is not currently recognized as a minority language according to current legal practice. According to the criteria of previous legal practice, it cannot be recognized as such. One of the central criteria is, among other things, an - not further elaborated - ethnic reference (...). This is not apparent in the group of people who use German Sign Language."</i></p> <p><i>(our translation)</i></p>
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17) For the record, we note the following observations:

Recommendation 1492 (2001) <sup>16</sup> Parliamentary Assembly <sup>17</sup>	12. The Assembly therefore recommends that the Committee of Ministers: 12.13 give the various sign languages utilised in Europe a protection similar to that afforded by the European Charter for Regional or Minority Languages, possibly by means of the adoption of a recommendation to member states;
Reply from the Committee of Ministers (2001) <sup>18</sup>	With regard to the recommendation that the various sign languages used in Europe be given a protection similar to that afforded by the European Charter for Regional or Minority Languages, the Committee of Ministers takes note of the opinions of the Committee of Experts of the European Charter for Regional or Minority Languages and of the Committee on the Rehabilitation and Integration of People with disabilities (Partial Agreement) (CD-P-RR) (Appendix 3 and 4 respectively of the current reply).  ANNEXE 3

<sup>16</sup> <https://pace.coe.int/en/files/16861/html>

<sup>17</sup> <https://pace.coe.int/en/files/16861/html>

<sup>18</sup> <https://assembly.coe.int/nw/xml/XRef/X2H-Xref-ViewHTML.asp?FileID=9776&lang=EN>

	<p><b>Opinion of the Committee of Experts of the European Charter for Regional or Minority Languages on Recommendation 1492 of the Parliamentary Assembly on the Rights of National Minorities</b></p> <p><i>As for sign languages, it must be recognised that the Charter was not conceived to meet their specific needs. Sign languages are present in all European States and they are not at present the subject of a special international instrument addressing their particular needs, whether from a social, cultural or human rights perspective. The Committee of Experts would welcome an initiative aiming to promote and protect sign languages through a separate instrument that would take into account the special situation and needs of the users of these languages.</i></p> <p>ANNEXE 4</p> <p><b>Committee on the rehabilitation and integration of people with disabilities (Partial Agreement) (CD-P-RR).</b></p> <p><b>7. Sign language users form a minority.</b> In keeping with the same European Parliament Resolution, the CD-P-RR considers that sign languages are the preferred or only language of large numbers of deaf people. It has been estimated that the ratio of pre-lingually deaf persons is approximately 1 in 1000. However, since also post-lingually deaf persons, families of deaf children, teachers, social workers, etc. need to use sign languages, the number of sign language users is considerably larger than the number of deaf persons. Sign language users are a minority, since they are a group numerically inferior to the rest of the population of a state, in a non-dominant position, possessing linguistic characteristics differing from those of the rest of the population and show, if only implicitly, a sense of solidarity, directed towards preserving what constitutes their common identity, including their culture, traditions and language (cf the proposed definition of “national minority” in Parliamentary Assembly Recommendation 1201 (1993)). Both Finland and Portugal have already enshrined the rights of sign language users in their Constitutions.</p> <p><b>8. Sign languages as non-territorial languages.</b> Sign languages can, in principle, be regarded as non-territorial languages. It is pertinent to note that sign languages meet the definition criteria of non-territorial languages as set out in the European Charter for Minority or Regional Languages, i.e. “Languages used by nationals of the state which differ from the language or languages used by the rest of the state’s population but which, although traditionally used within the territory of the state, cannot be identified with a particular area thereof.” (Part I, Article 1c.) Sign languages are typically used throughout the country that they are native to: British Sign Language in Great Britain, French Sign Language in France, German Sign Language in Germany, Italian Sign Language in Italy, etc. However, it is worth noting that in some countries more than one sign language may exist. These sign languages are used in certain geographical areas only and thus meet the definition of regional minority languages. For example: In Spain, Catalan Sign Language is used in Catalonia, and Galician sign Language in Galicia; in Belgium, Flemish Belgian Sign Language, Belgian French Sign Language, and German Sign Language are used; in Switzerland, Swiss-German, Swiss-French and Swiss-Italian Sign Language(s) are used; in Finland, Finnish Sign Language and Finnish-Swedish Sign Language are used.</p> <p><b>9. Sign languages and linguistic and cultural diversity.</b> Sign language users are a cultural and linguistic minority. In relation to the European Parliament Resolution on sign languages of 18 November 1998, the CD-P-RR considers that every one of the different sign languages used in Europe has its specific cultural identity. In accordance with the Council of Europe Declaration on cultural diversity, adopted by the Committee of Ministers on 7 December</p>
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		<p>2000, member states should develop and/or maintain measures to sustain, protect and promote linguistic and cultural diversity, in order to enhance pluralism and multi-cultural societies in Europe. Also sign languages should be recognised as an expression of cultural wealth. They constitute an important element of Europe's linguistic and cultural heritage."</p>
Recommendation (2003) <sup>19</sup>	1598	<p>1. The Parliamentary Assembly recalls its Recommendation 1492 (2001) on the rights of national minorities, and particularly paragraph 12.xiii concerning sign languages.</p> <p>2. The Assembly takes note of the reply by the Committee of Ministers to this recommendation, contained in Document 9492. It regrets that the Committee of Ministers did not make a pronouncement on the opinions delivered by the Committee of Experts of the European Charter for Regional or Minority Languages (ETS No. 148) and by the Committee on the Rehabilitation and Integration of People with Disabilities (Partial Agreement). This reply warrants, if any justification were needed, the Parliamentary Assembly's concern that the rights of sign language users should be incorporated into a specific legal instrument, or into an additional protocol to the charter, without prejudging the position that may be adopted by the organisations representing deaf people.</p> <p>3. The Assembly recognises sign languages as the expression of Europe's cultural wealth. They are a feature of Europe's linguistic and cultural heritage.</p> <p>4. The Assembly also recognises sign languages as a complete and natural means of communication for deaf people.</p> <p>(...)</p> <p>9. For the above reasons, and in the knowledge that only action at European level will afford a solution to this problem, the Assembly recommends that the Committee of Ministers devise a specific legal instrument on the rights of sign language users, and accordingly:</p> <p>9.1 instruct the relevant bodies of the Council of Europe to undertake a preparatory study in consultation with national experts and representatives of the deaf community in order to clarify outstanding issues in regard to the protection of the use of sign languages;</p> <p>9.2 define clear goals to be achieved, exact deadlines to be met, and resources and methods to be used, founded on a full study of requirements with the mandatory participation of associations representing the users of these languages;</p> <p>9.3 consider drafting an additional protocol to the European Charter for Regional or Minority Languages incorporating sign languages into the charter, among the non-territorial minority languages."</p>
Reply from the Committee of Ministers (2004) <sup>20</sup>		<p>1. The Committee of Ministers has been paying sustained attention to the question concerning the protection of sign languages and the rights of their users since the adoption of its reply to Parliamentary Assembly Recommendation 1492 (2001) on the rights of national minorities, which contained a paragraph on sign languages, and, more particularly since the Assembly's Recommendation 1598 (2003) on protection of sign languages in the member states of the Council of Europe.</p> <p>(...)</p>
Report of the Committee on Equality and Non-Discrimination (rapporteur: Ms Miren		<p>2. The Parliamentary Assembly believes that official recognition of sign languages can make all the difference in terms of access to education, public services, employment and participation in political life. It refers to its Recommendation 1492 (2001) on the rights of national minorities, in particular its paragraph 12.xiii on sign languages, and Recommendation 1598 (2003) on the protection of sign languages in the member States of</p>

<sup>19</sup> <https://pace.coe.int/en/files/17093/html>

<sup>20</sup> <https://assembly.coe.int/nw/xml/XRef/X2H-Xref-ViewHTML.asp?FileID=10573&lang=EN>

<p>Edurne Gorrotxategui) (2018)<sup>21</sup></p>	<p><i>the Council of Europe in which the Assembly recognises sign languages as “the expression of Europe’s cultural wealth” and took the view that “official recognition of these languages will help deaf people to become integrated into society and gain access to justice, education and employment”. It also refers to its Resolution 2155 (2017) “The political rights of persons with disabilities: a democratic issue”, which called for official recognition of sign languages.</i></p> <p><i>(...)</i></p> <p><i>5. In the light of these considerations, the Assembly calls on Council of Europe member States to: (...)</i></p> <p><i>5.11 provide, on a voluntary basis, information on the use and protection of sign languages to the Committee of Experts of the European Charter for Regional or Minority Languages which may be useful in the event of future discussions on this topic;</i></p> <p><i>(...)</i></p> <p><i>19. The European Charter for Regional or Minority Languages (ETS No. 148) does not mention sign languages, so their use is not discussed during monitoring visits conducted by the Committee of Experts of the Charter. Finland sends the Committee information on the protection and use of sign languages in its national report. Sign languages are clearly not regional languages but they could come under the definition of minority languages as they are used by a minority of the population in each State. An official minority language status could increase the protection of sign languages.</i></p>
<p>Parliamentary Assembly (2018)<sup>22</sup></p>	<p><i>2. The Parliamentary Assembly believes that the official recognition of sign languages can make all the difference in terms of access to education, public services, employment and participation in political life. It refers to its Recommendation 1492 (2001) on the rights of national minorities, in particular its paragraph 12.xiii on sign languages, and Recommendation 1598 (2003) on the protection of sign languages in the member States of the Council of Europe, in which it recognises sign languages as “the expression of Europe’s cultural wealth” and took the view that “official recognition of these languages will help deaf people to become integrated into society and gain access to justice, education and employment”. It also refers to its Resolution 2155 (2017) “The political rights of persons with disabilities: a democratic issue”, which calls for the official recognition of sign languages.</i></p> <p><i>(...)</i></p> <p><i>5. In the light of these considerations, the Assembly calls on Council of Europe member States to:</i></p> <p><i>5.11 provide, on a voluntary basis, information on the use and protection of sign languages to the Committee of Experts of the European Charter for Regional or Minority Languages (COMEX) which may be useful in the event of future discussions on this topic;</i></p>
<p>Committee of Ministers Reply to Recommendation (2019)<sup>23</sup></p>	<p><i>2. The Committee of Ministers concurs with the Parliamentary Assembly of the importance of sign languages as natural languages of deaf persons and welcomes the fact that several member States grant the status of official language to their national sign languages. It recognises that it would be of importance to improve the understanding of how sign languages are protected and promoted in all Council of Europe member States. Referring to paragraph 4.3 of the recommendation, it underlines however that the European Charter for Regional or Minority Languages was not set up or drafted so as to protect sign languages and that its Committee of Experts</i></p>

<sup>21</sup> Report | Doc. 14660 | 30 October 2018 <https://pace.coe.int/en/files/25133/html>

<sup>22</sup> Recommendation 2143 (2018) <https://pace.coe.int/en/files/25212/html>

<sup>23</sup> Reply to Recommendation | Doc. 14892 | 21 May 2019 <https://pace.coe.int/en/files/27705/html>

	<p>is at present not in a position to request States to provide information on the status and the protection of sign languages.</p> <p>(...)</p> <p>8. In the light of these elements, the Committee of Ministers has considered with interest the Assembly's proposal to set up a working group on the status and protection of sign languages in the Council of Europe member States with a view to the possible drafting of standards for the protection of sign languages. It will consider the possibility of exploring further this subject within the Council of Europe framework with a view to protecting and promoting sign languages in Europe. However, the Committee of Ministers underlines that the setting up of additional activities and/or structures seems difficult, in view of the current budgetary situation, unless they could be based on the existing budget envelope of the Organisation's competent entities. Finally, it informs the Assembly that the Steering Committee for Education Policy and Practice and the European Centre for Modern Languages will organise a conference on sign languages in Graz, on 5 and 6 December 2019, to give visibility to sign languages.<sup>24</sup></p>
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## C. WORKING GROUP'S STATEMENT

18) Within the scope of the WG's mandate, the main question is whether sign languages can correspond to the category of minority language established by the ECRML. **This is the question we will seek to clarify and respond to in the following observations. Firstly, we will examine, if any, the possible studies, or observations from European countries regarding the case of sign languages related to the ECRML. Next, we will clarify the criteria/definition applicable to European regional or minority languages in the case of sign languages.**

19) According to the ECRML, which is originally intended for spoken languages, we may encounter some difficulties in properly interpreting the expression "regional or minority languages spoken" within the scope of Article 2(1), which states:

Article 2 – Undertakings	
1.	Each Party undertakes to apply the provisions of Part II to all the <b><u>regional or minority languages spoken</u></b> within its territory and which comply with the definition in Article 1. (emphasis added)

20) Although this version has some aspects that may be subject to different interpretations in various official and unofficial versions. We can compare the translations that render:

France	1 Chaque Partie s'engage à appliquer les dispositions de la partie II à l'ensemble des <b><u>langues régionales ou minoritaires pratiquées</u></b> sur son territoire, qui répondent aux définitions de l'article 1. (emphasis added)
German	1. Jede Vertragspartei verpflichtet sich, Teil II auf alle in <b><u>ihrem Hoheitsgebiet gebrauchten Regional- oder Minderheitensprachen</u></b> anzuwenden, die der Begriffsbestimmung in Artikel 1 entsprechen. (emphasis added)

<sup>24</sup> ECML 25th Anniversary Conference Special Session: Protecting and Promoting Sign Languages in Europe (David Little Rapporteur). report on sign languages event December 6 2019.pdf (ecml.at) Especially Sixto Molina (2-3) refers to possible needs to incorporate sign languages into ECRML.

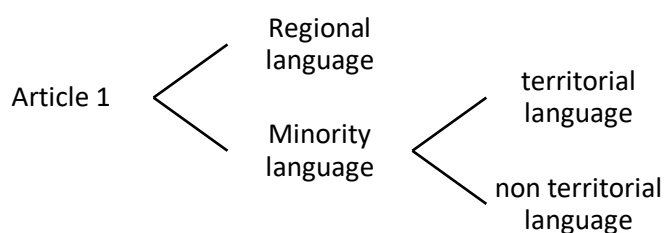
Spain	1. Cada Parte se compromete a aplicar las disposiciones de la parte II al conjunto de las <u>lenguas regionales o minoritarias habladas</u> en su territorio, que respondan a las definiciones del artículo 1. (emphasis added)
Norway	1. Hver av partene forplikter seg til å anvende bestemmelsene i Del II <u>på alle regions- eller minoritets-språk</u> innen sitt territorium og rette seg etter definisjonen i Artikkel 1. (emphasis added)
Portugal	1. Cada uma das Partes compromete-se a aplicar as disposições da Parte II a todas as <u>línguas regionais ou minoritárias utilizadas</u> no seu território e que se enquadrem na definição do artigo 1.º (emphasis added)

- 21) In the interpretation of the Charter the Committee of Experts welcomes the fact that regional or minority languages are learned (and used) by persons who are not native speakers thereof (see for instance in 7.1.g *"the provision of facilities enabling non-speakers of a regional or minority language [...] to learn it if they so desire"*). It should be stressed (with numbers where possible) that there are learners and users of Sign Language who are not people with disabilities.
- 22) A defence of Sign Language should profit from the fact that the text of the Charter uses the term "users" (19 times) not "speakers" to refer to people who communicate in the relevant regional or minority language. The only time "speakers" appears is in "non-speakers". The two occurrences of "spoken" can be assimilated to "used". A non-written norm that is heading its way in the Committee of Experts says that evaluation reports should favour the word "users" over "speakers".
- 23) **As different interpretations can be seen in translations that use terms such as “spoken language” or “used language.”** In some cases, the characteristics of the spoken or used language for the designation of sign languages lend themselves to an evolutionary and flexible interpretation of the ECRML. English, for example, is more generic than French, which has inherent contexts. For instance, the German expression indicates that it is the language used. Consequently, **the WG understands that it is pertinent to have a flexible and non-exclusive (i.e. modality-inclusive) interpretation applicable to sign languages, in the sense that all languages, spoken or signed, have the purpose of conveying ideas and thoughts through words, involving an act of speaking, practising, or using a language to convey words.**
- 24) Moreover, there is a modality-inclusive notion of a language in the CEFR framework which has been published by CoE: *“The Common European Framework of Reference for Languages: Learning, teaching, assessment (CEFR)”* (2020: 22): *“(…) adapting the descriptors to make them gender-neutral and “modality-inclusive” (and so applicable also to sign languages), sometimes by changing verbs and sometimes by offering the alternatives “speaker/signer”. In*



*relation to the final point above, the term “oral” is generally understood by the deaf community to include signing. However, it is important to acknowledge that signing can transmit text that is closer to written than oral text in many scenarios. Therefore, users of the CEFR are invited to make use of the descriptors for written reception, production and interaction also for sign languages, as appropriate. And for this reason, the full set of illustrative descriptors has been adapted with modality-inclusive formulations (...)*<sup>25</sup>

25) Article 1 of the ECRML delineates key terms defining the scope of regional or minority languages, each serving distinct purposes.



26) Conversely, Article 1 of the ECRML sets forth criteria under which its provisions do not apply.

official language(s) of that State      languages of migrants      dialects of the official language(s) of the State

27) Assessing whether sign languages align with the definition of “regional language” or “minority language” outlined in Article 1 entails considering essential characteristics. **The WG offers essential guidance for interpreting this definition.**<sup>26</sup>

<sup>25</sup> The Common European Framework of Reference for Languages: Learning, teaching, assessment (CEFR, 2020). 16809ea0d4 (coe.int)

<sup>26</sup> Nogueira López, Alba, Ruiz Vieytes, Eduardo J., & Urrutia Libarona, Iñigo (ed.). (2012). *Shaping language rights*. Strasbourg: Council of Europe; Woehrling, Jean-Marie. (2005). *The European Charter for Regional or Minority Languages. A critical commentary*. Strasbourg: Council of Europe.



LINGUISTIC BASIS	HISTORICAL BASIS	TERRITORIAL/GEOGRAPHIC BASIS
"means languages that are"	"traditionally used"	"used within a given territory of a State"
SOCIOLINGUISTIC BASIS	SOCIOPOLITICAL BASIS	
"by nationals of that State who form a group numerically smaller than the rest of the State population"	"different from the official language(s) of that State"	

#### ***a) Linguistic Basis:***

The initial factor in delineating the linguistic nature of a language eligible for protection under the ECRML is pivotal. Generally, **sign languages unequivocally meet the criteria of being fully-fledged languages with all properties at all linguistic levels (phonetics, phonology, lexicon, morphosyntax, semantics, discourse and pragmatics) which have been transmitted and used in sign language communities since centuries.**<sup>27</sup> This underscores that sign languages are not regarded as inferior or secondary languages; rather, they are authentic languages deserving of protection under the Charter on an equal linguistic footing.

Interestingly, the exclusion only concerns dialects or languages associated with migrant groups. Article 1 of the Charter explicitly excludes "dialects of official languages", which leaves open the possibility of including dialects of non-official languages, for example.

This emphasizes the need to address the language and dialect specifics under the umbrella of the ECRML, considering the different interpretations of this distinction. Despite the absence of a clear delineation between language and dialect in the ECRML Explanatory Report, it is imperative for national deaf associations to conduct comprehensive studies. These studies should aim to elucidate the essence of national sign languages, distinguishing them from respective dialects, notwithstanding their contribution to the linguistic idiosyncrasy of the national sign languages.

**We underscore the distinctiveness of sign languages within their respective State, akin to other spoken languages, each with its sign language employed within territorial boundaries. Notably, Belgium boasts three regional sign languages, while Spain exhibits two**

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<sup>27</sup> Brentari, D. (Ed.). (2010). Sign Languages. Cambridge: Cambridge University Press.; Mathur, G., & Rathmann, C. (2014). The Structure of Sign Languages. The Oxford Handbook of Language Production, 379.; Meier, R. P. (2002). Why different, why the same? Explaining effects and non-effects of modality upon linguistic structure in sign and speech. Modality and structure in signed and spoken languages, 1-25. Meier, R. P., Rathmann, C., & Shield, A. (2023). Editorial: Modality and language acquisition: how does the channel through which language is expressed affect how children and adults are able to learn?. Frontiers in psychology, 14, 1334171. <https://doi.org/10.3389/fpsyg.2023.1334171>; Pfau, R., Steinbach, M. & Woll, B. (2012). Sign Language: An International Handbook. Berlin, Boston: De Gruyter Mouton. <https://doi.org/10.1515/9783110261325>



autonomous sign languages — Catalan in the Catalonia region and Spanish, extending nationally. Similarly, Switzerland showcases diverse sign languages across German, French, and Italian-speaking regions. It is paramount to discern between the safeguarding of sign languages, whether at the national or regional level under the purview of the Charter.

The ECRML empowers states, in collaboration with national associations of the deaf, to meticulously scrutinise the sociolinguistic dynamics surrounding sign languages, spanning both national and regional dimensions. A perception of the diversity that is inherent to sign languages, as well as their dialectal richness, is necessary since they are an integral part of linguistic identity. **The ECRML does not force linguistic homogeneity but offers protection to only the languages that are formally recognized by the state, as per their respective sociopolitical and sociolinguistic context.**

***b) Historical Basis:***

The ECRML extends protection exclusively to languages with historical roots. However, the Charter refrains from providing a precise definition of “traditionality” inherent in a language's existence. Generally, historical languages exhibit a consistent pattern of usage across various historical epochs, substantiating their continued existence.

**National sign languages boast a rich tradition that sustains their historical lineage dating back to the 16th century.** Despite originating and evolving during this period, many sign languages have persevered against numerous threats of endangerment or extinction. Moreover, in addition to traditionality, the Charter mandates that the language in question be utilised by the state's nationals. **This criterion poses no inherent challenges, given that users of sign languages hold nationality and are entrenched in the sociolinguistic and sociohistorical fabric of the state's territory where they reside.**

***c) Territorial or Geographic Basis:***

Geographical or territorial considerations constitute fundamental criteria outlined in Article 1 of the European Charter. Sign languages are utilised within the confines of the state's territory, as stipulated in the article. This territorial aspect must be substantiated, even if specific territorial references are absent under Article 1(b) or (c).

Flexibility in interpreting territorial elements is crucial for delineating the concept of a minority language, albeit with varying purposes. **Sign languages, on one hand, possess a national geographic foundation spanning the entire territory of the state.** This distinction sets them apart from other sign languages and underscores their usage by a minority group distinct



from the dominant society's majority language. This geographical basis aligns with the notion of “mode of expression” articulated in paragraph (b) of the same article, necessitating measures to accommodate enough sign language users within the state's territory.

Conversely, **sign languages can also be classified as non-territorial languages, as per Article 1(a)(b).** While meeting the essential criteria outlined in the article, these languages lack a territorial basis. Consequently, they are considered non-territorial languages protected under Part II of the European Charter. Specifically, Article 7(5) affords protection to non-territorial languages solely through the provisions of Article 7, rather than Part III. **This intermediate level of protection warrants further dialogue and collaboration between national associations of the Deaf and authorities to ensure adequate conditions for sign languages' equitable protection, particularly in comparison to spoken languages covered under Part III.**<sup>28</sup>

***d) Sociolinguistic Basis:***

The cornerstone of a minority language lies in the quantitative aspect of its user base. For a language to qualify as a minority language under the European Charter, it must boast an adequate and enough users eligible for protection. **While Article 1 of the Charter does not formally specify the *minimum* user threshold,** the presence of a viable user population is indispensable for the language's sociolinguistic vitality. Preserving and promoting the use of sign languages hinges upon their active usage by a thriving community, rather than sporadic or artificial instances of expression.

**However, quantifying the user base of sign languages poses challenges in Europe due to the lack of reliable data. Nonetheless, qualitative evidence underscores that sign language users constitute a distinct minority within the general population.** These users predominantly employ sign language in their daily interactions alongside the majority language of the state. For satisfying this data gap, **the WG advocates co-operation between deaf national associations and governments to work out internationally approved statistical methods to identify sign language users.** Besides, use by a numerically smaller group of nationals, plus its identification with the state territory, renders the sign languages minority languages de facto that have to be safeguarded under the European Charter.

***e) Sociopolitical Basis:***

Article 1 of the ECRML delineates that regional or minority languages cannot attain formal recognition as the official language of the State, thus precluding them from the protective

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<sup>28</sup> Ramallo, Fernando (2019). «El “esfuerzo estatal” como modelo de cómputo del cumplimiento de la parte III de la Carta Europea para las Lenguas Regionales o Minoritarias», *Revista de Llengua i Dret*, 72, 146-167. <http://dx.doi.org/10.2436/rld.i72.2019.3353>



ambit of the European Charter. Notably, the definition and implications of official language status vary across national legal frameworks, warranting clarification. The concept of an official language should be distinguished from that of official status extended across the entire state territory. While several legal statutes may categorise sign languages under different designations such as “recognized language”, “mother tongue”, or “main language”, their status often falls short of being declared an official state language.<sup>29</sup>

**Sign languages are typically recognized as independent languages, bearing certain attributes of an official state language. However, they diverge from the concept of an official state language due to their limited usage among the majority of nationals and distinctiveness from languages primarily used by the deaf community.** This underscores a critical differentiation between sign languages and official state languages within the Charter's framework.

Several legal statutes concerning sign languages encompass a diverse array of juridical categories of varying constitutional or legal nature. Often, they define sign languages primarily within the context of disability and, to a lesser extent, as languages in and of themselves. **However, this legal recognition possesses its own juridical characteristics, with asymmetric legal efficacy, but it does not equate to the same status as the official language of the State.**<sup>30</sup> It is worth emphasising that legal statutes pertaining to sign languages share some characteristics with language officialization. Furthermore, it is important not to conflate the issues of legal recognition of these languages with the declaration of incorporation of minority languages within the scope of the Charter. The Charter does not interfere with the internal affairs of States regarding whether they have declared sign languages as “official” languages, as this is a separate matter from the Charter's purview. Indeed, for example, sign languages that are constitutionally recognized have their specificities reinforced within their respective Constitutions and may resemble characteristics of an intersecting legal status between the official language and the minority language. **Nevertheless, national legislations formally recognizing sign languages do not preclude the possibility of incorporating them as protected languages under the Charter, provided they meet the requirements outlined in the aforementioned article.**

Alternatively, the legal status of sign languages may align with the notion of the “least used official language” as stipulated in Article 3 of the European Charter. While this legal expression lacks clarity, **the Charter seeks to address such legal nuances to prevent the exclusion of sign languages from the protective purview granted by the Charter. Given their sociolinguistic**

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<sup>29</sup> Sousa, Filipe Venade de (2022). Essential framework of the legal status of sign language: recognition and officiality. *Revista de Llengua i Dret*, pp. 177-193. <http://revistes.eapc.gencat.cat/index.php/rld/article/view/10.2436-rld.i78.2022.3843>

<sup>30</sup> Sousa, Filipe Venade de. (2023). What legal recognition? What does the official language declaration concerning sign language consist of? Blog *Revista de Llengua i Dret*. <https://eapc-rld.blog.gencat.cat/2023/03/16/what-legal-recognition-what-does-the-official-language-declaration-concerning-sign-language-consist-of-filipe-venade-de-sousa/>



and sociopolitical vulnerabilities, sign languages share comparable circumstances with regional or minority languages, warranting protection under the Charter.

28) Based on the WG's analysis, **it is evident that the situation of sign languages in Europe can conform to the parameters outlined by the ECRML.** It is imperative to acknowledge the specific sociolinguistic and sociopolitical realities of sign languages, which may necessitate adaptation to the level of protection afforded by the ECRML. Therefore, **the WG strongly advocates for national associations of the deaf to delve deeper, supplementing the requisite criteria to align with the essential parameters of the European Charter. This includes justifying national peculiarities to ascertain the appropriate number of sign language users and delineating criteria to distinguish between the official status of sign language and that of the official state language.**

29) Importantly, the use of the above-identified expression has contexts according to the situation of each language, as per Article 2(1) of the same Charter. **This means that the ECRML can be open to the linguistic-cultural diversity of languages existing in Europe, irrespective of language modalities (i.e. spoken and signed) that correspond to the language's linguistic status.** Because the notions found in Article 1 are open, according to the explanatory report of the ECRML, and adaptable to widely used terminologies. In other words, the objective of the ECRML finds a way to designate the scope of the application of the ECRML reasonably common to the languages covered by the European Charter.

#### **D. CONCLUSION**

30) The concept of “regional language” or “minority language” within the ECRML inherently encompasses European sign languages. While the charter does not explicitly exclude sign languages, its implicit inclusivity suggests the potential inclusion of sign languages into its protective framework, ensuring linguistic equality with other languages. Despite possible terminological imprecision in Article 1, this does not imply a rigid conceptual framework; rather, it necessitates an adaptable interpretation to include languages used in various language modalities (i.e. spoken languages in audio-vocal modality and sign languages in visuo-gestural modality).



- 31) Sign languages possess profound linguistic and cultural significance, akin to that of regional or minority languages, reflecting inherent linguistic characteristics shaped by their respective sociolinguistic contexts.** Portraying European sign languages as regional or minority languages underscores their historical and cultural relevance, recognized, and endorsed by various stakeholders who appreciate the linguistic-cultural and identity-related nuances expressed within these communities.
- 32) Notably, recommendations and resolutions from the Council of Europe, particularly by the Parliamentary Assembly and the Committee of Ministers, tacitly acknowledge the potential inclusion of sign languages within the protective ambit of the ECRML.** The evolving consensus over recent decades underscores the growing recognition of the necessity to explore and incorporate sign languages within the ECRML's framework, highlighting the imperative of establishing a suitable legal framework to safeguard sign languages effectively.
- 33) Drawing from governmental positions and other observations, a compelling argument emerges for a definition applicable to sign languages that acknowledges their linguistic parity with spoken languages.** Such a definition should bridge the formal correspondence between spoken and sign languages, recognizing their substantial linguistic alignment and thereby affirming the principle of substantial equivalence under the ECRML.
- 34) Emphasising the need for an inclusive definition of the ECRML for sign languages, it is justified to apply the conceptual criteria of Article 1 to historically established sign languages within respective European countries.** This inclusive approach, rooted in the recognition of the minority character of sign languages, should be accompanied by tailored criteria that address the unique sociolinguistic contexts in which sign languages operate, thereby ensuring their effective integration and protection within the ECRML framework.
- 35) Thus, according to Article 1(a)(c), sign languages in Europe can correspond to the essential definition of a minority language.** In other words, they meet the essential requisites:
- a. Sign languages are *“traditionally used within a given territory of a State”*. They are traditional languages with a historical basis that originates the existence and development of the respective sign language, which is linked to the geography and history of their countries (Article 1(a)(i)).



- b. Sign languages are used by “*nationals of that State who form a group numerically smaller than the rest of the State’s population*”. They are indeed languages used by many deaf people who constitute and develop their activities within the recognized deaf community by the State according to its respective national legislations (Article 1(a)(i)).
- c. Sign languages are legally recognized and distinct from the official languages of the State (Article 1(a)(ii)). The problematic distinction between the legal status of sign languages that are formally recognized by different legal categories and the status of the official language. The formulation of the definition in Article 1(a) may pose some problems of adequate interpretation regarding what constitutes the official language. This article has a restrictive formulation that refers to the “official language of the State” and not just any official language. It refers to languages declared official by the State. The opinion of the WG believes it is pertinent to study and deepen the legal implications of the status of formally recognized sign languages to properly frame the protection provided by the European Charter.
- d. **Sign languages can, in principle, be non-territorial languages, which essentially corresponds to the characteristics of Article 1(c).** Possibly, the term “*minority language without territorial basis*” is a possibility to consider framing the sociolinguistic characteristics of sign languages, not excluding other possibilities to frame territorial languages, leaving it to national associations of the deaf to identify and substantiate their particularities.

	Minority language	Regional language
Austria	Österreichische Gebärdensprache	
Belgium		– Vlaamse Gebarentaal – Langue des signes de Belgique francophone – Deutsche Gebärdensprache
Bulgaria	Български жестов език	
Croatia	Hrvatski znakovni jezik	
Cyprus	Κυπριακή Νοηματική Γλώσσα	
Czech Republic	Český Znakový Jazyk	
Denmark	Dansk tegnsprog	
Estonia	Eesti viipekeel	Vene viipekeel
Finland	Suomalainen viittomakieli	Suomenruotsalainen viittomakieli
France	Langue des Signes Française	
Germany	Deutsche Gebärdensprache	
Greece	Ελληνική Νοηματική Γλώσσα	
Hungary	Magyar jelnyelv	
Iceland	íslenskt táknmál	
Ireland	Irish Sign Language	
Italy	Lingua dei Segni Italiana	
Latvia	Latviešu Zīmju Valoda	
Lithuania	Lietuvių gestų kalba	
Luxembourg	Deutsche Gebärdensprache	
Malta	Lingwa tas-Sinjali Maltija	
Netherlands	Nederlandse Gebarentaal	
Norway	Norsk Tegnspråk	
Poland	Polski Język Migowy	
Portugal	Língua Gestual Portuguesa	
Romania	Limba Mimico-Gestual Romanesc	
Slovakia	Slovník Posunkovej Reci	
Slovenia	Slovenski znakovni jezik	
Spain	Lengua de Signos Española	Llengua de signes catalana
Sweden	Svenskt Teckenspråk	
Switzerland		– Deutschschweizerische Gebärdensprache – Langue des Signes Française – Lingua dei Segni Italiana
United Kingdom	British Sign Language	



## **Part II**

### **The provisions of the ECRML and connection to the CRPD**



## A. CONCEPTUAL FRAMEWORK OF THE ECRML

- 1) The ECRML was adopted by the Committee of Ministers of the Council of Europe on June 25, 1992, and opened for signature by States on November 5, 1992. **The ECRML aims to protect and promote regional and minority languages. To achieve this, it sets out a series of commitments that States undertake to adopt measures established under the Charter. For its implementation, the Charter is subject to its own monitoring mechanism.**
- 2) According to the preamble of the ECRML, the objectives pursued by the European Charter is as follows:

Considering that the aim of the Council of Europe is to achieve a greater unity between its members, particularly for the purpose of safeguarding and realising the ideals and principles which are their common heritage;	Considering that the protection of the historical regional or minority languages of Europe, some of which are in danger of eventual extinction, contributes to the maintenance and development of Europe's cultural wealth and traditions;	Considering that the right to use a regional or minority language in private and public life is an inalienable right
Stressing the value of interculturalism and multilingualism and considering that the protection and encouragement of regional or minority languages should not be to the detriment of the official languages and the need to learn them;	Realising that the protection and promotion of regional or minority languages in the different countries and regions of Europe represent an important contribution to the building of a Europe based on the principles of democracy and cultural diversity within the framework of national sovereignty and territorial integrity;	Taking into consideration the specific conditions and historical traditions in the different regions of the European States,

- 3) **Sign languages should be integrated as objects of protection under the ECRML, contributing to Europe's linguistic heritage and cultural identity.** We must not forget that the origins of most sign languages date back centuries, as does any oral language, in Europe, especially with names such as Pedro Ponce de León (1510-1584) and, globally, Charles Michel de l'Épée (1712-1789) in France. This European origin is part of the history of the continent, and it is noteworthy to emphasize that the history of sign languages in Europe is included in the linguistic history of humanity, adding to the linguistic and cultural heritage of Europe. Thus, we reaffirm that the underlying intention of the European Charter is to protect and further historic languages across Europe, and sign languages cannot be deprived of this historical foundation that underlies Europe's socio-historical and sociolinguistic reality.



- 4) We understand that the ECRML is the fundamental legal instrument for protecting and preserving sign languages traditionally and historically recognized in Europe, treating these languages as minority languages of significant cultural importance. Sign languages in this context are to be considered as an integral part of the endangered linguistic heritage whose proper protection must guarantee their conservation and protection.
- 5) Worth noting is the fact that European sign languages are not exempted from the threat of endangerment, extinction or threat by the 21st century challenges. Therefore, sign languages must be preserved and nurtured to contribute to the linguistic diversity of Europe, as a valued linguistic scenery of the continent.
- 6) The ECRML operates under two distinct legal regimes, Part II and Part III. **Part II is automatically applicable to all languages, establishing that States commit to applying the provisions of Part II without the possibility of exclusion, except if they do not meet conceptual criteria.** On the other hand, **Part III is reserved for languages formally declared in ratification instruments, applying a reinforced legal regime to the selected languages.** States commit to applying the provisions set out in Part III, **choosing a *minimum* of 35 measures from the 98 measures provided in Part III for the languages determined at the time of ratification.**



- 7) It is pertinent that the implementation of the ECRML in the case of sign languages requires **the adoption of language policies that can fulfil the essential presuppositions of the ECRML, considering the specific sociolinguistic circumstances of respective countries.** Furthermore, the ECRML extensively and flexibly allows for national means and methods to adopt appropriate approaches that respond to the purposes of the ECRML, considering the flexible formulation of the provisions established by the ECRML. **The mechanisms for implementing the ECRML must adapt adequately to the sociolinguistic situations of sign languages that may correspond to the objectives of the ECRML.**



- 8) It is pertinent that the implementation of the ECRML in the case of sign languages requires **adequate periodic reporting, which national authorities and, above all, national associations of the deaf, must effectively monitor for the implementation of the ECRML to their national sociolinguistic reality.** Thus, it should involve the exchange of experiences and mutual encouragement in designing actions aimed at promoting sign languages.
- 9) We note that there are three different situations outlined in the following tables: firstly, there are the States that ratify the ECRML, and it is fully applicable to the provisions of the ECRML. Secondly, there are the States that sign but have not yet ratified the Charter. And finally, there are the States that do not participate (neither sign nor ratify) in the scope of the ECRML.

State	Signature	Ratification	Entry into Force	EU	EUD
Armenia	11/05/2001	25/01/2002	01/05/2002		
Austria	05/11/1992	28/06/2001	01/10/2001	X	X
Bosnia and Herzegovina	07/09/2005	21/09/2010	01/01/2011		
Croatia	05/11/1997	05/11/1997	01/03/1998	X	X
Cyprus	12/11/1992	26/08/2002	01/12/2002	X	X
Czech Republic	09/11/2000	15/11/2006	01/03/2007	X	X
Denmark	05/11/1992	08/09/2000	01/01/2001	X	X
Finland	05/11/1992	09/11/1994	01/03/1998	X	X
Germany	05/11/1992	16/09/1998	01/01/1999	X	X
Hungary	05/11/1992	26/04/1995	01/03/1998	X	X
Liechtenstein	05/11/1992	18/11/1997	01/03/1998		
Luxembourg	05/11/1992	22/06/2005	01/10/2005	X	X
Montenegro	22/03/2005	15/02/2006	06/06/2006		
Netherlands	05/11/1992	02/05/1996	01/03/1998	X	X
Norway	05/11/1992	10/11/1993	01/03/1998		X
Poland	12/05/2003	12/02/2009	01/06/2009	X	X
Romania	17/07/1995	29/01/2008	01/05/2008	X	X
Serbia	22/03/2005	15/02/2006	01/06/2006		
Slovak Republic	20/02/2001	05/09/2001	01/01/2002	X	X
Slovenia	03/07/1997	04/10/2000	01/01/2001	X	X
Spain	05/11/1992	09/04/2001	01/08/2001	X	X
Sweden	09/02/2000	09/02/2000	01/06/2000	X	X
Switzerland	08/10/1993	23/12/1997	01/04/1998		X
Ukraine	02/05/1996	19/09/2005	01/01/2006		X
United Kingdom	02/03/2000	27/03/2001	01/07/2001		X

State	Signature	Ratification	Entry into Force	EU	EUD
Azerbaijan	21/12/2001				
France	07/05/1999			X	X
Iceland	07/05/1999				X
Italy	27/06/2000			X	X
Malta	05/11/1992			X	X



North Macedonia	25/07/1996		
Portugal	07/09/2021	X	X
Republic of Moldova	11/07/2002		

State	Signature	Ratification	Entry into Force	EU	EUD
Albania					
Andorra					
Belgium				X	X
Bulgaria				X	X
Estonia				X	X
Georgia					
Greece				X	X
Ireland				X	X
Latvia				X	X
Lithuania				X	X
Monaco					
San Marino					
Türkiye					

10) Out of curiosity, on one hand, Finland made a declaration upon ratification stating:

*Declaration contained in an instrument from the Ministry for Foreign Affairs of Finland, dated 27 November 2009, registered at the Secretariat General on 30 November 2009 – Or. Engl.*  
*The Government of Finland has decided to modify the declaration contained in the Instrument of Acceptance of the Charter as follows:*  
*“Finland declares, referring to Article 7, paragraph 5, that it undertakes to apply, mutatis mutandis, the principles listed in paragraphs 1 to 4 of the said Article to the Romanes language, to the Karelian language and to the other non-territorial languages in Finland.*

We carefully examined Finland's declaration, particularly the expression “other non-territorial languages in Finland.” This opens possibilities for including sign languages, for instance. Recently, the 6th periodic report on the implementation of the ECMRL, 4/2023, stated:<sup>31</sup>

<sup>31</sup> [https://um.fi/euroopan-neuvoston-voimassa-olevat-ihmisoikeussopimukset/-/asset\\_publisher/mnr92wS4p13/content/alueellisia-kielia-tai-vahemmistokielia-koskeva-eurooppalainen-peruskirja-1992-](https://um.fi/euroopan-neuvoston-voimassa-olevat-ihmisoikeussopimukset/-/asset_publisher/mnr92wS4p13/content/alueellisia-kielia-tai-vahemmistokielia-koskeva-eurooppalainen-peruskirja-1992-)

### 3. NON-TERRITORIAL LANGUAGES AND NUMBER OF PERSONS USING THEM IN FINLAND

#### Sign language

48. Under section 17, subsection 2 of the Constitution of Finland, the rights of users of sign languages and of those who need interpretation and translation because of disability shall be guaranteed by Acts of Parliament. According to a recommendation contained in the language policy programme for the national sign languages in Finland, the Government should ensure that the status of minority languages, including sign language, is promoted at the European level, for example under the European Charter for Regional or Minority Languages and other instruments relevant to languages. Sign language users are a linguistic and cultural minority in Finland.

49. Sign language users are a linguistic and cultural group, the core of which consists of the deaf and those with severe hearing impairment for whom sign language is their mother tongue. However, sign language can also be regarded as a child's mother tongue when at least one of their parents or an older sibling is a sign language user, and the sign language has been used to communicate with the child from birth. According to the Finnish Association of the Deaf, there are around 10,000–14,000 people in Finland who are able to use sign language and some 4,000–5,000 of them are deaf.<sup>14</sup> Finnish sign language is the mother tongue of roughly 5,500 persons, some 3,000 of whom are deaf. Some sign language users in Finland are Swedish-speaking Finns. Living mainly in southern Finland and Ostrobothnia, their language is the Finnish-Swedish sign language. Around 100 of them are deaf.” (page 13)

And on the other hand, the declaration from the Spanish state regarding the languages mentioned in its specific legislation:

Declarations contained in the instrument of ratification deposited on 9 April 2001 - Or. Spa.  
Spain declares that, for the purposes of the mentioned articles, are considered as regional or minority languages, the languages recognised as official languages in the Statutes of Autonomy of the Autonomous Communities of the Basque Country, Catalonia, Balearic Islands, Galicia, Valencia and Navarra.  
For the same purposes, Spain also declares that the languages protected by the Statutes of Autonomy in the territories where they are traditionally spoken are also considered as regional or minority languages.

Spain includes sign languages in its respective Statutes of Autonomy. This therefore opens up possibilities for including sign languages, although it does not explicitly mention the case of sign languages, for example, in Catalonia with its own sign language. The recent periodic report (2017-2021) includes the framework for sign languages.<sup>32</sup>

## B. CONCEPTUAL FRAMEWORK OF THE ECRML: PROTECTION AND PROMOTION OF SIGN LANGUAGES

- 11) The working group considers the authoritative doctrine of the Committee of Experts of the ECRML through its periodic reports from various states, as well as equally authoritative doctrines from various authors who interpret the ECRML, explaining and clarifying its various meanings and the scope of its provisions.<sup>33</sup> As a result, **we adapt the applicable criteria to sign languages**

<sup>32</sup> [https://mpt.gob.es/dam/es/portal/politica-territorial/autonomica/Lenguas-cooficiales/Consejo-Europa-Carta-lenguas/Informes/Sexto\\_informe.pdf0#page=1](https://mpt.gob.es/dam/es/portal/politica-territorial/autonomica/Lenguas-cooficiales/Consejo-Europa-Carta-lenguas/Informes/Sexto_informe.pdf0#page=1)

<sup>33</sup> Woehrling, Jean-Marie. (2005). *The European Charter for Regional or Minority Languages. A critical commentary*. Strasbourg: Council of Europe.



that can be assessed to verify compliance or non-compliance with the parameters of the ECRML. We clarify that the objective of the working group is to seek, whenever possible, to maximise the existing parameters of the ECRML to compare the situation of sign languages with that of regional or minority languages.

- 12) **Article 7 of the ECRML is, so to speak, a *conditio sine qua non* for the implementation of its provisions.** In other words, this article is considered as a guiding principle for the adoption of measures considered effective by national authorities. Article 7 is fully applicable to all languages (regional or minority), *de facto* and/or *de jure*, existing, provided they meet the requirements of Article 1, regardless of state declarations at the time of ratification. It is important not to confuse Article 7, which belongs to Part II, with Part III. Further explanation is provided below.

**Part II – Objectives and principles pursued in accordance with Article 2, paragraph 1**  
**Article 7 – Objectives and principles**

1. 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. 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;

c. the need for resolute action to promote regional or minority languages in order to safeguard them;

d. the facilitation and/or encouragement of the use of regional or minority languages, in speech and writing, in public and private life;

e. the maintenance and development of links, in the fields covered by this Charter, between groups using a regional or minority language and other groups in the State employing a language used in identical or similar form, as well as the establishment of cultural relations with other groups in the State using different languages;

f. the provision of appropriate forms and means for the teaching and study of regional or minority languages at all appropriate stages;

	<p>g. the provision of facilities enabling non-speakers of a regional or minority language living in the area where it is used to learn it if they so desire; h the promotion of study and research on regional or minority languages at universities or equivalent institutions;</p> <p>i. the promotion of appropriate types of transnational exchanges, in the fields covered by this Charter, for regional or minority languages used in identical or similar form in two or more States.</p>
2. The Parties undertake to eliminate, if they have not yet done so, any unjustified distinction, exclusion, restriction or preference relating to the use of a regional or minority language and intended to discourage or endanger the maintenance or development of it. The 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.	
3. The Parties undertake to promote, by appropriate measures, mutual understanding between all the linguistic groups of the country and in particular the inclusion of respect, understanding and tolerance in relation to regional or minority languages among the objectives of education and training provided within their countries and encouragement of the mass media to pursue the same objective.	
4. 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. They are encouraged to establish bodies, if necessary, for the purpose of advising the authorities on all matters pertaining to regional or minority languages.	
5. The Parties undertake to apply, <i>mutatis mutandis</i> , 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.	

- 13) It is pertinent to clarify **the role of states in recognizing sign languages used within their state territories, both at the national and regional levels. The application of Part II to sign languages is the starting point for verifying the levels of implementation of the provisions compared to spoken languages. The fact that sign languages meet the criteria of the Charter and are not**



**expressly mentioned by states in their ratification instruments does not prevent the state from mentioning them in periodic reports, in coordination and dialogue with representative entities of deaf communities.** Because Part II applies to all languages, regardless of whether they are mentioned or not at the time of ratification. It considers the contexts of the European Charter, due to its flexible application. **It is different in the case of Part III, which requires the specification of languages mentioned by states in their respective ratification instruments.**

- 14) **The objectives pursued by Part II are of a general, minimal, and obligatory scope** (subject to exceptions provided for by Article 21), although they allow for flexibility in the adoption of measures considered effective by national authorities in line with the purposes of the European Charter.
- 15) In the case of **sign languages as non-territorial languages, consideration is given to the limits of Article 7(5) of the ECRML**. That is to say, it fulfils the essential requisites:
  - (i) the principle of generic application pursuant to the paragraphs provided for by Article 7(1);
  - (ii) the flexible application of Article 7(1) takes into account the nature and scope of the measures adopted by national authorities;
  - (iii) the flexibility of the adoption of measures by national authorities takes into consideration the needs and desires, traditional and historical characteristics of the languages in question; and
  - (iv) the adoption of measures of any legislative, political, administrative, social, educational, cultural nature, among others, takes into account the social situation of the language, pursuant to Article 7(1).
- 16) We study and analyse, *mutatis mutandis*, particularly, some provisions considered relevant to clarify key issues within the scope of the application of the principles enumerated by Article 7 to sign languages as non-territorial languages. In fact, in Europe, the situation of sign languages varies widely depending on their own inherent sociopolitical and sociolinguistic circumstances.



*a) Cultural Recognition (Article 7(1)(a))*

Consideration is given to the very concept of recognition within the scope of the ECRML, which must generally fulfil two requirements: **formality and practicality**. Firstly, **formality implies that the ECRML requires regional or minority languages to be formally recognized by States, with formal legal effectiveness within their respective territories, in accordance with their national legal systems**, within the framework of the freedom of political-legislative configuration to choose the form and means of formalising the recognition of these languages. Consequently, formal recognition requires, at least, the existence of legal statutes relating to regional or minority languages with a corresponding level of protection conferred by the respective legislations defining the meaning and scope of these languages.

Secondly, formal recognition of languages, while important in terms of their respective legal statutes, **must also be supplemented by the “material” or practical aspect of recognition**. This means that the legal statutes of regional or minority languages must **adequately translate their practical effects into everyday life, including valuing, respecting, encouraging, and supporting the presence and use of these languages both in public and private life, through various forms and means to be properly achieved through their public resources and public policy instruments consistent with or periodic strategies for languages**.

It is pertinent to underline that the issue of cultural recognition requires the adoption of appropriate measures by States that expressly mention and adequately value, from a formal and practical point of view, the “expression of cultural richness” of the languages considered regional or minority languages protected within the meaning of the European Charter.

**The form and means of defining the legal issues of language recognition as an “expression of cultural richness” are broad and variable**. Any legal formulation may define the recognition issue, of any constitutional or legal nature, if it adequately meets the purposes pursued by the ECRML. The ECRML itself leaves room for the political-legislative freedom of States to adopt, through their legal instruments, the legal statutes concerning the languages in question.

**For example, constitutional recognition of the respective language may be a reinforced legal instrument to be protected compared to other legal forms. It is important not to confuse the issues of language recognition with issues related to recognized linguistic minorities. They are both different issues. Only the former falls within the scope of the application of the ECRML.**

To determine the compatibility of recognition within the scope of the Charter, the legal status related to the language in question constitutes a declared recognition requisite by the State, considering its specific characteristics and needs of the recognized languages. **The**



recognition of the language in question must be consistent with the purposes pursued by the Charter, particularly in the context of Article 7 of the same Charter. In other words, the recognition of this language implies, at least, the existence of an appropriate purpose that contextualises the “expression of cultural richness” to be adequately protected and promoted in both public and private life. Thus, recognition implies the determination of the legal status, with a linguistic character, which grants protection and promotion to the respective recognized language with different scopes of application according to its legal status.

***b) Safeguarding Regional or Minority Languages (Article 7(1)(c))***

The adoption of measures deemed “resolute” entails asserting that the adoption of these measures has appropriate and effective purposes to sufficiently achieve these “resolute” measures. **These actions may include, for example, the creation of legal statutes to safeguard and promote regional or minority languages; the existence of bodies responsible for overseeing and promoting these languages, including, naturally, adequate public resources for this purpose.**

***c) Use of Regional or Minority Languages in Public and Private Life (Article 7(1)(d))***

This provision has a broad dimension, requiring States to “facilitate” and/or “encourage” the use of languages in public and private life. Considering the keywords “facilitation” and “encouragement,” the use of language in public life implies that “everything that is not part of private life”<sup>34</sup>, including the realm of justice, public services, education, and media. On the other hand, private life may have implications in the everyday lives of speakers — for example, family, professional, and cultural life in a general sense — which cannot be interfered with by the actions of public authorities.

***d) Language Education (Article 7(1)(f))***

Paragraph (f) requires the adoption of measures deemed appropriate by public authorities, considering three assumptions:

- (i) the provision of language teaching and learning;
- (ii) the adequacy of forms and means to provide language teaching and learning;
- (iii) the provision of language teaching and learning “at all appropriate stages.”

Regarding the first assumption, the State must “provide” language teaching and learning within the educational system. It considers the difference between providing language

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<sup>34</sup> Woehrling, Jean-Marie. (2005). *The European Charter for Regional or Minority Languages. A critical commentary*. Strasbourg: Council of Europe.





teaching and learning “in” the language and “of” the language. The latter element is not explicitly described in paragraph (f). Thus, **the first characteristic element is the provision of language teaching and learning. This implies that language teaching and learning aim to linguistically transmit to generations so they can know and acquire their own considered mother tongues.**

Regarding the second assumption, the provision must be “adequate” to achieve the pursued objectives. With various forms and means to achieve, for example, the public education system can provide language curriculum for students to learn and express themselves in this language, developing their linguistic and communicative skills according to their respective levels of schooling. Lastly, the third assumption implies that language teaching and learning, despite being adequate, must be provided at “all appropriate stages.” This means that language teaching can be provided at each educational level according to educational circumstances and the needs of language users.

***e) Language Learning (Article 7(1)(g))***

This provision not only encourages speakers but also non-speakers to learn their respective regional or minority language, in addition to the official language of the State. This statement must be understood in terms of the preamble, which states that “the protection and encouragement of regional or minority languages should not be to the detriment of official languages and the need to learn them.” **We can say, at least implicitly, that multilingualism is valued in this context. Consequently, paragraph (g) has the following assumptions:**

**(i) the provision of facilities that allow non-speakers to learn languages in addition to the official language of the State;**

**(ii) the freedom of learning for non-speakers and no imposition of learning regional or minority languages.**

***f) Study and Research on Language (Article 7(1)(h))***

It is pertinent for national authorities to promote studies and research of any linguistic, sociolinguistic, sociohistorical nature, among others, on the languages in question, to ensure their progress within society and to have an adequate level of codified knowledge about these languages, in coordination with representative entities of the languages that represent the speakers, for example.

***g) Non-Discrimination based on Language (Article 7(2))***

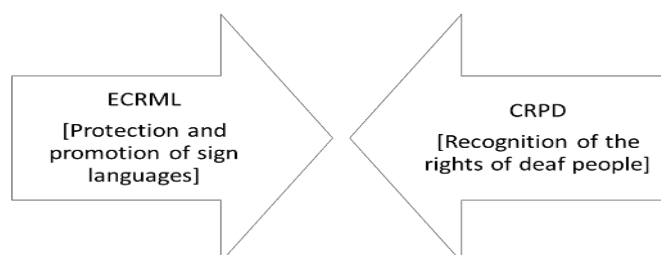
Undoubtedly, equality and non-discrimination are fundamental principles of International Human Rights Law. Numerous legal statutes of sign languages provide provisions regarding non-discrimination, at least from a formal point of view. It remains to be seen whether they fulfil practical effectiveness to ensure that speakers do not suffer discrimination based on language, in addition to their inherent personal condition related to deafness or disability. Therefore, it is necessary to study cases that specify intersectional discriminations based on language and deafness.

#### ***h) Consultation (Article 7(4))***

National authorities consider the needs and desires expressed by the various communities that use these languages. This is a generic formulation that can have various forms and means to achieve this purpose. For example, the creation of advisory councils to address issues specific to the languages in question.

### **C. CONNECTION BETWEEN ECRML AND CRPD**

36) The CRPD and its Optional Protocol were adopted on December 13, 2006. Virtually all States Parties, both within the European Union and within the Council of Europe, have ratified the Convention. **The main purpose of the Convention is based on the new paradigm of human rights for persons with disabilities. Thus, the Convention focuses on recognizing the rights of persons with disabilities, distinguishing it from the ECRML, which does not focus on recognizing the rights of individuals and only addresses specific issues related to languages themselves.**



37) The article 4 of the ECRML and article 4(4) of the CRPD define, respectively, the level of protection provided by other international legal instruments, notably the CRPD, as well as national legislations that offer enhanced and complementary protection to that conferred by the European Charter. In other words, **sign languages, which already enjoy their respective legal statuses established by national legislations and in compliance with the CRPD, cannot fall below the level of protection provided by the CRPD or the ECRML, both of which ensure**



an essential level of protection for sign languages. On the one hand, the CRPD does not accept provisions concerning deaf individuals to fall below the level of protection defined by national legislations, for example. On the other hand, the provisions of the ECRML cannot be undermined in favour of national legislations or other international legal instruments. Thus, the CRPD and the ECRML provide a reinforced and complementary legal framework for sign languages and the linguistic rights of deaf people. The interdisciplinary nature of the ECRML and the CRPD regarding sign languages strengthens and complements the scope of protection provided, with different scopes and applications.<sup>35</sup>

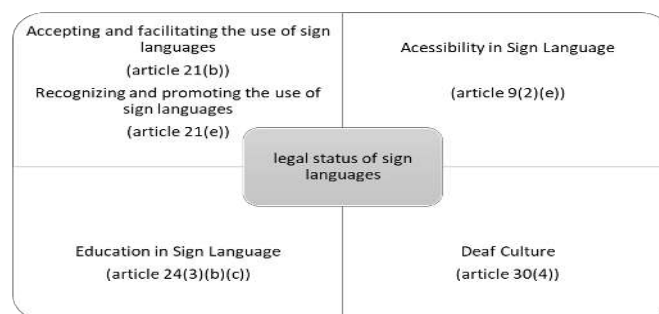
38) We can find correspondence between the relevant provisions of the ECRML and the CRPD:

ECRML	CRPD
Article 7(1) a. the recognition of the regional or minority languages as an expression of cultural wealth Article 7(1)	Article 2 – Definitions For the purposes of the present Convention: “Communication” includes languages, display of text, Braille, tactile communication, large print, accessible multimedia as well as written, audio, plain-language, human-reader and augmentative and alternative modes, means and formats of communication, including accessible information and communication technology; “Language” includes spoken and signed languages and other forms of non spoken languages;
Article 7(2)	Article 9 – Accessibility 2. States Parties shall also take appropriate measures: e) To provide forms of live assistance and intermediaries, including guides, readers and professional sign language interpreters, to facilitate accessibility to buildings and other facilities open to the public;

<sup>35</sup> Sousa, Filipe Venade de. (2019). The Charter of Fundamental Rights of the European Union and the United Nations Convention on the Rights of Persons with Disabilities: a dynamic *pro unione* and *pro homine* with particular reference to the CJEU case-law. *UNIO – EU Law Journal*, 5(1), 109–120. <https://doi.org/10.21814/unio.5.1.255>

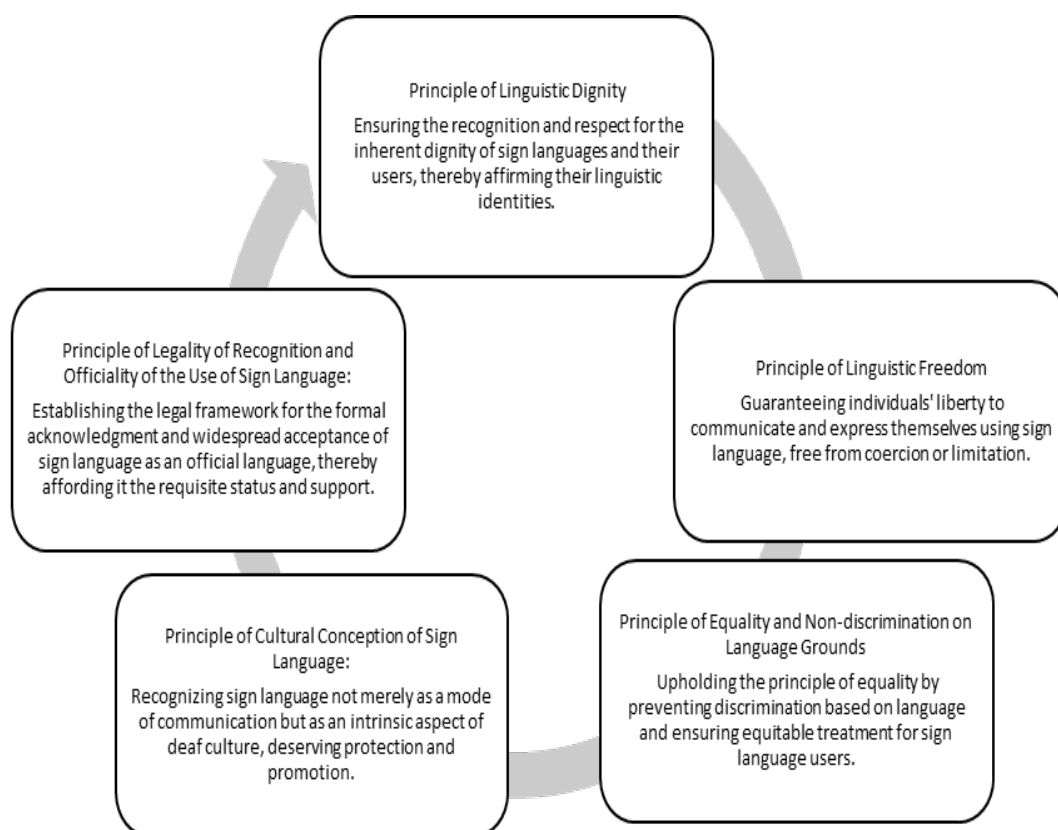
<p>Article 7(1)</p> <p>f. the provision of appropriate forms and means for the teaching and study of regional or minority languages at all appropriate stages;</p> <p>g. the provision of facilities enabling non-speakers of a regional or minority language living in the area where it is used to learn it if they so desire; h the promotion of study and research on regional or minority languages at universities or equivalent institutions;</p>	<p>Article 24 – Education</p> <p>3. States Parties shall enable persons with disabilities to learn life and social development skills to facilitate their full and equal participation in education and as members of the community. To this end, States Parties shall take appropriate measures, including:</p> <p>b) Facilitating the learning of sign language and the promotion of the linguistic identity of the deaf community;</p> <p>c) Ensuring that the education of persons, and in particular children, who are blind, deaf or deafblind, is delivered in the most appropriate languages and modes and means of communication for the individual, and in environments which maximize academic and social development.</p>
<p>Article 7(1)</p> <p>d. the facilitation and/or encouragement of the use of regional or minority languages, in speech and writing, in public and private life;</p>	<p>Article 21 – Freedom of expression and opinion, and access to information</p> <p>b) Accepting and facilitating the use of sign languages, Braille, augmentative and alternative communication, and all other accessible means, modes and formats of communication of their choice by persons with disabilities in official interactions;</p> <p>e) Recognizing and promoting the use of sign languages.</p>
<p>Article 7(1)</p> <p>a. the recognition of the regional or minority languages as an expression of cultural wealth</p>	<p>Article 30 – Participation in cultural life, recreation, leisure and sport</p> <p>4. Persons with disabilities shall be entitled, on an equal basis with others, to recognition and support of their specific cultural and linguistic identity, including sign languages and deaf culture.</p>

37) We analyse, in particular, the norms regarding sign languages in light of the CRPD. The essential parameters of the CRPD complement those of the ECMRL. Here are the key criteria:<sup>36</sup>



<sup>36</sup> Issues relating to cultural rights have already been studied. Sousa, Filipe Venade de. (2023). Exploring Deaf Culture in Legal Texts: A Journey from Deafology to Cultural Rights. *Diffractions*, (7), 177-202. <https://doi.org/10.34632/diffractions.2023.11851>

38) The provisions concerning sign languages carry significant implications that delineate the rights of individuals who are deaf. The Convention mandates national authorities to undertake necessary measures for the legal acknowledgment of sign languages and the facilitation of linguistic rights' exercise. It is incumbent upon the State to establish conducive conditions for sign language users to freely employ and access their respective sign languages across various facets of everyday life. Through the lens of International Human Rights Law, pertinent criteria underscore fundamental principles integral to the rights of deaf individuals:<sup>37</sup>



<sup>37</sup> Sousa, Filipe Venade de (2022). Essential framework of the legal status of sign language: recognition and officiality. *Revista de Llengua i Dret*, pp. 177-193. <http://revistes.eapc.gencat.cat/index.php/rld/article/view/10.2436-rld.i78.2022.3843>

## Part III

### ECRML and CRPD implementation strategies for sign languages in Europe

STRATEGY
<b>A. GENERAL MEASURES</b>
Creation of an ECRML Implementation Monitoring Committee for sign languages within the scope of EUD in conjunction with national associations of the Deaf
Presentation of periodic reports from national associations of the Deaf on the implementation of ECRML and CRPD for sign languages
Presentation of indicators of compliance with the objectives pursued at European and national level, in coordination between EUD and national associations of the Deaf
Creation of a specific Conference to discuss the state of sign languages in Europe
Creation of policy strategies for EUD and national associations of the deaf to contact and dialogue with their respective States to support the incorporation of sign languages into the ECRML or additional protocol to incorporate sign languages
<b>B. SPECIFIC MEASURES</b>
Legal status of sign language (national and regional) with special emphasis on intersectional approaches between approaches relating to the rights of people with disabilities and minorities
Recognition of sign languages (national and regional) as an object of intangible cultural heritage to be culturally safeguarded, contributing to the expression of the cultural and linguistic richness of sign languages in Europe
Recognition of the cultural status of sign languages that have (national and regional) linguistic specificities that are supported by regional authorities, in addition to national sign languages
Adoption of effective measures by national and regional authorities to preserve the history and culture relating to sign languages
Recognition and availability of the use of sign languages in public life, namely public services, education, justice, among others, and in private life
Provision of appropriate forms and means for teaching and studying sign languages at all levels of education
Provision of curricular and extracurricular training relating to sign languages in schools, public institutes and universities
Promotion of study and research on sign languages in universities or academic and scientific institutions
Ensure education and teaching related to sign languages, at all educational levels
Ensure that education and teaching are provided in sign languages
Encourage and support students whose families request them and whose numbers are considered adequate to study and learn sign languages
Ensure media and information media have adequate presence of sign languages that they transmit to the public in these sign languages



Support periodic cultural and linguistic activities related to sign languages
Support and collaborate with bodies responsible for monitoring the implementation of measures relating to sign languages, as well as for collecting, archiving and presenting or publishing works created in sign languages
Encourage the participation and involvement of national deaf associations in providing equipment and planning cultural and linguistic activities