

DECISION 99-412 DC OF 15 JUNE 1999
European Charter for Regional or Minority Languages

On 20 May 1999 the President of the Republic referred to the Constitutional Council, pursuant to Article 54 of the Constitution, the question whether the ratification of the European Charter for Regional or Minority Languages, signed at Budapest on 7 May 1999, must be preceded, in view of the interpretative statement made by France and of the undertakings that France intends to enter into under Part III of the Charter, by amendment of the Constitution;

THE CONSTITUTIONAL COUNCIL,

Having regard to the Constitution of 4 October 1958;

Having regard to Ordinance 58-1067 of 7 November 1958, as amended, laying down the Institutional Act on the Constitutional Council, and in particular sections 18(2), 19 and 20 thereof;

Having heard the rapporteur;

On the following grounds:

ON THE CONTENT OF THE INTERNATIONAL UNDERTAKING REFERRED AND THE EXTENT OF REVIEW:

1. The European Charter for Regional or Minority Languages, as referred to the Constitutional Council, consists of a Preamble; a Part I, entitled “General provisions”; a Part II, setting out “Objectives and principles” that each State party undertakes to apply; a Part III, comprising ninety-eight measures to promote the use of regional or minority languages in public life, by field of application, from which each State party is free to choose in accordance with Article 2(2) of the Charter, the measures chosen applying only to the languages specified in its instrument of ratification; a Part IV, concerning application of the Charter; and a Part V, setting out final provisions;

2. By Article 2(1) of the Charter, “Each Party undertakes to apply the provisions of Part II ‘consisting only of Article 7’ to all the regional or minority languages spoken within its territory and which comply with the definition in Article 1”; it follows from this wording that Part II is prescriptive and applies not only to the languages specified by France by virtue of its Part III undertakings but to all the regional or minority languages used in France within the meaning of the Charter;

3. Article 2(2) of the Charter obliges each State party to undertake to apply a minimum of thirty-five paragraphs or subparagraphs chosen from among the provisions of Part III, including at least three from each of Articles 8 “Education” and 12 “Cultural activities and facilities” and one from each of Articles 9 “Judicial authorities”, 10 “Administrative authorities and public services”, 11 “Media” and 13 “Economic and social life”; France, when it signed the Charter, specified thirty-nine paragraphs or subparagraphs, out of the ninety-eight set out in Part III of the Charter, which it undertakes to apply and which will be annexed to its instrument of ratification; eleven of these relate to education, nine to the media, eight to cultural activities and facilities, five to economic and social life, three to administrative authorities and public services, two to transfrontier

exchanges and one to judicial authorities; the Constitutional Council's review of Part III must extend only to these undertakings;

4. When the French Government signed the Charter, it also made an interpretative statement specifying the meaning and scope it intends to give to the Charter or to certain of its provisions in the light of the Constitution; a unilateral statement of this kind is no more than an instrument relating to the treaty which, in the event of a dispute, may be used to interpret it; the Constitutional Council, on a referral under Article 54 of the Constitution, may therefore review the constitutionality of the undertakings entered into by France irrespective of that statement;

ON THE PARAMETERS FOR REVIEW:

5. On the one hand, as Article 1 of the Constitution states: "France shall be an indivisible, secular, democratic and social Republic. It shall ensure the equality of all citizens before the law, without distinction of origin, race or religion. It shall respect all beliefs"; the principle that the French people is one, and that no section of it may claim to exercise national sovereignty, is also of constitutional status;

6. In the light of these fundamental principles, no collective rights can be recognised as inhering in any group defined by community of origin, culture, language or belief;

7. On the other hand, the freedom proclaimed by Article 11 of the Declaration of Human and Civic Rights of 1789, whereby "The free communication of ideas and of opinions is one of the most precious rights of man. Any citizen may therefore speak, write and publish freely, except what is tantamount to the abuse of this liberty in the cases determined by Law" must be reconciled with the first paragraph of Article 2 of the Constitution, whereby "The language of the Republic shall be French";

8. By virtue of these provisions, public-law corporations and private-law entities supplying a public service are obliged to use French; private individuals can claim no right, in their relations with government departments or public authorities, to use any language other than French, nor must they be compelled to do so; Article 2 of the Constitution does not prohibit the use of translations; its application must not entail any neglect of the importance, in education, research and audiovisual communication, of the freedom of expression and communication;

ON THE CONSISTENCY OF THE CHARTER WITH THE CONSTITUTION:

9. The fourth paragraph of the Preamble to the Charter considers that "the right to use a regional or minority language in private and public life is an inalienable right"; in Part I of the Charter, Article 1(a) defines "regional or minority languages" as "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", but not including either dialects of the official language or the languages of migrants;

Article 1(b) defines "territory in which the regional or minority language is used" as "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 the Charter; by Article 7(1) "the Parties shall base their policies, legislation and practice on the ... objectives and principles" set out in that Article; these objectives and principles include in particular "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 language in question ..." and "the facilitation and/or encouragement of the use of regional

or minority languages, in speech and writing, in public and private life”; moreover, by Article 7(4) “the Parties shall take into consideration the needs and wishes expressed by the groups which use such languages” by establishing “bodies, if necessary, for the purpose of advising the authorities” on these matters;

10. Taken together, these provisions of the European Charter for Regional or Minority Languages, in that they confer specific rights on “groups” of speakers of regional or minority languages within “territories” in which these languages are used, undermine the constitutional principles of the indivisibility of the Republic, equality before the law and the unicity of the French people;

11. These provisions are also contrary to the first paragraph of Article 2 of the Constitution in that they seem to recognise a right to use a language other than French not only in “private life” but also in “public life” – a category in which the Charter includes judicial authorities and administrative authorities and public services;

12. Consequently, the specified provisions of the Charter are inconsistent with the Constitution;

13. Having regard to their nature, none of the other undertakings entered into by France is contrary to the Constitution, most of them, incidentally, doing no more than recognise practices that France has already implemented to promote regional languages;

Has decided as follows:

Article 1

The European Charter for Regional or Minority Languages contains clauses contrary to the Constitution.

Article 2

This decision shall be notified to the President of the Republic and published in the *Journal officiel de la République française*.

Deliberated by the Constitutional Council at its sitting of 15 June 1999, presided by Mr Yves GUÉNA and attended by Mr Georges ABADIE, Mr Michel AMELLER, Mr Jean-Claude COLLIARD, Mr Alain LANCELOT, Ms Noëlle LENOIR, Mr Pierre MAZEAUD and Ms Simone VEIL.