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**EUROPEAN COMMISSION FOR DEMOCRACY THROUGH LAW**  
**(VENICE COMMISSION)**

**NORTH MACEDONIA**

**JOINT AMICUS CURIAE BRIEF  
OF THE VENICE COMMISSION AND THE DIRECTORATE GENERAL  
OF DEMOCRACY AND HUMAN DIGNITY (DGII)  
OF THE COUNCIL OF EUROPE**

**ON INTERNATIONAL AND EUROPEAN STANDARDS  
ON THE USE OF MINORITY LANGUAGES IN PUBLIC LIFE  
AND IN THE JUDICIAL PROCEDURES**

**Adopted by the Venice Commission  
at its 142<sup>nd</sup> Plenary Session  
(Venice, 14-15 March 2025)**

**on the basis of comments by**

**Ms Veronika Bílková (Member, Czechia)  
Mr Martin Kuijer (Member, Netherlands)  
Mr Jan Velaers (Member, Belgium)  
Mr Mattia Zeba (Expert, DGII)**

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## I. Introduction

1. By letter of 20 November 2024, the President of the Constitutional Court of North Macedonia requested an *amicus curiae* brief of the Venice Commission in the context of a case pending before it on the issue of the constitutionality of the Law on the Use of Languages adopted by the Parliament in March 2018.
2. The Constitutional Court invited the Venice Commission to respond to the following questions:
  1. What are the international and European standards on the use of minority languages in public life i.e. in State bodies and public institutions:
    - At central level (especially on the criteria for the use of minority languages on the whole territory of the State);
    - At local level (local self-government units).
  2. What are the international and European standards on the use of languages in proceedings before the courts and the judiciary in general?
3. The Venice Commission, in line with its practice, decided to prepare this opinion jointly with the Directorate General on Democracy and Human Dignity (DGII).
4. Ms Veronika Bílková, Mr Martin Kuijer, Mr Jan Velaers and Mr Mattia Zeba (DGII expert) acted as rapporteurs for this opinion.
5. This joint *amicus curiae* brief was drafted on the basis of comments by the rapporteurs. The draft *amicus curiae* brief was examined at the meeting of the Sub-Commissions on Fundamental Rights, Non-Discrimination and the Protection of National Minorities on 13 March 2025. It was adopted by the Venice Commission at its 142<sup>nd</sup> Plenary Session (Venice, 14-15 March 2025).

## II. Scope of the joint *amicus curiae* brief

6. The Venice Commission and DGII will examine and provide an answer to the questions posed by the Constitutional Court of North Macedonia on the international and European standards applicable to the use of minority languages in public life and before the courts and the judiciary in general. As the request refers to “*international and European standards*” (a notion which is limited neither to *legally binding* standards, nor to standards binding on North Macedonia), the joint *amicus curiae* brief will not focus on the specificities of North Macedonia but will present the standards in general. The interpretation of the Constitution of North Macedonia and its application to the specific case remain the exclusive competence of the Constitutional Court. Accordingly, the Joint *amicus curiae* brief will neither assess the facts of the case pending before the Constitutional Court nor assess the compatibility of the Law on the Use of Languages, or any other piece of adopted or draft legislation, with the Constitution of North Macedonia.
7. The Venice Commission recalls that it previously adopted an opinion on the Law on the Use of Languages of North Macedonia.<sup>1</sup>
8. The Venice Commission and DGII note that the two questions posed are very broad. The joint *amicus curiae* brief will only focus on the most important aspects of the legal regulation in this area. The Venice Commission and DGII also note that whereas the first question relates to the use of “minority languages”, the second refers to the use of “languages” as such – the context of the request however indicates that the two questions both focus on the use of minority languages. The same approach will be followed in the joint *amicus curiae* brief.

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<sup>1</sup> [CDL-AD\(2019\)033](#) North Macedonia - Opinion on the Law on the Use of Languages

### III. Preliminary remarks

9. The Commission and DGII wish to stress at the outset that the European and international standards that will be examined are to be regarded as “*minimum standards*”. They do not prevent the States from offering broader guarantees, provided that these are in accordance with the Constitution and with international obligations incumbent on the country. The Venice Commission has previously stated that it is “*in principle praiseworthy*”<sup>2</sup> and “*to be commended*”<sup>3</sup> if the national legal framework goes beyond minimum European and international standards.

10. However, it is equally important from a Rule of Law perspective that these legal provisions are (capable of being) enforced in practice.<sup>4</sup> The Venice Commission and DGII underline that the European and international standards examined in the joint *amicus curiae* brief do not only imply that the language rights of national minorities are determined in clear legislative rules. A proper implementation of the law is a crucial aspect of the Rule of Law.<sup>5</sup>

11. In addition, the Venice Commission has repeatedly acknowledged that international treaties on human rights and on the protection of minorities require that the member States must strike a fair balance between protecting the linguistic rights of persons belonging to national minorities on the one hand and maintaining the cohesion between different linguistic groups of the country, on the other.<sup>6</sup>

12. Given the importance of the right to use minority languages orally and in writing, in private and in public, including – under certain conditions - in relations with the administrative authorities, it is essential that any decision related to language policies and the enjoyment of language rights should be made in close consultation with minority representatives to ensure that the concerns of persons belonging to national minorities are duly and effectively taken into account.<sup>7</sup>

### IV. International and European standards on linguistic rights of minorities

13. The right to use one’s language freely, both privately and publicly, orally and in writing, is essential for preserving linguistic identity. Language rights are effective only if they can be enjoyed in the public sphere.

14. The general human rights treaties encompass, mainly, the International Covenant on Civil and Political Rights (ICCPR), the International Covenant on Economic, Social and Cultural Rights (ICESCR) and the European Convention on Human Rights (ECHR). The ICCPR and the ECHR both mention language in the provisions enshrining the prohibition of discrimination (Article 26 of the ICCPR, Article 14 of the ECHR and Protocol 12 to the ECHR) and the right to a fair trial (Article 14(3) of the ICCPR and Article 6(3) of the ECHR). The ICCPR moreover stipulates that “*i/n those States in which ethnic, religious or linguistic minorities exist, persons belonging to such minorities shall not be denied the right, in community with the other members of their group, to enjoy their own culture, to profess and practise their own religion, or to use their own language*” (Article 27). No similar provision features in the ECHR.

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<sup>2</sup> Ibid. [CDL-AD\(2019\)033](#), para. 99.

<sup>3</sup> [CDL-AD\(2004\)026](#), Montenegro - Opinion on the revised draft law on exercise of the rights and freedoms of national and ethnic minorities, para. 41.

<sup>4</sup> [CDL-AD\(2016\)007](#), Rule of Law Checklist, II.B.2 and II.A.7.

<sup>5</sup> Op. cit. [CDL-AD\(2019\)033](#), para. 78.

<sup>6</sup> [CDL-AD\(2011\)008](#) Ukraine - Opinion on the Draft Law on Languages, para. 97. [CDL-AD\(2010\)035](#) Slovak Republic – Opinion on the act on the State language, para. 47. [CDL-AD\(2012\)011](#) Hungary – Opinion on the act on the rights of nationalities, para. 73.

<sup>7</sup> [ACFC Thematic Commentary No. 3](#), The Language Rights of Persons Belonging to National Minorities under the Framework Convention, adopted on 24 May 2012, para. 51.

15. Specific (regional) legal instruments related to the use of languages are mainly the Council of Europe Framework Convention for the Protection of National Minorities (the Framework Convention) and the European Charter for Regional or Minority Languages (the Charter). The Venice Commission notes that North Macedonia is a State party to the Framework Convention,<sup>8</sup> but it is merely a signatory of the Charter.

16. The Framework Convention provides a comprehensive set of provisions aimed at safeguarding the rights of persons belonging to national minorities, with particular emphasis on language rights in Articles 5, 9, 10, 11, 12, and 14. The use of the term '*framework*' in its title underscores the flexibility afforded to States parties in adapting the Framework Convention's broad provisions to their specific domestic contexts through appropriate national laws and policies. While the Framework Convention does not explicitly define the term '*national minorities*', several States Parties have introduced their own definitions during the ratification process, often either excluding certain groups or identifying specific minorities to which the Framework Convention applies.<sup>9</sup> The joint *amicus curiae* brief will not look into the definition of the term '*national minorities*'.

The Charter offers an "*a la carte*" approach, enabling States to determine both which languages are covered and the level of protection afforded to each. It is divided into general provisions, binding provisions applying to all regional and minority languages within a member State, and provisions allowing States to select which languages to protect and which specific provisions to implement (covering areas such as education, judicial and administrative authorities, public services, media, and cultural, economic, and social life).

Both the Framework Convention and the Charter have established monitoring mechanisms. They are respectively monitored by the Advisory Committee on the Framework Convention, and the Committee of Experts of the Charter.

17. The Venice Commission has previously applied these general and specific instruments to analyse the legislation related to the use of languages drafted or adopted in several countries, e.g., Latvia,<sup>10</sup> Ukraine<sup>11</sup> and North Macedonia itself.<sup>12</sup>

18. At EU level, Article 2 of the Treaty on European Union (TEU) establishes that the EU is founded on fundamental values such as equality and respect for human rights, "*including the rights of persons belonging to minorities*". These values are further reinforced by the EU Charter of Fundamental Rights, which, while not explicitly providing for minority rights, nevertheless prohibits discrimination on grounds such as ethnic origin, language, religion, or membership of a national minority, and further reaffirms that the EU respects cultural, religious, and linguistic diversity.

#### **A. First question: International and European standards on the use of minority languages in public life**

19. The first question raised by the Constitutional Court concerns the international and European standards on the use of minority languages in public life, i.e. in state bodies and public institutions at central level (especially on the criteria for the use of minority languages on the whole territory of the state) and at local level (local self-government units).

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<sup>8</sup> The Framework Convention was ratified by North Macedonia on 10/04/1997 and entered into force on 01/02/1998.

<sup>9</sup> Regarding North Macedonia, according to a declaration submitted by the Minister of Foreign Affairs on 16 April 2004, the term "national minorities" used in the Framework Convention shall be applied to the citizens who live within its borders and who are part of the Albanian people, Turkish people, Vlach people, Serbian people, Roma people and Bosniac people.

<sup>10</sup> [CDL-AD\(2020\)012](#), Latvia - Opinion on the recent amendments to the legislation on education in minority languages.

<sup>11</sup> [CDL-AD\(2019\)032](#), Ukraine - Opinion on the Law ensuring the Functioning of the Ukrainian language as State Language.

<sup>12</sup> [CDL-AD\(2019\)033](#), North Macedonia - Opinion on the Law on the Use of Languages.

20. According to the Charter, public life encompasses at least the following areas: education, judicial proceedings (see below), administrative authorities and public services, media, cultural activities and facilities and economic and social life.<sup>13</sup> The Venice Commission and DGII nonetheless note that the request is limited to the use in State bodies and public institutions (this limitation will thus be respected in this joint *amicus curiae* brief).

21. The ICCPR and the ECHR are silent on the use of minority language in public life. The right to use an unofficial language of one's choice in communication with public authorities as such, has never been recognised by the Court in its case-law.<sup>14</sup> Article 27 of the ICCPR nonetheless grants the persons belonging to national minorities the right to "*use their own language*". This right applies both to the private and public use of the language. Neither the ICCPR nor the General Comment on Article 27<sup>15</sup> specify the details of its implementation.

### 1. The Framework Convention for the Protection of National Minorities

22. Article 10(1) of the Framework Convention provides for the right of persons belonging to national minorities to "*use freely and without interference his or her minority language, in private and in public, orally and in writing*".<sup>16</sup> Article 10(2) furthermore adds that "*in areas inhabited by persons belonging to national minorities traditionally or in substantial numbers, if those persons so request and where such a request corresponds to a real need, the Parties shall endeavour to ensure, as far as possible, the conditions which would make it possible to use the minority language in relations between those persons and the administrative authorities*". According to the Explanatory Report to the Framework Convention<sup>17</sup> this provision has been worded "*very flexibly, leaving Parties a wide measure of discretion*",<sup>18</sup> acknowledging the financial, administrative and technical difficulties when implementing this provision and in order to "*allow each Party's particular circumstances to be taken into account*".<sup>19</sup> The Venice Commission and DGII however wish to stress that States must use objective criteria and must respect the principle of non-discrimination.<sup>20</sup>

23. Article 10(2), of the Framework Convention provides the conditions under which minority languages may be used in relations with administrative authorities, without detriment to the official language(s). While States enjoy a margin of discretion with regard to the identification of areas where minorities live "in substantial numbers", they must define clear criteria for terms like

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<sup>13</sup> Explanatory Report to the European Charter for Regional or Minority Languages (see Part III – Measures to promote the use of regional or minority languages in public life).

<sup>14</sup> See, for example, *Igors Dmitrijevs v. Latvia*, no. 61638/00, para. 85, 30 November 2006, with further references. See also *Paun Jovanović v. Serbia*, no. 41394/15, para. 89, 7 February 2023.

<sup>15</sup> Op. cit. Human Rights Committee, General Comment 23, Article 27.

<sup>16</sup> According to this article, the right to use one's language freely, both privately and publicly, orally and in writing, is essential for preserving linguistic identity. According to the Advisory Committee's Thematic Commentary No. 3 (para. 51), "Language rights are effective only if they can be enjoyed in the public sphere".

<sup>17</sup> See paragraphs 64-66 of the Explanatory Report to the Framework Convention

<sup>18</sup> See M. Weiler (ed.) *The rights of minorities. A commentary on the European Framework Convention for the Protection of National minorities*, Oxford University Press, 2005, 312: "Article 10, paragraph 2 was to permit 'restrictions leaving a wide margin of appreciation to the Parties', including the adoption of phrases such as 'parties shall endeavour' and other softening terms."

<sup>19</sup> For example, the existence of a "real need" is to be assessed by the State on the basis of objective criteria, whereas the wording "*as far as possible*" indicates that various factors, in particular the financial resources of the Party concerned, may be taken into consideration. Equally, the Framework Convention deliberately refrains from defining "*areas inhabited by persons belonging to national minorities traditionally or in substantial numbers*". It was considered preferable to adopt a flexible form of wording which will allow each Party's particular circumstances to be taken into account. The term "*inhabited ... traditionally*" does not refer to historical minorities, but only to those still living in the same geographical area.

<sup>20</sup> See also Explanatory Report to the Framework Convention for the Protection of National Minorities, 1 February 1995, para 65.



“*substantial numbers*” and “*sufficiently large numbers*” to ensure consistent application of these rights.

24. The Venice Commission and DGII wish to underline that the Advisory Committee's Thematic Commentary No. 3 provides that the possibility of using minority languages in dealings with administration cannot be left solely to the discretion of local authorities.<sup>21</sup> Therefore, clear and transparent procedures should be established to implement the use of minority languages, including in written form to ensure that the right is enjoyed in an equal manner. The primary challenge with any numerical approach therefore lies in setting thresholds that are not excessively high. The Venice Commission and DGII note for instance that thresholds of 20% or higher often represent “*an insurmountable barrier for effective access to rights by persons affiliated with national minorities*”,<sup>22</sup> while lower thresholds have generally been received more favourably by the Advisory Committee, notably at local level.<sup>23</sup> Moreover, different thresholds may be applied to differentiate between various rights and services. Nevertheless, it is important to note that the official use of minority languages may be established also in areas with relatively small minority populations, provided that they are traditionally inhabited by the group, that a request is made, and that there is a genuine need. According to the Advisory Committee,<sup>24</sup> “*need*” does not imply dependence on the minority language due to a lack of proficiency in the official language. “A threat to the functionality of the minority language as a communication tool in a given region is sufficient to constitute a “need” in terms of Article 10(2) of the Framework Convention.”<sup>25</sup>

25. The Venice Commission and DGII wish to stress that the Advisory Committee's Thematic Commentary No. 3 on language rights<sup>26</sup> makes a distinction between communication with public authorities at the local level and communication with public authorities at the central level. In respect of the use of minority languages in contacts with administrative authorities *at the local level*, the Advisory Committee encourages States to provide “*maximum implementation of the possibilities provided by law*”. “*Authorities should support and actively encourage such measures by creating an environment that is conducive to the use of minority languages, including through the allocation of necessary financial and human resources.*”<sup>27</sup>

26. Based on the above, the Venice Commission and DGII conclude that while leaving a large discretion to States to take into account the particularities of their factual situation and their respective legal systems, the Framework Convention requires that the use of minority languages in relations with administrative authorities be subject to objective criteria and based on the principle of non-discrimination. The Framework Convention is more demanding regarding the implementation of the possibilities provided by law to allow the use of minority languages in contacts with administrative authorities at local level, while also considering carefully the situation of those national minorities and linguistic communities whose members live in substantial numbers outside their traditional areas (often in capital cities<sup>28</sup>). The Venice Commission and DGII wish to insist that with regard to the effective implementation of the use of minority languages in public life, the State should be ready to provide adequate resources to ensure the actual implementation of what is established by law. In particular, when translation is required by the law regarding certain documents,<sup>29</sup> in order to avoid additional financial burden and workload

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<sup>21</sup> ACFC's Thematic Commentary No. 3 para. 55

<sup>22</sup> Advisory Committee, [Fourth Opinion](#) on Albania (2018), para. 101.

<sup>23</sup> Advisory Committee, [Fifth opinion](#) on North Macedonia (2022), para. 96.

<sup>24</sup> Op. cit. Thematic Commentary No 3, para. 56

<sup>25</sup> Thematic Commentary No. 3, para. 53.

<sup>26</sup> Ibid, para. 58.

<sup>27</sup> Thematic Commentary No. 3, para. 58.

<sup>28</sup> 3rd Thematic Commentary on language rights 2012, para. 58.

<sup>29</sup> [CDL-AD\(2010\)035](#), Slovak Republic – Opinion on the Act on the State language, para. 84.

for the municipalities concerned, additional administrative and/or financial means should be provided.<sup>30</sup>

## 2. The European Charter for Regional or Minority Languages

27. The Charter was signed but not ratified by North Macedonia. Part III of the Charter contains a series of specific provisions in respect of which the individual States are free, within certain limits, to determine which of these provisions will apply to each of the languages spoken within their frontiers. This flexibility takes account of the major differences in the *de facto* situations of regional or minority languages (number of speakers, degree of fragmentation, etc). It also has regard to the costs entailed by many of the provisions and the varying administrative and financial capacity of the European States.<sup>31</sup> Article 10 of the Charter (in Part III) deals with the communication between the public authorities and those who use a minority language. The provision distinguishes between action by administrative authorities of the State (i.e. the central level), action by local and regional authorities, and action by bodies providing public services. The undertakings of the parties are qualified by the words "*as far as this is reasonably possible*" as far as Article 10(1) and 10(3) are concerned. This provision seeks to take account of the fact that some of the measures provided for have significant implications in terms of finance, staffing or training. The Venice Commission and DGII stress that an acceptance of a particular provision with respect to a given language necessarily entails a commitment to provide the resources and make the administrative arrangements required to render it effective.

28. The obligations related to actions by administrative authorities of the State apply "*within the administrative districts of the State in which the number of residents who are users of regional or minority languages justifies the measures specified below and according to the situation of each language*" (Article 10(1)). It is left to States to determine the criteria for the identification of such districts, though the criteria must be defined and applied in an objective manner. States undertake, "*as far as this is reasonably possible*", to ensure that some communication between the individual and the administrative authorities in the regional or minority language is possible. The provision suggests several options from which States may choose, going from the authorities themselves using the language to allowing to users of such languages to submit applications and/or documents in such languages and/or receive reply in such languages. States may also commit to making available widely used administrative texts and forms for the population in the regional or minority languages or in bilingual versions and to allowing the administrative authorities to draft documents in a regional or minority language.

29. The obligations related to actions by local and regional authorities apply "*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 /specified/ measures*" (Article 10(2)). There is again a discretion left to States to determine which areas these are, based on fair, objective and equal criteria. However, the Committee of Experts has repeatedly stated that thresholds of 20% or higher for the local use of minority languages in public life are not compatible with the Charter.<sup>32</sup> This time, the provisions encompass the obligations to allow and/or encourage the use of regional or minority languages within the framework of the regional or local authority; the possibility for users of regional or minority languages to submit oral or written applications in these languages; the publication by regional and local authorities of their official documents also in the relevant 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; the use by local authorities of regional or minority languages in debates in their assemblies, without excluding, however, the use of the official language(s) of the State; the use

<sup>30</sup> [CDL-PI\(2022\)049](#) Compilation of Venice Commission Opinions and Reports concerning the Protection of National Minorities, para. 38.

<sup>31</sup> Explanatory report of the European Charter for Regional or Minority Languages, para 23.

<sup>32</sup> Committee of Experts, [Seventh evaluation report on Switzerland](#) (2019), para 29; [Seventh evaluation report on Croatia](#) (2024), para 13.



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.

30. The obligations related to actions by bodies providing public services apply “*within the territory in which regional or minority languages are used, in accordance with the situation of each language and as far as this is reasonably possible*” (Article 10(3)). A problem partially connected to the lack of adequate funding stems from the increasing outsourcing of many public services to private providers so as to reduce public spending. These private enterprises may not be prepared to offer multilingual services. For this reason, the Committee of Experts of the Charter has underlined that the public use of minority languages “*applies to services provided by the administrative authorities or private enterprises acting on their behalf*”.<sup>33</sup>

31. The Venice Commission and DGII consider that the three obligations, alternative in nature, are the obligations 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; or to allow users of regional or minority languages to submit a request in these languages. Article 10 also requires States to undertake additional activities, such as translation and interpretation and recruitment or training of competent public officers; and to allow the use or adoption of family names in the regional or minority languages, at the request of those concerned.

32. Article 10 therefore leaves a large margin for individual States to decide on the use of the regional and minority languages in the field of administrative authorities and public services. The regulation always needs to take account of the concrete situation, which may be quite different in different countries and for each regional or minority language.<sup>34</sup> Given this (institutional) design of the Charter, whereby the State may itself choose varying degrees of commitments, the Venice Commission and DGII find that the standards flowing from the Charter relate to a large extent to the choice States make. However, it is noteworthy that the Charter distinguishes between communication with public authorities at the local level and communication with public authorities at the central level. The terms of paragraph 2, and in particular the undertaking of the parties to “*allow and/or encourage*” instead of the formulation “*as far as this is reasonably possible*” used in paragraphs 1 and 3, are drafted so as to take account of the principle of local and regional autonomy.<sup>35</sup> The Venice Commission and DGII consider that expectations can reasonably be higher in respect of the use of a minority language when communicating with authorities at local level (in a district in which the number of residents using that minority language justifies taking measures), considering that these are the public authorities closest to the citizen. Similarly, a distinction should be made between communication by public authorities in an individual file and communication by public authorities in respect of generally applicable texts and forms. In respect of the latter category, the authorities may “*reasonably*” be expected to take more measures. A distinction also needs to be made between the right of the person speaking a minority language to submit information to the authorities in that language (less burdensome) and the obligation for authorities to reply in that language (more burdensome).<sup>36</sup>

33. The Venice Commission and DGII recall “*that granting language rights to individuals implies assuming positive obligations on the part of the State, which has to provide the personnel to facilitate linguistic services in administration*”.<sup>37</sup> The European and international standards examined above do not only imply that the language rights of persons affiliating with national

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<sup>33</sup> Committee of Experts of the European Charter for Regional or Minority Languages. [Fifth Report on Slovenia](#), (2019), para. 29.

<sup>34</sup> Explanatory Report to the European Charter for Regional or Minority Languages, 5 November 1992, para. 103.

<sup>35</sup> Explanatory Report to the European Charter for Regional or Minority Languages, 5 November 1992, para. 105.

<sup>36</sup> Ibid. paragraph 103: “oral or written applications or documents may legitimately be submitted in the regional or minority language, but without entailing any obligation to reply in that language”.

<sup>37</sup> [CDL-AD\(2019\)033](#), para. 76 op. cit.

minorities are determined in clear legislative rules, but also that the consistent practical implementation of the law is guaranteed by providing the necessary funds for the recruitment of public servants with the appropriate language skills and/or the employment of qualified interpreters and translators.<sup>38</sup>

34. The Venice Commission and DGII wish to stress that States must use objective criteria and must respect the principle of non-discrimination, while also ensuring consultations with persons affiliating with national minorities. While the Framework Convention encourages measures to be taken at the local level regarding contacts with administrative authorities in minority languages, the Charter allows the State to choose varying degrees of further commitments taking into account the major differences in the de facto situations of regional or minority languages. At any rate, this should be accompanied by a commitment to provide the relevant resources and to make the administrative arrangements required to render it effective.

## **B. Second question: International and European standards on the use of minority languages in judicial proceedings and by the judiciary**

35. The second question relates to the international and European standards on the use of languages in proceedings before the courts and the judiciary in general.

### **1. Standards applicable to a defendant in criminal proceedings**

36. The ICCPR and the ECHR both recognize the right of any person charged with a criminal offence to be informed promptly and *“in a language that /the person/ understands”* of the nature and cause of the accusation (Article 14(3)(a) of the ICCPR and Article 6(3)(a) of the ECHR) as well as the right to *“have the free assistance of an interpreter if he cannot understand or speak the language used in court”* (Article 14(3)(f) of the ICCPR and Article 6(3)(e) of the ECHR). This right is restated in the Framework Convention (Article 10(3)) which, as the Explanatory Report indicates, *“does not go beyond the safeguards contained in /the ECHR/”*.<sup>39</sup> Article 5(3) of the ECHR also provides that *“everyone who is arrested shall be informed promptly, in a language which he understands, of the reasons for his arrest and of any charge against him.”*

37. These provisions of the ECHR – aimed at guaranteeing the right to a fair trial for the accused – are relevant in respect of a defendant who cannot understand or speak the language used in the court. However, an accused who understands the official State language cannot insist upon the services of an interpreter to allow him to conduct his defence in another language, including a language of an ethnic minority of which he is a member.<sup>40</sup>

38. According to Article 10(3) of the Framework Convention *“the Parties undertake to guarantee the right of every person belonging to a national minority to be informed promptly, in a language which he or she understands, of the reasons for his or her arrest, and of the nature and cause of any accusation against him or her, and to defend himself or herself in this language, if necessary with the free assistance of an interpreter.”* The Advisory Committee on the Framework Convention has consistently encouraged the authorities to take all necessary measures to ensure that minority language rights in the judicial system are fully safeguarded, including as regards investigative and pre-trial stages.<sup>41</sup>

39. The Venice Commission and DGII wish to underline that the rights guaranteed in Article 14(3)(a) of the ICCPR, in Article 6(3)(a) of the ECHR) and in Article 10(3) of the Framework Convention do not rule out that broader linguistic rights are guaranteed in judicial proceedings,

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<sup>38</sup> Advisory Committee, [Fourth Opinion on North Macedonia](#) (2016), 64; [CDL-AD\(2019\)033](#) op. cit., para. 76.

<sup>39</sup> Explanatory Report to the Framework Convention op. cit., para. 67.

<sup>40</sup> See the [Guide](#) on Article 6 ECHR (criminal), para. 574.

<sup>41</sup> Thematic Commentary No. 3, para. 59

provided that no other rights guaranteed in international treaties or in the Constitution are violated such as the right to a fair trial (within a reasonable time).<sup>42</sup>

40. As previously stated by the Venice Commission, “*granting language rights to individuals implies assuming positive obligations on the part of the State, which has to provide the personnel to facilitate linguistic services in justice*”.<sup>43</sup> The Advisory Committee has frequently observed that, despite the existence of adequate legal provisions, this right is not consistently implemented due to insufficient financial resources and/or a shortage of qualified interpreters – particularly for the languages of numerically smaller minorities. It is therefore not sufficient to enact adequate legal provisions, it is also essential to provide for sufficient financial resources for the recruitment of qualified interpreters and translators.

41. On the other hand, Article 9(1)(a) of the Charter goes beyond the standards laid down in the ECHR.<sup>44</sup> Providing for an “a la carte” approach, it reads that States Parties undertake “*in respect of those judicial districts in which the number of residents using the regional or minority languages justifies the measures specified below*” and “*on condition that the use of the facilities afforded by the present paragraph is not considered by the judge to hamper the proper administration of justice*” to either conduct the criminal proceedings in the minority language and/or to allow the accused to use his/her minority language and/or to submit documents and requests in that language. Moreover, requests and evidence, written or oral, formulated in a regional or minority language shall not be considered inadmissible. “*If necessary*”, the judicial authorities shall provide interpreters and translations for free.

42. Given the overall design of the Charter and the wording used in Article 9 of the Charter, the Venice Commission and DGII find it difficult to define a precise standard in this regard, noting that the provision “*reflects the concern (...) to protect fundamental principles of the judicial system, such as equality of the parties and avoidance of undue delays in the process of law, against possible misuse of the facilities for recourse to regional or minority languages*”.<sup>45</sup>

43. Based on the above, the Venice Commission and DGII conclude that if a defendant in criminal proceedings does not understand the State language used in the courts, the legally binding standards of the ECHR apply (in addition to the provisions of the Charter), while if a defendant in criminal proceedings understands the State language but *wishes* to express him/herself in “*the language which is emotionally closest*” to him/her, Article 9 of the Charter applies (if the State has ratified the Charter) .

44. The right to use a minority language is not limited to persons belonging to that minority. As the Court of Justice of the European Union held in *Bickel and Franz* (1998) and *Rüffer* (2014), there would be discrimination if a State allowed only its citizens to use a given minority language in judicial proceedings. These cases were however decided based on the EU standards.

## **2. Standards applicable to a litigant in non-criminal proceedings**

45. In respect of non-criminal proceedings, the Advisory Committee merely States that it has welcomed the guarantee under the Framework Convention of the right to interpretation into a minority language in civil and administrative proceedings.<sup>46</sup>

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<sup>42</sup> [CDL-AD\(2019\)033](#), o p. cit., para. 89

<sup>43</sup> [CDL-AD\(2019\)033](#), ibid. para. 76.

<sup>44</sup> Explanatory Report to the European Charter for Regional or Minority Languages, op. cit., para. 95.

<sup>45</sup> Explanatory Report to the Language Charter for Regional or Minority Languages, op. cit., para. 91.

<sup>46</sup> Advisory Committee, Thematic Commentary No. 3 (2012), para 59.

46. The Charter goes beyond this framework and regulates, in its Article 9 (providing an “a la carte” approach), the use of languages in judicial proceedings more broadly. As previously noted by the Venice Commission and DGII, this provision “*contains the highest European standards for the use of minority languages in judicial proceedings*”.<sup>47</sup> It provides in particular that States parties undertake “*in respect of those judicial districts in which the number of residents using the regional or minority languages justifies the measures specified below*” and “*on condition that the use of the facilities afforded by the present paragraph is not considered by the judge to hamper the proper administration of justice*” to either conduct the proceedings in the minority language at the request of one of the parties, and/or to allow the litigant to use his/her minority language if he/she appears in person before a court, and/or to produce documents and evidence in that language. The obligations may be ensured either by using the regional or minority languages directly or by resorting to interpreters and translators (involving no extra expense for the persons concerned). Article 9(2) and (3) also enshrine the obligations not to deny the validity of legal documents drafted in a regional or minority language and to make available in the regional or minority languages the most important national statutory texts.

47. However, given the overall design of the Charter and the wording used in its Article 9 (for which States have to choose one subparagraph as a minimum), the Venice Commission and DGII once again consider it difficult to define a precise standard in this regard. While providing a high standard of protection, Article 9 of the Charter indeed leaves a large margin for States to choose the obligations by which they intend to be bound.

## V. Conclusion

48. By letter of 20 November 2024, the President of the Constitutional Court of North Macedonia requested an *amicus curiae* brief putting two questions related to the European and international standards on the use of minority languages in public life and in judicial proceedings. In view of the questions raised *in abstracto*, the joint *amicus curiae* brief does not focus on the specificities of North Macedonia but presents the standards in general. As the request refers to “*international and European standards*” (a notion which is limited neither to *legally binding* standards, nor to standards binding on North Macedonia), the joint *amicus curiae* brief will not focus on the specificities of North Macedonia but will present the standards in general. In reply to the questions put by the Constitutional Court of North Macedonia, the Venice Commission and DGII have reached the following conclusions:

49. The European and international standards examined are to be regarded as “minimum standards”. Such standards, moreover, do not only imply that the language rights of national minorities are determined in clear legislative rules, but also that the consistent practical implementation of the law is guaranteed by providing the necessary resources. A proper implementation of the law is a crucial aspect of the Rule of Law. States are obliged to bear the consequences of their choices with regard to policies on minority languages given the wide margin of discretion afforded to them.

50. The Venice Commission and DGII wish to stress that States must use objective criteria and must respect the principle of non-discrimination, while also ensuring consultation of minority groups. While the Framework Convention encourages measures to be taken at the local level regarding contacts with administrative authorities in minority languages, the Charter allows the State to choose varying degrees of further commitments taking into account of the major differences in the de facto situations of regional or minority languages. At any rate, this should be accompanied by a commitment to provide the resources and make the administrative arrangements required to render it effective.

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<sup>47</sup> [CDL-AD\(2019\)033](#), op. cit., para. 83.

51. The Venice Commission and DGII find it difficult to provide an exhaustive list of the European and international standards applicable to the use of minority languages in public life, in view of the different situations deriving from the State of ratification of the respective instruments, and based on the broad margin of appreciation left to the States with the “a la carte” approach, allowing them to take into account the particularities of their factual situation and their respective legal systems. The Venice Commission and DGII consider that expectations can reasonably be higher in respect of the use of a minority language when communicating with authorities at local level (in a district in which the number of residents using that minority language justifies taking measures), considering that these are the public authorities closest to the citizen. Similarly, a distinction should be made between communication by public authorities in an individual file and communication by public authorities in respect of generally applicable texts and forms. In respect of the latter category, the authorities may “reasonably” be expected to take more measures. A distinction also needs to be made between the right of the person speaking a minority language to submit information to the authorities in that language (less burdensome) and the obligation for authorities to reply in that language (more burdensome).

52. The Venice Commission and DGII conclude that the States must take all necessary measures to ensure that minority language rights in the judicial system are fully implemented, and to ensure fair trial safeguards including as regards investigative and pre-trial stages, primarily in the context of criminal proceedings. The obligations related to criminal proceedings, aimed at guaranteeing the right to a fair trial for the accused, constitute the hard core of the regulation on the use of minority languages in the judiciary. Yet, these are minimal standards, and nothing prevents the State from guaranteeing broader linguistic rights in judicial proceedings, provided that this does not hamper the proper administration of justice. If such a choice is made, it is even more essential to provide for sufficient financial resources allowing for the implementation of the legal provisions.

53. The Venice Commission and DGII remain at the disposal of the Constitutional Court of North Macedonia for further assistance in this matter.