


**ОСТВАРУВАЊЕ НА ПРАВОТО НА УПОТРЕБА НА ЈАЗИЦИТЕ
НА ЗАЕДНИЦИТЕ ВО КОМУНИКАЦИЈАТА СО ОРГАНИТЕ НА
ДРЖАВНАТА ВЛАСТ ВО РЕПУБЛИКА МАКЕДОНИЈА:**

**УСОГЛАСЕНОСТ СО РАМКОВНАТА КОНВЕНЦИЈА ЗА ЗАШТИТА
НА НАЦИОНАЛНИТЕ МАЛЦИНСТВА И ЕВРОПСКАТА ПОВЕЛБА ЗА
РЕГИОНАЛНИТЕ ИЛИ МАЛЦИНСКИТЕ ЈАЗИЦИ**

Minority
Right to
Minority
Language
and
Freedom
of
Expression

Проектот е
имплементиран од:





**REALIZATION OF THE RIGHT
TO USE THE LANGUAGES OF
THE COMMUNITIES IN THE
COMMUNICATION WITH THE STATE
ORGANS IN REPUBLIC OF MACEDONIA:**

**CONFORMITY WITH THE FRAMEWORK
CONVENTION FOR THE PROTECTION OF
NATIONAL MINORITIES AND THE EUROPEAN
CHARTER FOR REGIONAL OR MINORITY
LANGUAGES**

7

ENGLISH LANGUAGE

Realization of the right to use the languages of the communities in the communication with the state organs in RM:

Conformity with the Framework Convention for the Protection of National Minorities and the European Charter for Regional or Minority Languages

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CONTENTS



I) International documents including rights of the persons belonging to national/ethnic, religious or linguistic minorities entailing legal and political repercussion in regard with the republic of macedonia **202**

II) International legal acts guaranteeing or regulating the right to use the languages of national/ethnic, religious or linguistic minorities, relevant for republic of macedonia **205**

III) Differences and similarities between the framework convention for the protection of national minorities and the european charter for regional or minority languages **210**

IV) Incorporating the obligation from the framework convention for the protection of national minorities and the european charter for regional or minority languages in the national law of republic of Macedonia **212**

V) Incorporating the obligations from the framework convention for the protection of national minorities and the european charter for regional or minority languages regarding the use of languages of persons belonging to communities in the communication with state organs the standing inquiry committee for protection of civil rights and freedoms and the ombudsman in the national law of republic of Macedonia **214**

VI) Realization of the right to use the languages of the members of communities in the communication with state organs, the standing inquiry committee for protection of civil rights and freedoms and the ombudsman in republic of Macedonia **215**

VII) Conclusions on the conformity of the modes of realization of the right to use the languages of communities in the communication with state organs with the standing inquiry committee for protection of civil rights and freedoms of the assembly of republic of macedonia and with the ombudsman of republic of macedonia, with the corresponding provisions of the framework convention for the protection of national minorities and the european charter for regional or minority languages **224**



PREFACE

The right to use the languages of the communities in the Republic of Macedonia is a part of a number of rights, whose enjoyment and exercise significantly determines the communities' factual situation. It is a very complex (in accordance with the number and the diversity of element which constitute it), very complicated (due to the numerous problems in its realization) and extremely costly right. Because of such a nature of the right, every attempt to analyze it as such, and especially to analyze its everyday realization in all the spheres of social functioning, is not a less complicated or an activity of a negligible difficulty. A complete presentation of all the aspects of the realization of the right to use the languages of the communities in the Republic of Macedonia should endeavour to include all the rights (sub-rights) constituting the right in the heading, namely:

- the right to use the languages of the communities in the various levels of education;
- the right to use the languages of the communities in the units of local self-governance ;
- the right to use the languages of the communities in the official records in the process of issuing of personal documents;
- the right to use the languages of the communities in the interaction with state organs;
- the right to use the languages of the communities in judicial proceedings ;
- the right to use the languages of the communities during plenary meetings of the Assembly of RM; and
- the right to use the languages of the communities when laws and other acts are published etc.

Of course, such an approach would presume a more comprehensive text, which would come as a result. Nonetheless, the working principle of the non-governmental organization "Common values", which initiated this publication, in the advancement of the knowledge of an average citizen of the Republic of Macedonia on human freedoms and rights, and the rights of the members of minorities in particular, in general and in the Republic of Macedonia, is among other means, through the publication of:

- first, a generally set guide on the realization ethnic communities' rights in the Republic of Macedonia (already published in 2005);
- second, a more specifically prepared guide on the conformity of the realization of the right to use the languages of the communities in the Republic of Macedonia with relevant provisions of the Framework Convention for the Protection of National Minorities and the European Charter for Regional or Minority Languages (and that is this handbook you have at hand)); and
- third, series of guides on various aspects of the realization of the right to use the languages of the communities.

The handbook “Realization of the right to use the languages of the communities in the communication with the state organs in Republic of Macedonia: conformity with the Framework Convention for the Protection of National Minorities and the European Charter for Regional or Minority Languages”, is envisaged as an elementary guide through the procedures for realization of the communication of the languages of the ethnic communities in the Republic of Macedonia which have a status of official languages, with the Ministries, the local units of the Ministries, and the institutions competent for the protection of the freedoms and rights of the citizen of the RM, but which do not have character of judiciary organs - the Standing Survey Committee for Protection of Civil Rights and Freedoms and the Ombudsman of the Republic of Macedonia. The Committee and the Ombudsman could be a subject of analysis, which would comprehensively comprise the institutions in the Republic of Macedonia competent for protection of freedoms and rights. Still, due to the possibility for the citizens to use the official languages in the communication with these institutions, on one, and the specifics which distinguish them from the regular courts and the Constitutional Court of the Republic of Macedonia- also institutions for protection of freedoms and rights- from the other hand, the decision is the communication with these organs on the languages of the communities, to be a subject of this handbook, as well.

Finally, the realization of the right to use the languages of the communities in the Republic of Macedonia in this handbook is not being presented independently from the relevant international standards in the precisely delimited field. The corresponding provisions from the universal documents determined within the UN, are just enumerated or merely mentioned. This is maybe justified, considering the fact that the legally binding rules regulating the subject defined are not numerous and very general in nature. This handbook is completely concentrated on the regional instruments, which go farthest in the regulation of the right to use the languages of minorities- the Framework Convention for the Protection of National Minorities and the European Charter for Regional or Minority Languages. Both of them are - acts of the Council of Europe, though one- The framework Convention legally binding for the Republic of Macedonia, while the other- the European Charter not yet. The handbook does not by any means; overlook the lack of an act of ratification by the Republic of Macedonia for the European Charter. As it, as well, cannot afford the luxury, due to such a lack, to fail to see the numerous, for now, unique, meticulously formulated modes of use of languages of minorities in a European context. Especially, bearing in mind that though, the Republic of Macedonia has only signed the Charter, she has brought to life the highest standards for the use of languages of the communities in the communication with state organs thereof.

From the author





I) International documents including rights of the persons belonging to national/ethnic, religious or linguistic minorities¹ entailing legal and political repercussion in regard with the republic of macedonia

1. How are the international documents, which list rights for the persons belonging to national/ethnic, religious or linguistics minorities, classified?

The totality of international documents for the protection of fundamental freedoms and human rights, and within them or individually, the rights of the members of minorities, could be classified, based on at least two stable criteria:

- first, the width (in the sense of number and proximity of member states) of the legal subjects of the type of the international organizations in which the appropriate documents have been adopted, i.e., the number of subjects-states bound by those documents and
- second, the character/ nature of the documents guaranteeing fundamental human/ minority freedoms and rights conformist

2. How are the international documents for protection of fundamental freedoms and human rights and, in that context, or taken separately, for protection of the rights of the persons belonging to minorities classified on the basis of the criteria of the number of subjects bound by them?

The criteria of number of states bound by the corresponding documents, implicates a classification of:

- documents for protection of human freedoms and rights/ freedom and rights of the members of minorities adopted within the universal mechanisms with the UN and
- documents for protection of protection of human freedoms and rights/ freedoms and rights of members of minorities adopted within corresponding regional organizations.

¹ All the international documents/ acts, which will be elaborated below in the text, use the term "minority". The Constitution of RM of 17.11.1991 ("Official Gazette of RM" No. 52/91) and the relevant laws for its operationalization used the term "nacionalnost" as a synonym to the term "minority", despite the irrefutable fact that, from point of view of comparative law, such a term could not be find in a legal act of any state, or in the legal theory. Therefore, big problems have arisen when the acts of RM or various texts referring to the rights of minorities in RM had to be translated into foreign languages, and from apparent reasons, into English. The real nightmare for the translators and even bigger for the readers would happen, when in a lack of an appropriate term,, the term "nacionalnost" was translated/ read as "nationality". It is clear to any person, who speaks/ understands English even on a minimal level, that the use of the term "nationality" in inappropriate, as its meaning is not minority, but citizenship. The term "community", was, officially, for the first time used in the Framework Agreement of 13.8.2001, and accordingly in the amendments to the 1991 Constitution adopted on 16.11.2002 ("Official Gazette of RM, No. 91/01"). Based on the amendments and in accordance with the all the legal acts adopted thereafter, in order to note the term "minority:" the term "community" is in use not in a linguistic or cultural sense, but as an ethnic community is key concept for the transformation of the multiethnic society into multiethnic state. The concept of "community" enable the extraction of the ethnicity in the sphere of identity, culture, language and its translation in the spheres of politics, institutions, law. The need for a maximal preciseness of the text, which the reader has at hand, dictates that in every instance involving a particular international document/act a use of the term "minority", while in the part elaborating the procedure of the use of the languages of the minorities in the communication with the state organs, with the Standing Survey Committee for Protection of Civil Rights and Freedoms and the Ombudsman of RM, a use of the constitutionally determined term, "community". Of course, such an approach does not even nearly question the fact, that these two terms are synonyms which are interchangeably used. As on the other hand, this last fact does not preclude the need for correctness (in a sense of literal following) in citing of the contents of relevant international documents/acts.

3. How are the international documents for protection of fundamental freedoms and human rights classified on the basis of their character/ nature?

The criteria nature of the relevant documents, presupposes a new classification, in at least two directions:

- first, depending on the fact of the concrete document contains fundamental human freedoms and rights or rights of the persons belonging to minorities only, or only certain aspects of the rights of the persons belonging to minorities; and
- second, depending on the fact if the document for protection of human or minority rights is or is not legally binding, i.e. can it produce legal or political consequences.

4. Which documents/acts of the United Nations include rights, which could be relevant for minorities, are legally binding for Republic of Macedonia?

RM is bound by:

- a) the general document for fundamental human freedoms and rights, which doesn't not include any separate provision for the rights of the persons belonging to minorities and which has not been adopted, as legally binding one, but in the course of the time gained a status of customary law and on that basis, RM is obliged to respect it- the 1948 Universal Declaration of Human Rights, (bounds RM with its reconstituting as a newly created subject on the international scene in 1991);
- 6) legal acts guaranteeing fundamental human rights in general, or concrete human right, but also containing provisions for the rights of the persons belonging to minorities:
 - Convention on the Prevention and Punishment of the Crime of Genocide of 1948/51 (binds RM as of 17.11.1991/18.1.1994);
 - Convention No. 111 of the International Labour Organization concerning Discrimination in respect of Employment and Occupation 1958/60 (binds RM as of 17.11.1991);
 - UNESCO Convention against Discrimination in Education of 1960/62 (binds on RM as of 17.11.1991);
 - International Convention on the Elimination of All Forms of Racial Discrimination of 1965/69 (binds RM as of 17.11.1991/ 18.1.1994);
 - International Covenant for Civil and Political Rights 1966/76 (binds RM as of 17.11.1991/18.1.1994) and
 - UN Convention on the Rights of the Child of 1989/1990 (binding for RM as of 17.11.1991/10.11.1993).

7

5. Which documents prescribing minority rights are not legally binding for the Republic of Macedonia?

RM is not bound by the documents, which do not have character of international treaties, which would produce legal consequences for the contracting parties:

- UN Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities of 18.12.1992 and
- Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief of 18.12.1992.

6. Which acts of the regional European intergovernmental mechanisms² containing rights that could be relevant for minorities are binding for Republic of Macedonia?

RM is legally- bound by:

- a) The act of the Council of Europe guaranteeing fundamental freedoms and rights- the European Convention for the Protection of Human Rights and Fundamental Freedoms of 3.9.1953 (binds RM as of 10.4.1997/ 10.4/1997) and
- 6) The act of the Council of Europe guaranteeing the rights of the persons belonging to minorities in general, the first legal instrument specifically guaranteeing rights only for persons belonging to minorities- The Framework Convention for the Protection of National Minorities of 1.2.1998 (binds RM as of 1.2.1998).

7. Which acts of the regional European inter-governmental mechanisms guaranteeing minority rights are not binding for Republic of Macedonia?

RM is not legally bound by the act of the Council of Europe regulating different aspects of exercise of the guaranteed right to use regional or minority languages, i.e., the act determining international (European) standards for linguistic politics of the European states- the European Charter for Regional or Minority languages of 1.3.1998 (signed by RM on 25.7.1996, but not yet ratified).

8. Which documents of the regional European inter-governmental mechanisms prescribing minority rights are politically binding Republic of Macedonia?

RM is politically³ bound by all the documents on the human dimension of the CSCE/ OSCE.⁴ Of course, in

7 ² The term “regional European inter-governmental mechanisms” does not cover the sui generis entity European Union. This, with no doubt, specific entity is on par with a specific, previously non-existent legal system, from the point of view of its creation, as well as from the point of view of its implementation, realization, enforcement. The specific legal mechanism is followed by a not less characteristic process of determination of the documents with political value within the institutions and the bodies of the Union. Their more thorough elaboration demands a completely different context, approach and space. Accordingly, in this text, the documents/acts of the European Union which could by any means be relevant for the set subject, will be put aside. On the contrary, the only classical acts- international treaties of the classical international (intergovernmental) organization- Council of Europe will be a subject of a detailed analysis. For the sake of the truth, there is another European intergovernmental mechanism- the one functioning within the Organization for Security and Co-operation in Europe (OSCE), but it produces documents with a political value only, and not legally binding ones, which is mentioned below in the text, but not elaborated.

³ Nevertheless, the fact that the human dimension of the CSCE/OSCE is based of the provisions of the universal international human rights law cannot be overlooked by any means. One more thing. The member States of the OSCE (RM including) with the act of acceptance of the rules of the OSCE human dimension have undertaken an obligation to incorporate the provisions of the universal international acts for human rights in their (internal) legal orders.

⁴ The term “human dimension” has been established in January 1989 on the Vienna Conference of the CSCE at the time. The Final Act of the Conference does not include a precise definition of the very term, which is understandable in light of the fact that the CSCE and OSCE (since 1995) acts are not international treaties. The Vienna Final Act includes something that could possibly help in the process of defining of the term “human dimension”: “...all human rights and fundamental freedoms, human contacts and other issues of humanitarian character”. Briefly, it can be concluded that “human dimension” is a wider concept than the concept of “human rights” and the concept of “rights of the persons belonging to minorities”. The latter two concepts may be outlined, developed and extended through documents on series of conferenc-

this context, relevant are those documents guaranteeing, and, more importantly, elaborating the rights of the persons belonging to minorities as guaranteed by Article 27 of the UN Covenant for Civil and Political Rights, which will be referred to below, and which offer solutions for a number of specific questions emerging in the process of application of the general provisions on human rights on persons belonging to minorities.

These are the Final Acts of the:

- Helsinki Conference (1975);
- Copenhagen Conference (1990);
- Paris Summit for New Europe (1990);
- Geneva Expert Meeting (1991);
- Moscow Meeting (1991) and
- Helsinki Conference (1992).



II) International legal acts guaranteeing or regulating the right to use the languages of national/ethnic, religious or linguistic minorities, relevant for republic of macedonia

1. In what way does the International Covenant for Civil and Political Rights guarantee the right to use the languages of persons belonging to ethnic, religious or linguistic minorities?

The International Covenant for Civil and Political Rights, guarantees the rights of the persons belonging to ethnic, religious or linguistic minorities in a separate Article, Article 27, as rights different from all the other rights which could have any sort of repercussions regarding the persons belonging to minorities and includes as a supplement- the right of peoples to self-determination⁵; right to non-discrimination⁶ and the right to equal participation in the conduct of public affairs, and related to it, the right to have equal access to public service.⁷ The guarantees incorporated in Article 27 refer to persons belonging to a particular minority group with which they share a common culture, religion or language. Such a universal guarantee is not given as a listing in positive terms, or as their positive enumeration, but in a negative manner, through defining the rights, which these persons, cannot be deprived of, that is to say, by a positive enumeration of the obligations of the state parties towards them. Given the fact, that for the text that follows, only the provision regarding the right to use the language/s of minorities is of relevance, on this occasion I shall only present that, rather widely set formulation of the right to use the language, which is as follows: "... persons belonging to such minorities shall not be denied the right... to use their own language (the right to use their own language)." This is it, with no further explanations or preciseness. Article 27 of the Covenant, only guarantees the right as such, on the most elementary level.

es, summits and expert meetings in order to embrace: 1) fundamental human freedoms and rights; 2) the subject of this text- the protection of national minorities; 3) democracy and rule of law related issues and 4) other issues of humanitarian character. All together, as a part of a so-called integral approach to the matter of security on the European continent.

5 Guaranteed as a right of all peoples, in Article 1 of the Covenant. This right is the basis for the right to freely determine their political status and freely pursue their economic, social and cultural development.

6 Guaranteed by Article 26 of the Covenant.

7 Guaranteed by Article 25 of the Covenant.

2. In what way does the UN Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities, guarantee the right to use the languages?

The UN Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities, in Article 2(1), guarantees the right to use the languages of the members of minorities (note: not to every member of national minority), to a certain extent more extensively than the International Covenant for Civil and Political Rights, but still, very generally and without defining any further assumptions or modalities :

- right to use their language in private;
- right to use their language in public;
- right to use their language freely or as a freedom to use their language without interference; and
- right to use their language freely or as a freedom to use their language without any form of discrimination on any ground.

3. In what way does the European Convention for the Protection of Human Rights and Fundamental Freedoms of the Council of Europe, guarantee the right to use the languages of the persons belonging to national minorities ?

7 The European Convention for the Protection of Human Rights and Fundamental Freedoms does not include special provisions that would guarantee specific and concrete rights of members of certain minorities. In general, the term “national minority” is used only once in this Convention in the context of Article 14, prohibiting discrimination on any ground, including on the ground of belonging to/ association with a national minority. It is very often wrongly deduced, on the basis of this fact, that apart from the right to equality, the European Convention for the Protection of Human Rights and Fundamental Freedoms, does not include any other right, which could be invoked by minority members, in the protection of their interests, of course, also including the ones referring to their culture, religion and language. Such a conclusion, completely neglects, the fact, that a large part of the rights of persons belonging to minorities, are actually founded on general human rights standards. The logical conclusion, which must follow from this, is that a number of provisions of the European Convention for the Protection of Human Rights and Fundamental Freedoms are a serious guarantee for a series of rights of minority members. Still, this general remark is not valid for the issue that is the main subject of this text- the use of the languages of persons belonging to minorities in the communication with the state organs. Namely, in relation to it, Article 14 could only be relevant, if it only included a general prohibition of discrimination. But, not as it stands- only by “prohibition of discrimination in the enjoyment of the rights set forth in the Convention”. This means, that the Convention guarantees only right to use the languages of the national minorities in private and only as an aspect of right to express freely (freedom of expression)⁸. Argumentum a contrario (concluding from the contrary), the Convention does not guarantee a right to use the language of persons belonging to minorities in public as a segment of freedom of expression. Therefore, there is no need to for further analysis of the provisions thereof in this context.

⁸ Guaranteed in Article 10 of the Convention.

4. In what way does the Council of Europe Framework Convention for the Protection of National Minorities, guarantee the right to use the languages of persons belonging to national minorities?

The Framework Convention for the Protection of National Minorities in accordance with its own title, which suggests conferring of a very general, but still relatively precise and clear frame, yet, not with details with which, it must be fulfilled⁹, explicitly guarantees the right to use the language to “every person belonging to a particular national minority” in Article 10 (1) as :

- right to use the language in public;
- right to use the language in writing;
- right to use the language orally; and
- right to use the language freely or as freedom to use the language without interference.

Unlike the relevant UN Declaration, the framework Convention of the Council of Europe does not include an exact term regarding the right to use the language freely, that is to say, freedom to use the language without any form of discrimination on any ground, but the very fact that this right is guaranteed to “every person belonging to a national minority”, leads to the logical conclusion that the right must not be put into question, through discrimination on any ground.

It is worth, to note the fact, that unlike the already elaborated UN Declaration, Article 10 (2) of the Framework Convention for the Protection of National Minorities, goes a step further in the defining, in the process of making more precise, even in the limitations, of the, otherwise most generally guaranteed rights, through making the practice of the right, conditional upon the fulfilment of the following conditions:

- there has to be a request to use the languages of national minorities in the manner determined in Article 10 (1) by the persons belonging to the particular minority and
- where such a request corresponds to a real need to use the languages and only (and this condition is set alternatively only)
 - a) in areas inhabited by persons belonging to a particular national minority/ minorities traditionally or
 - b) In areas in which persons belonging to the corresponding national minority are in substantial numbers

If the conditions set forth are fulfilled, the particular Contracting State is obliged to ensure, as far as possible, the satisfying of the conditions enabling a use of the minority language/languages in the communication with the administrative authorities.

Finally, Article 10 (3) of the framework Convention in a general way regulates aspects of the right to use the languages of national minorities in the criminal procedure as well. However, bearing in mind the headline of this text, there is no need in its context to keep to this segment of the realization of the right to use the languages of national minorities.

To conclude, in comparison with the relevant universal documents/acts, the Council of Europe framework Convention, is more extensive, precise and detailed regarding the right to use the languages of national minorities. Due to this fact exactly, of course, not isolated from additional information that this Convention is binding on RM, a part of the key conclusions in relation with the main subject of this text (realization of the right

⁹ The term “framework” presupposes a possibility for each of the Contracting Parties, depending on the actual situation, to fulfill the given frame with specific substance comprised of governmental politics, national legislation and administrative measures.

to use the language/s of national minorities in the communication with the state organs, the Standing Survey Committee for Protection of Civil Rights and Freedoms of the Assembly of the RM and the Ombudsman of RM), is presented through conclusions on the conformity of the relevant provisions from the legislation of RM with the corresponding provision of the framework Convention.

5. In what way does the Council of Europe Charter for Regional or Minority Languages, guarantee the right to use minority languages?

The European Charter for Regional or Minority Languages, avoiding any formulation that could be interpreted as conferring individual or collective rights to minorities as groups, or as members of linguistic minorities, regulates the use of regional or minority languages by determining objective standards in:

- education (Article 8);
- judicial authorities (in the judicial sphere, the various judicial proceedings (Article 9);
- communication with administrative authorities and public services (Article 10)
- media (Article 11);
- cultural activities and facilities (Article 12)
- economic and social life (Article 13)¹⁰.

Considering the defined demarked subject of the text that follows, in this part, only Article 10 shall be analyzed, regulating the use of regional or minority languages in the communication with administrative authorities and public services.

Article 10 distinguishes between:

- 7**
- a) obligation of the State Parties “within the administrative districts of the State in which the number of residents who are users of regional or minority languages justifies certain measures and as far as it is reasonably possible to”
 - to ensure that the administrative authorities use the regional or minority;
 - to ensure that such of their officers as are in contact with the public use the regional or minority languages in their relations with persons applying to them in these languages;
 - to ensure that users of regional or minority languages may submit oral or written applications and receive a reply in these languages;
 - to ensure that users of regional or minority languages may validly submit a document in these languages
 - to make available widely used administrative texts and forms for the population in the regional or minority languages or in bilingual versions
 - to allow the administrative authorities to draft documents in a regional or minority language;
 - b) obligation of the Parties In respect of the local and regional authorities on whose territory the number of residents who are users of regional or minority languages is such as to justify the measures specified below, “to allow or encourage” one of few of the following measures:
 - the use of regional or minority languages within the framework of the regional or local authority;

¹⁰ This is Part III of the Charter from which by a “menu” technique Contracting Parties are given 100 possibilities, to choose from at least 35. The freedom of the States is in the flexibility to find an optimum in the proposed modalities which they will apply in regard with particular regional or minority languages. States are not given the right on the already given list, to add new options.

- the possibility for users of regional or minority languages to submit oral or written applications in these languages;
- the publication by regional authorities of their official documents also in regional or minority languages;
- the use by regional authorities of regional or minority languages in debates in their assemblies, without excluding, however, the use of the official language(s) of the State Party;
- the use or adoption, if necessary in conjunction with the name in the official language(s), of traditional and correct forms of place-names in regional or minority languages;
- c) Obligation of the State Parties “to use or adopt the use of family names in the regional or minority languages, at the request of those concerned” and
- d) obligation of the State Parties with regard “to public services provided by the administrative authorities or other persons acting on their behalf... “in accordance with the situation of each language and as far as this is reasonably possible “:
 - to ensure that the regional or minority languages are used in the provision of the service;
 - to allow users of regional or minority languages to submit a request and receive a reply in these languages and
 - to allow users of regional or minority languages to submit a request and receive a reply in these languages

Apparently, the obligations of the State Parties, are rather loosely formulated, and are left a wide measure of discretion, depending on the particular circumstances (numerical and political) on the field. They are exhausted by “enabling”, “allowing”, “encouraging”, and in terms of the use of family names, the state should react on its own impulse, but exclusively at the request of the concerned, speaking the particular regional or minority language. The provisions of the Charter, even formulated as they stand in the use of minority languages are a meaningful improvement and strengthening of the right to use minority languages, in comparison with the other universal or regional (European) instruments.

To conclude with, every time when on the European field, the modes of the right to use regional or minority languages, or in the communication with state organs, are analyzed, the primary focus must be put on the solutions incorporated in the Charter for Regional or Minority Languages. Such an approach, must be followed when the modes of using the languages of communities in RM in their communication with state organs, are analyzed. Therefore, the fact that the second part of the conclusions referring to the main subject of the text that follows (realization of the right to use the language/s of national minorities in the communication with the state organs, the Standing Survey Committee for Protection of Civil Rights and Freedoms of the Assembly of the RM and the Ombudsman of RM), is founded on statements on the conformity of the provisions of the law of RM exactly with provisions of the European Charter. Finally, the fact that despite the lack of ratification of the Charter by the Assembly of RM, the act of signing binds RM to a bona fide acting (to act in good faith), which, *inter alia*, assumes, at least, to consider the solutions in the Charter, in every occasion in which on an internal level, the modes of use of languages of the communities are being defined.



III) Differences and similarities between the framework convention for the protection of national minorities and the European Charter for regional or minority languages

1. What are the differences between the Framework Convention for the Protection of National Minorities and the European Charter for Regional or Minority Languages?

The differences between the two instruments are numerous and diverse. For the needs of this text, only the few following positions will be located:

- differences from the aspect of the time point of their defining/drafting/creation;
- differences from the aspect of their primary goals;
- differences from the aspect of their subjects- users of the rights guaranteed by the two instruments;
- differences from the aspect of their structure of the acts; and
- of course, differences from the aspect of the concrete contents of separate provisions, which have already been put forward, and in this context, they will not be referred to again.

2. What is the difference between the two instruments arising from the historical context in which they were created?

The framework Convention is “younger” compared to the European Charter. The Convention has been created at the very beginning of the nineties of the last century, instantly after the dissolution of the former socialist multiethnic states. The drafting process of the Convention had to be influenced by the interethnic conflicts taking place on the territory of Central and Eastern Europe and by the measures that the other international organizations were trying to undertake (especially the CSCE/OSCE). So, the framework Convention, was supposed to primarily give answer to human rights problems and in that context, rights of minority members, which were set on the Council of Europe agenda, by the turbulences of the European East.

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The work on the European Charter, on the other hand, had commenced in the eighties, in light of the need to preserve the numerous regional or minority languages on the territory of Western Europe, without being accompanied by interethnic conflicts. So, the Charter was outlined as an answer to the problems set on the Council of Europe agenda by the European West.

3. What is the difference between the primary goals of the two instruments?

Completely in accordance with the historical moment of its creation, the framework Convention’s primary goal is in the “protection of national minorities and their rights and freedoms” as a function of further realization of human rights and freedoms, from one, and keeping of peace and security in Europe, on the other hand. Differently, the primordial goal of the European Charter is the protection of the languages spoken by minority groups or their members.

4. Who are the beneficiaries of the rights set forth in the two instruments?

In accordance with the goals of the two instruments, there is also a difference in the objects of their protection. Object of protection of the framework Convention are national minorities, that is to say, the persons belonging to them. Apparently, the formulation is extensive enough to include the traditional/old and new/young minorities, which were created as a result of the dissolution of the former socialist multinational states. Object of protection of the European Charter, are languages as such, regardless of the dimension attributed to their beneficiaries (individual or collective).

5. What are the differences in the structure of the two instruments?

A comparative analysis of the two instruments could be performed on various criteria, but on this occasion, the one taking into consideration the character of the norms included in each of the acts, appears to be sufficient. Namely, the framework Convention contains framework, programme-type provisions leaving the States concerned a measure of discretion in their implementation.

Part III of the Charter, also, leaves a measure of discretion, but gives very precise directions in the frame of which, the free will of the State parties may be practised.

6. What are the similarities between the Framework Convention for the Protection of National Minorities and the European Charter for Regional or Minority Languages?

There are numerous similarities between the two instruments as well, but on this occasion, few are worthy to be mentioned:

- parts of the subject of their regulation are identical, similar, and coincide;
- significant number of the same States are bound by two instruments;
- there is a similarity in the functioning of the monitoring mechanism – the Advisory Committee of the framework Convention and the Committee of Experts of the European Charter; and
- identical legal nature of the two instruments, imposing the necessity of their incorporation in the legal systems of the State Parties.



IV) Incorporating the obligations from the framework convention for the protection of national minorities and the european charter for regional or minority languages in the national law of republic of Macedonia

1. What kind of acts are the Framework Convention for the Protection of National Minorities and the European Charter for Regional or Minority Languages?

The Framework Convention for the Protection of National Minorities and the European Charter for Regional or Minority Languages are classical legal acts of the type multilateral (interstate) treaties. As such, they are not an immediate source of the domestic law of RM. This means, that the persons under jurisdiction of the individual states, to which this international treaties guarantee certain rights, in order to exercise them, need to enjoy them as legally accessible. Formulated differently, in order to be used by determined/ determinable beneficiaries - physical persons, they must become part of the national law of the particular state. They have to be prescribed domestic norms that will entitle the persons- holding the guaranteed rights, that is to say, will enable them to invoke their rights before the competent bodies of the particular State Party.

2. In what way can the international norms of the Framework Convention for the Protection of National Minorities and the European Charter for Regional or Minority Languages be incorporated in the domestic legal orders of the State Parties?

The manner of incorporating international norms included in international treaties in general, depends on the constitutional order of the particular State Party. Contemporary constitutional solutions go between one extreme- the monistic systems¹¹, in which all or some international legal provisions are directly applicable as they have supremacy over domestic legal provisions and the other extreme- dualist solutions¹² which do not allow for a direct applicability of international norms without their incorporation in national legislation, in a procedure determined with the constituting act of the state in question. Between these two extremes. in most of the states, actually function combined solutions, in which the dualist systems rarely accept the sources of international law, other than treaties.

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Nevertheless, the differences explained between individual systems prove to be completely irrelevant in the context of international treaties, which are covered herein- the Framework Convention for the Protection of National Minorities and the European Charter for Regional or Minority Languages. Why? Because these international acts are not self-executing. They cannot by any means, be directly applicable, without an additional choice of one of the options given in them. Furthermore, there have to be other supplementary, precise in more detail options in the frame of each of the selected options. Accordingly, their incorporation in the particular legal orders (of course the legal order of RM, as well), inevitably points to the necessity of undertaking activities characteristic for the dual systems and not only simple ratification of the Convention/ Charter, but their full transformation through passing of law/s for their detailed operationalization.

11 Monistic systems, assume a totality, unity of domestic and international law, they found the source of international law in all or some of international legal norms, which are superior to the domestic norms.

12 The dualist systems separate the international and national law, i.e. assume a division of the two legal systems. International legal provisions are binding only when incorporated into domestic law.

3. How were the Framework Convention for the Protection of National Minorities and the European Charter for Regional or Minority Languages incorporated in the legal order of Republic of Macedonia?

The Framework Convention for the Protection of National Minorities and the European Charter for Regional or Minority Languages were incorporated through guaranteeing the rights of persons belonging to communities in the highest legal and political document of RM- its 1991 Constitution and in the amendments adopted after the signing of the Framework Agreement in 2001¹³, and through the manner of their realization by numerous laws and sub-legal acts which put into operation the relevant constitutional provisions. The approach of regulating the status and rights of communities with a single law (general from the aspect of the width of the rights that would be regulated) and concomitantly specialized given the persons to which it would be directed (whose rights it would regulate) was not used, but the rights are regulated in the laws and sub-legal acts which regulate the fundamental subject matter for all persons and in that context :

- a) the manner of realization of certain rights of community members as :
 - freedom of expression;
 - freedom of religion;
 - free expression of national belonging;
 - right freely to express, foster and develop the identity and community attributes
 - use of the symbols of the communities;
 - establishing institutions and associations of the communities;
 - realization of instruction on the languages of the communities in the elementary and secondary education;
 - appropriate and equitable representation of the communities in state organs and other public institutions at all levels;
 - use of the language of communities in the official records:
 - use of the language of communities in the local self-government;
 - use of the language of communities in the communication with Ministries and local units of Ministries and state organs; and
 - use of the language of communities in judicial proceedings,
- 6) protection of the rights of members of communities in the proceedings before:
 - regular courts;
 - Constitutional Court;
 - Ombudsman of RM and
 - Standing Survey Committee for Protection of Civil Rights and Freedoms

13 The Framework Agreement was a document of a political value envisaging substantial changes in the constitutional order of RM as defined with the 1991 Constitution and the legislation based on it, *inter alia*, in the direction of extending the rights of communities. The Agreement, in itself, does not and cannot have legally relevant meaning. After its signing on 13.8.2001 in Ohrid, a process of translating into a number of constitutional and legal provisions, followed. After the process ended, there is no legal basis, in the procedure of invoking of particular rights by the members of communities, to invoke the Agreement as such. The particular, individual rights cannot be realized on the basis of the Ohrid Agreement. The individual rights are embedded in the Constitution and the laws, and can only be realized in prescribed procedures for invoking concrete provisions thereof.



V) Incorporating the obligations from the framework convention for the protection of national minorities and the European charter for regional or minority languages regarding the use of languages¹⁴ of persons belonging to communities in the communication with state organs the standing inquiry committee for protection of civil rights and freedoms and the ombudsman in the national law of republic of Macedonia

1. How were the Framework Convention for the Protection of National Minorities and the European Charter for Regional or Minority Languages incorporated in the national law of Republic of Macedonia, in regard with the use of minority languages in the communication with state organs, the Standing Survey Committee for Protection of Civil Rights and Freedoms and the Ombudsman?

The incorporation of the Framework Convention for the Protection of National Minorities and the European Charter for Regional or Minority Languages in regard with the use of minority languages in the communication with state organs, the Standing Survey Committee for Protection of Civil Rights and Freedoms and the Ombudsman in the national law of Republic of Macedonia, was performed through guaranteeing the right to use the language of members of communities in Amendment V of the Constitution of RM, and by regulating the manner of its realization in the area that is subject of analysis in this text with the laws that operationalized the said amendment. The approach of regulating the use of languages of members of communities with a single law is not followed, and the use is regulated in the frame of several laws.

2. Which acts regulate the manner of the use of minority languages in the communication with state organs, the Standing Survey Committee for Protection of Civil Rights and Freedoms and the Ombudsman in the national law of Republic of Macedonia?

For now it is, the Law on General Administrative Procedure only.¹⁵

The question of the use of languages of members of communities in the communication with the Standing Survey Committee for Protection of Civil Rights and Freedoms is not regulated with the Decision of the Assembly of RM on the establishment of Standing Committees (as working bodies).¹⁶ The question of the use of languages of members of communities in the communication with the Ombudsman of RM is not regulated with the Law on the Ombudsman¹⁷, as well.

Up to the moment when this text was forwarded for publishing,¹⁸ there have been no new sub-legal acts that would elaborate the aspects of the provisions contained in the said laws.

¹⁴ The European Charter for Regional or Minority Languages is not strictly legally speaking, incorporated, as the binding process is not yet completed by an act of ratification. On the other hand, observed on the substantial level, it is completely clear that a series of solutions in the Charter, especially regarding the use of languages in the communication with administrative authorities, already form part of the legal system of RM.

¹⁵ "Official Gazette" of RM, No. 44/02.

¹⁶ "Official Gazette" of RM, No 85/02

¹⁷ "Official Gazette" of RM, No 60/03

¹⁸ The text was sent to publishing on 8.8.2006



VI) Realization of the right to use the languages of the members of communities in the communication with state organs, the standing inquiry committee for protection of civil rights and freedoms and the ombudsman in republic of Macedonia

A. REALIZATION OF THE RIGHT TO USE THE LANGUAGES OF THE MEMBERS OF COMMUNITES IN THE COMMUNICATION WITH STATE ORGANS

1. What does the term “state organ” presuppose?

The term “state organ” in the context in which it is used, it is advisable to be interpreted in the sense of the relevant Article of Law on General Administrative Procedure, regulating the organs competent for the administrative procedure, that is to say, to decide in administrative matters. Namely, Article 20 of the law, under the term “organ” presupposes:

- Ministries;
- other organs of state administration;
- other state organs;
- municipality organs;
- organs of the City of Skopje;
- municipality organs of the City of Skopje ; and
- legal and other subjects to which the law confers public authorities, unless otherwise determined by a law.

2. How should the term “communication” of members of communities with state organs be understood?

In order to correctly understand the term “communication” of members of communities with state organs, Article 61(1) of Law on the General Administrative procedure is relevant, defining the form of communication/ interaction–submission. It enumerates the following submissions:

- requests;
- forms used for automatic processing of data;
- proposals;
- notifications;
- applications;
- complaints;
- objections and
- other notifications with which the members of communities refer to competent state organs.

3. How is the right to use the languages of members of communities in their communication with state organs, realized?

The right to use the language of communities their communication with state organs is realized in the manner determined by Article 61 (3) of the Law on the General Administrative procedure, which in turn, is not a step forward, in the sense of further elaboration of the relevant constitutional Amendment V, but its reiteration ,

without offering other, detailed solutions. Thus, the right of the members of communities to communicate is realized through:

- right of every citizen- member of a certain community residing in unit of local self-government in which at least 20 percent of the population speaks an official language other than Macedonian may use any official language and its alphabet to communicate with the regional units of the Ministries;
- obligation of the regional units competent for the corresponding units of self-governance, to give answers in Macedonian and its Cyrillic alphabet and the official language and alphabet in which the community member addressed them;
- right of every citizen- member of a certain community residing in unit of local self-government in which at least 20 percent of the population speaks an official language other than Macedonian, to communicate with Ministries in any official language and its alphabet
- obligation of the Ministries to respond in Macedonian and its Cyrillic alphabet and the official language and alphabet in which the community member addressed them;
- right of every citizen- member of a certain community residing in unit of local self-government in which at least 20 percent of the population speaks an official language other than Macedonian to request for bilingual templates; and
- obligation of the Ministries and other organs and administrative organizations of state administration to undertake the necessary activities in the publishing of bilingual templates for the community members residing unit of local self-government in which at least 20 percent of the population speaks an official language other than Macedonian.

B. REALIZATION OF THE RIGHT TO USE THE LANGUAGES OF PERSONS BELONGING TO COMMUNITIES IN THE COMMUNICATION WITH THE STANDING SURVEY COMMITTEE FOR PROTECTION OF CIVIL RIGHTS AND FREEDOMS

7 1. What is the Standing Survey Committee for Protection of Civil Rights and Freedoms?

The Standing Survey Committee for Protection of Civil Rights and Freedoms of the Assembly of RM is one of the seventeen standing working bodies of the Assembly, established by a decision of the Assembly. It is comprised of a Chairperson, eight members and their deputies.

2. Which issues fall within the competence of the Committee?

The Committee has the right and the duty to:

- consider matters referring to general questions, proposals and opinions regarding the implementation of the provisions of the Constitution, laws and other regulations and acts, relevant for realization and protection of civil freedoms and rights;
- points to the need of adoption of laws, regulations and acts with a view to a more comprehensive protection of civil freedoms and rights;
- follows and analyzes the implementation of the ratified international acts which regulate protection of civil freedoms and rights;
- cooperation with scientific and expert organizations from the field of protection of civil freedoms and rights;
- cooperation with appropriate foreign and international bodies from the field of protection of civil

- freedoms and rights; and
- other issues from the area of protection of freedoms and rights of the citizen.

3. Within the frame of which competence of the Committee, the communication of members of communities with the Committee, is realized?

The Committee is competent to consider the notices related to violations of freedoms and rights of citizens, and in that context, of the members of communities, and in connection with that, to take positions.

4. Which issues do not fall within the competence of the Committee?

The Committee cannot exercise investigative and other judicial functions.

5. What is the course of the procedure of communication of an individual member of a community with the Committee?

The procedure commences with a submission of a precisely formulated petition to the Archives of the Assembly of RM. The preliminary consideration of the petition is performed by the Committee's Consultant. If he finds that are grounds the petition to be considered by the Committee, it will be put on the agenda on the next meetings. In order to make the debate meaningful, the Committee in the meantime, sends a notice to the competent organ (competent Ministry, competent court, the Republican Judicial Council etc) with a request to be informed if the allegations of the petition are well-founded. Among the other information, the competent organs' information is necessary for the Committee's findings, which in turn, are a basis to open a procedure for accountability of holders of public functions.

6. Which elements must be included in the petition to the Standing Survey Committee for Protection of Civil Rights and Freedoms?

Petition which is submitted to this Committee, does not have strictly prescribed form, nor does it have to be submitted in form of previously prepared template. Still, in order, to be considered as complete, it has to contain the minimal elements on the basis of which the Committee can have clear perception as to what sort of actual or possible violation of a freedom or/and right, is in question:

- information on the actual or possible violation;
- attachments/evidence which could support it;
- basic information on the person who submitted it;
- signature of the person who submitted it; and
- date of submission.

7. Do the persons belonging to communities have a right to submit the petition in language other than Macedonian and on alphabet other than the Cyrillic, a language spoken/used by at least 20% of the citizens of RM?

The Standing Survey Committee for Protection of Civil Rights and Freedoms of the Assembly of RM is not an organ in the sense of the previously cited Article 20 of the Law on the General Administrative procedure. The petitions that the citizens are submitting to the Committee are not treated as submissions, in the sense

of Article 61 (1) of the Law on the General Administrative Procedure. The petitions, are not even objectively submissions, because they are not submitted to the Committee in order to open a procedure which would have characteristic of an administrative procedure. Accordingly, with regards to the petition which the citizens of RM are submitting to the Standing Survey Committee of the Assembly, the rules for the use of languages of members of communities set forth in Article 61 (3) of the Law on the General Administrative Procedure, which have been previously in the text dealt with, are not applicable. However, this does not mean that the citizens of RM- members of communities do not enjoy the right to submit complaint to this body in a language other than the Macedonian and on alphabet other than the Cyrillic, which are used by at least 20% of citizens of RM. Such a right is not explicitly listed in the Decision of the Committee on the establishment of the Committee, but it can be deducted on a basis of a permissible analogy with:

- the already realized right of the Members of the Assembly of RM- members of communities which are at least 20 % of the citizens in the state to address on the Assembly meetings on their own language and
- the already realized right of these persons to address on the official languages in the work of the working bodies of RM, including in the course of the work of the Standing Survey Committee for Protection of Civil Rights and Freedoms.

Of course, the remark that it is completely different when a particular citizen- member of a particular community addresses during the Assembly meetings from when a citizen who does not hold a public function, who is not a Deputy in the Assembly, but considers that he needs to address the Assembly Standing Survey Committee, due to an actual or future/possible violation of a particular right or freedom. But, such differences, when citizens- members of communities which are at least 20% of the population of RM address the Assembly or its working bodies, should not be grounds to negate the right members of communities which are at least 20% of the population of RM to address the Committee in their official language. If members of particular political parties which are concomitantly, members of particular communities which are at least 20% of the population of RM, have a right to address the Assembly or its working bodies, than the other members of communities cannot be deprived of that right, when they address the Committee as an integral part of the process of protection of freedoms and rights of all citizens, the right of the members of community which are at least 20% of the population of RM, including. Conversely, the Committee has the obligation to respond in Macedonian and its Cyrillic alphabet, as well as in the official language and alphabet in which the petitioner -member of a particular community of RM. This is especially important for the fact, that the members of these communities without a doubt, enjoy and exercise a right to address in the community languages to another state organ for the protection of rights and freedoms of the citizens of RM, which will be elaborated in more detail- the Ombudsman of RM, which practices the obligation to respond to the petitioners in Macedonian and in Cyrillic alphabet and in the official language which was used by the petitioner. Perhaps, it is more prudent, the core permissible analogy regarding the right to use the language of communities in the communication with the Standing Survey Committee for Protection of Civil Rights and Freedoms, to be deducted precisely from the practice of the Ombudsman of RM, namely due to the fact that these two institutions, of course, work on same quality problems- the protection of the right and freedoms of the citizens of RM.

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B. REALIZATION OF THE RIGHT TO USE THE LANGUAGES OF MEMBERS OF COMMUNITIES IN THE COMMUNICATION WITH THE OMBUDSMAN OF REPUBLIC OF MACEDONIA

1. What kind of organ is the Ombudsman of RM?

The Ombudsman is an organ of RM for the protection of the constitutional and legal rights and freedoms of the citizens of RM, when infringed by the state administration bodies and by other bodies and other organs and organizations that have public authority. It as an independent and self-governing organ that acts on the basis of and in accordance with the Constitution of RM.

2. What are the competencies of the Ombudsman of Republic of Macedonia?

The Ombudsman of RM is competent to intervene between the citizens of RM from one, and the state administration bodies, organs of local self-governance and organizations that have public authority, on the other hand, for the protection of the rights and freedoms of the citizens.

3. How does the Ombudsman exercise its competencies?

The Ombudsman realizes the protection of the rights and freedoms of the citizens of RM in two ways:

- at his own initiative; or
- at the imitative of the citizens of RM.

4. Who has the right to an imitative before the Ombudsman of Republic of Macedonia?

The holder of the right to initiative before the Ombudsman of Republic of Macedonia is every citizen of RM, should it be specially emphasised, with no discrimination on any ground, so every member of any community in RM, as well as any other person which is not legally tied to RM (does not have citizenship of RM). The only assumption, that has to be completely fulfilled, is that the particular citizen or person, in general, considers that his/her particular right or freedom has been infringed by the state administration bodies and by other bodies and other organs and organizations that have public authority in one of the following ways:

- through a wrongful application of legal provision/s;
- as a result of wrongly established factual situation;
- by violating the rules governing the course of the administrative procedure
- by not dully acting upon the petitions of citizens;
- by unnecessary delaying the procedure/s etc.

Additionally, in accordance with Amendment XI of the Constitution of RM, members of communities may initiate

when they consider that a state organ or organization infringed the principle of prohibition of discrimination on grounds of religion or ethnicity or of adequate and equitable representation of community members in state organs, organs of the units of local self-governance and other public institutions and services.

Such a general provision on the protection of right to equality and adequate and equitable representation of community members is completely taken from, but not elaborated in Article 13 of the Law on the Ombudsman.

5. What way is the process of applying to the Ombudsman?

The application to the Ombudsman must be in a form of a petition. The petition may be submitted orally or in writing. If the oral form is selected, the petition may be submitted immediately, in person in the Office of the Ombudsman In Skopje, or the regional offices in Tetovo, Kicevo, Stip, Strumica, Kumanovo and Bitola, or even over phone. If the written form is selected, the petition may be submitted to the Office, or the regional offices, by post, telex or electronic mail.

6. Which elements should be compulsory included in the petition to the Ombudsman of Republic of Macedonia?

The petition to the Ombudsman of RM, must include the following:

The petition addressed to the Ombudsman should be signed and to

- 7**
- a) Information for the person submitting it:
 - name and surname
 - place of residence
 - address
 - contact phone number
 - affiliation with a particular community
 - gender
 - age
 - profession and
 - citizenship
 - б) information on the subject the petition refers to:
 - name and headquarters of the organ/organization and
 - name, surname and function of the person which violated certain rights/rigs of the petitioner ;
 - в) information on the act or procedure/action which is in violation with particular right/s:
 - name, character, nature of the act or
 - description of the procedure/action;
 - г) information on the already used legal remedies in respect of the illegal act:
 - the legal remedy;

VI) REALIZATION OF THE RIGHT TO USE THE LANGUAGES OF THE MEMBERS OF COMMUNITIES IN THE COMMUNICATION WITH STATE ORGANS, THE STANDING SURVEY COMMITTEE FOR PROTECTION OF CIVIL RIGHTS AND FREEDOMS AND THE OMBUDSMAN IN REPUBLIC OF MACEDONIA

- the organ before which the remedy was lodged; and
- date of lodging the remedy;
- д) attachments to the petition, evidence on the violation of the right/s;
- ѓ) in the cases when the petition is given at the Office, or, the regional offices, it should include information on the officer to whom it was submitted;
- е) data of submission of the petition; and
- ж) signature of the person who submits it

The petitions are exempted from tax, which is very importantly as an additional stimulating factor regarding the citizens, which cannot afford such expenses.

7. In which language is the petition to the Ombudsman submitted?

The petition may be in Macedonian and its Cyrillic alphabet, as well as in any other official language and alphabet of RM.

OMBUDSMAN OFFICE
ul. "Dimitrie Cupovski" No. 2
1000 Skopje



Република Македонија
НАРОДЕН ПРАВОБРАНИТЕЛ
O M B U D S M A N
Republic of Macedonia

COMPLAINT

1. INFORMATION ON COMPLAINANT:

NAME AND SURNAME _____ PLACE OF RESIDENCE _____
ADDRESS _____ TELEPHONE NUMBER _____
COMMUNITY _____

2. SEX: M F

3. AGE _____

4. OCCUPATION _____ 5. CITIZENSHIP _____

6. ORGAN OR ORGANIZATION ON WHICH THE COMPLAINT REFERS:

7. NAME, SURNAME AND POSITION OF OFFICIAL THAT VIOLATED RIGHT OF THE COMPLAINANT:

8. ON BELOW LINES EXEMPLIFY FACTS ON DECISION, CONCLUSION OR SOME OTHER DOCUMENT THAT VIOLATE SOME OF YOUR RIGHT OR DESCRIBE ACTION THAT VIOLATED YOU:

9. WRITE WHICH LEGAL MEANS YOU HAVE USED (TO WHICH ORGAN AND WHEN):

10. ATTACH (FACTS):

11. IN THE OFFICE OF THE OMBUDSMAN YOU WERE HEARD BY (WRITE THE NAME OF THE CLERK):

DATE

SIGNATURE

8. What type of actions can the Ombudsman of Republic of Macedonia undertake?

The character of the activities which the Ombudsman has the right and the duty undertake, depend on his assessment if the petition is well founded or not. In order to respond in that regard, the Ombudsman may:

- request for explanations and additional information from the competent organs, regarding the allegations in the submission
- have a direct insight into the files and affairs within their competence or
- interview an appointed or nominated person, an official of the organ/ organization which violated the right/s.

If on the basis of such an action/s, finds that the petition is ill-founded, it will dismiss it as such. Conversely, if he finds that there are grounds, the Ombudsman, will initiate a procedure, and informs the person who made the petition on the course of the procedure. During the course of the procedure, the Ombudsman may:

- suggest that the procedure is re-opened in accordance with law;
- submit a request to the competent organ, for opening of an administrative dispute;
- submit a petition to the organ/organization for a temporary postponement of the execution of the act/activity;;
- propose opening of disciplinary proceedings in respect of the official of the organ/organization which has violated the right/s;
- submit a request to the competent Public Prosecutor for initiation of a procedure in order to determine a criminal or responsibility for a misdemeanour;
- give recommendations to the organs/organizations for improving of their work and conduct with the claimants or
- give his opinion regarding the protection of the constitutional and legal rights and freedoms or the principle of non-discrimination and appropriate and equitable representation of members of communities in the matter in procedure, regardless of the type and instance of the procedure pending before the state administration bodies, organs of local self-governance and organizations that have public authority,

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9. What sort of actions the Ombudsman may not undertake?

The Ombudsman may not:

- impose sanctions or
- amend judicial decisions.

10. In what language does the Ombudsman, address the petitioners?

The Ombudsman of RM addresses the person who made the petition in Macedonian and its Cyrillic alphabet. If the petition was in one of the official languages of RM, the Ombudsman responds to it, or informs the person who submitted it, on the course of the initiated proceeding in Macedonian its Cyrillic alphabet as well as in the particular official language and its corresponding alphabet in which the petition was given..



VI) Conclusions on the conformity of the modes of realization of the right to use the languages of communities in the communication with state organs with the standing inquiry committee for protection of civil rights and freedoms of the assembly of republic of macedonia and with the ombudsman of republic of macedonia, with the corresponding provisions of the framework convention for the protection of national minorities and the european charter for regional or minority languages

A. CONFORMITY WITH THE CORRESPONDING PROVISIONS OF THE FRAMEWORK CONVENTION FOR THE PROTECTION OF NATIONAL MINORITIES

- 1. Article 10(2) of the Framework Convention for the Protection of National Minorities is fully incorporated in the national law of RM.**
- 2. In this way, the formal legal obligation of RM as a State Party of this international treaty, for its complete incorporation, is completely satisfied.**
- 3. Even more so, the relevant constitutional and legal provisions of RM, defining the necessary pre-conditions that have to be satisfied in function of the use of languages of national minorities in the communication with communication with administrative authorities are by far, more precisely defined. Only as a comparison, the Convention demands to be cumulatively fulfilled even three conditions:**

- 7**
- alternate or traditional residence of minority./ minorities on a determined territory or their concentration) rather imprecisely determined, actually not determined) substantial numbers;
 - has to be request to use the languages by persons belonging to a particular national minority and
 - where such a request corresponds to a real need to use the languages, on the other hand

as a precondition for the obligation of the State Party to “make every effort as far as possible to ensure the conditions for the use the minority language”. Notice! Not a word of an obligation of the state for a definite, indisputable, unequivocal realization of the very right to use the language in the communication with administrative authorities.

Unlike the Convention, the relevant constitutional and legal provisions of RM, prescribe only one, rather precisely defined condition- the citizens - members of a particular community residing in particular unit of self-governance have to be at least 20% of the total population, in order to exercise the right to use their own language and alphabet. The preciseness of the threshold entails the element of objectivity, i.e. eliminating arbitration and continuous bargaining.

4. Furthermore, the Convention guarantees the right to use the minority language only in the communication of the persons belonging to minorities with the administrative authorities, while the corresponding constitutional and legal provisions of RM, set the term “communication” more broadly, covering all state organs, as well as the organs competent for the protection the civil rights and freedoms.

B. CONFORMITY WITH THE CORRESPONDING PROVISIONS OF THE EUROPEAN CHARTER FOR REGIONAL OR MINORITY LANGUAES

1. RM has only signed, but not ratified the European Charter for Regional or Minority Languages. In that sense, from a formal legal point of view, RM does not have an obligation to incorporate the Charter provisions in its national law. Nevertheless, the provisions regarding the communication of the persons speaking regional or minority languages with the administrative authorities and public services, are fully incorporated in the domestic law of RM.

2. The statement under the previous point, does not presuppose incorporation of one of the given options in each of the sections in the relevant Article 10 of the European Charter. Even more so, the corresponding constitutional and legal provisions of RM imply:

- implementation of the highest standards of the European Charter for Regional or Minority Languages in each of its sections and
- simultaneous implementation of few solutions in parallel, as a mutual supplementation, in order to create a real base for as far as possible more favourable factual situation of the community members.

3. As to the obligation of the State Parties, “as far as possible, in the local and regional authorities on whose territory the number of residents using minority or regional languages, justifies the taking of certain measures” , to undertake one or few of the seven measures, listed in Article 10 (1), in RM is implemented by precisely defining the unites of local self-government in which the number of community members as at least 20%. The prescribed number, is the only prerequisite, whose fulfilment, means by default, creating an obligation for RM, not for a mere concern for the use of minority languages as the Charter demands, which would by far be a weaker alternative, but for their actual exercise through:

- obligation for the administrative authorities to use minority languages (and not simply to ensure);
- obligation for the officials of the administrative authorities to use the regional or minority languages in the communication with persons who addressed them in those languages;
- obligation to ensure possibility to submit oral or written applications and receive a reply in the regional or minority languages (and not simply to ensure);
- obligation to ensure that a document may be may validly submit in regional or minority languages;
- obligation to make available widely used administrative texts and forms for the population in the regional or minority languages or in bilingual versions and

7

- obligation for the administrative authorities to draft documents in a regional or minority language..

4. When it comes to the obligation of the State Parties in respect of the local and regional authorities on whose territory the number of resident users of regional or minority languages is such as to justify undertaking certain measures, to “allow or encourage” some of the seven measures , in RM this obligation is implemented by a precise definition of the units of local self-governance in which the number of minority members is at least 20%. Reaching the prescribed number is the only prerequisite whose fulfilment automatically entails creation of an obligation for RM to undertake one of the following measures:

- use of the regional or minority languages in the local or regional administration;
- inviolable right (not just a possibility) to submit oral and written applications in the regional or minority languages;
- obligation for publication official documents by regional authorities in the regional or minority languages;
- right to use the regional or minority languages in debates of assemblies, of regional authorities, not excluding the use of the official language/s of the State party;
- the use or adoption, if necessary in particular case, in conjunction with the name in the official language(s), of traditional and correct forms of place-names in regional or minority languages and
- the use or adoption if necessary in particular case, of family names in conjunction with minority languages, is guaranteed as an inviolable right, and not as the Charter prescribes, “at the request of those concerned”

7
5. When it comes to the obligation of the State Parties through “public services provided by the administrative authorities or other person acting on their behalf”, this obligation is not implemented in accordance with the wording of the Charter “in accordance with the situation of each language and as far as it is reasonably possible”, but automatically, when the threshold, of at least 20% of members of a particular community concentrated into a certain unit of local self-governance, is reached. In such cases, RM has the obligation:

- not to “ensure that the languages are used in the provision of the service” but to enable the exercise thereof;
- to enable the users of the languages to submit a request in the language in question and
- to enable the users of the languages to submit a request and receive a reply in the appropriate language.

REALIZIMI I TË DREJTËS PËR PËRDORIMIN E GJUHËVE TË BASHKËSIVE NË KOMUNIKIM ME ORGANET E PUSHTETIT TË SHTETIT NË REPUBLIKËN E MAQEDONISË

HARMONIZIMI ME KONVENTËN KORNIZË PËR MBROTJEN E PAKICAVE KOMBËTARE DHE ME KONVENTËN EVROPIANE PËR GJUHËT RAJONALE OSE TË PAKICAVE

REALIZACIA E HAKOSKORO BAŞO LABARIPE E ĆHIBËNGORO E KHEDINËNGORO ANI KOMUNIKACIA E ORGANENCA TARO THEMAKORO RAZIPE ANI REPUBLIKA MAQEDONIA:

JEKHAJEKHIPE E PREMISKERE PHANDLE LAFESKERE KONVENCIJAĀ BAŞO ARAKHIPE E NACIONALNIKANE MINORITETËNGORO THAJ E EUROPAKERE DOKUMENTOĀ BAŞE REGIONALNIKANE JA PALE MINORITETËNGERE ĆHIBĀ

REALIZAREA A ĀNDREPTULUI TI UFILIZAREA A LIMBILOR A COMUNITĀTSLOR TU COMUNICAREA CU ORGANILI A STATLUI TU REPUBLICA MACHIDUNIA:

COORDINARI CU CONVENTSIA ĀNCADURATĀ TI APURARI A MINORITĀSLOR NATSIONALI SHI CU DOCUMENTUL EUROPEAN TI LIMBILI REGIONALI ICA LIMBILI A MINORITĀTSLOR

MAKEDONYA CUMHURİYETİ DEVLET YÖNETİM ORGANLARIYLA İLETİŞİMDE TOPLULUK DİLLERİNİN KULLANMA HAKKININ GERÇEKLEŞTİRİLMESİ:

MİLLİ AZINLIKLARI KORUMA ÇERÇEVE ANLAŞMASI İLE BÖLGESEL VEYA AZINLIK DİLLERİ AVRUPA BEYANNAMESİYLE UZLAŞMASI

ОСТВАРИВАЊЕ ПРАВА УПОТРЕБЕ ЈЕЗИКА ЗАЈЕДНИЦА У КОМУНИКАЦИЈИ СА ОРГАНИМА ДРЖАВНЕ ВЛАСТИ У РЕПУБЛИЦИ МАКЕДОНИЈИ:

УСАГЛАШЕНОСТ СА ОКВИРНОМ КОНВЕНЦИЈОМ ЗА ЗАШТИТУ НАЦИОНАЛНИХ МАЉИНА И ЕВРОПСКОМ ПОВЕЉОМ О РЕГИОНАЛНИМ ИЛИ МАЉИНСКИМ ЈЕЗИЦИМА

REALIZATION OF THE RIGHT TO USE THE LANGUAGES OF THE COMMUNITIES IN THE COMMUNICATION WITH THE STATE ORGANS IN REPUBLIC OF MACEDONIA:

CONFORMITY WITH THE FRAMEWORK CONVENTION FOR THE PROTECTION OF NATIONAL MINORITIES AND THE EUROPEAN CHARTER FOR REGIONAL OR MINORITY LANGUAGES

Проектот е поддржан од Европската комисија



Проектот е инициран од Фондацијата Крал Бодуен

