

An investigation into the desirable, and possible role of the Language Charter in expanding on article 22 of the EU's Charter of Fundamental Rights

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Introduction

The relationship between the EU and human rights knows a relatively long history and has been amply investigated and tracked.¹ The ever expanding track record of the EU as regards the protection of human rights both internally and externally stands in sharp contrast to the situation pertaining to minority protection. While there is a growing attention in academia about the actual and potential role the EU could fulfil towards the protection of minorities within its territory,² it is obvious that so far the EU has mainly been active in this respect at the external level, provoking claims of double standards.

Nevertheless, it seems that several gentle openings are made towards the accommodation of population diversity, which tends to be beneficial for minorities while avoiding the sensitive rhetoric of minority rights and minority protection.³ While there was a staunch opposition to have an explicit minority clause included in the Charter of Fundamental Rights,⁴ a consensus could be reached on article 22. Admittedly, the very vague and general wording of that provision "the European Union shall respect the cultural, religious and linguistic diversity" undoubtedly has facilitated this agreement.

In view of the focus of this conference, this contribution will largely be confined to the question of respect for the linguistic diversity and how this can (should?) be materialized in the EU. In this respect, adequate attention should be given to the growing attention worldwide for linguistic human rights and minority rights pertaining to language (use), which has manifested itself not only in various legal documents but also in the writings of several academics. Regarding the latter, the writings of Mala Tabory, Tove SKutnabb Kangas, Fernand de Varennes and Phillip Blair can be mentioned, to name but a few. In addition to some restricted procedural linguistic rights in most general human rights conventions, most linguistic rights are found in minority rights documents,⁵ like art 4, paras. 3 and 4 of the 1992 UN Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities, para. 34 of the

¹ See *inter alia* Ph. Alston (ed.), *The EU and Human Rights*, OUP, 1999; L. Betten & N. Grief, *EU Law and Human Rights*, 1998, Longman; J. Grass, *The European Union and Human Rights Monitoring*, 2000, Helsinki University Press; EU Network of Independent Experts in Fundamental Rights, *Report on the situation of fundamental rights in the European Union member states in 2002*, 2003, EU official publications; A. Cassese, A. Clapham & J. Weiler, *Human Rights and the European Community: the substantive law*, 1991, Nomos; G. de Burca, 'Human Rights: The Charter and Beyond', [jeanmonnetprogram.org/papers/01/013601.html]; Ph. Alston & J.H.H. Weiler, 'An 'Ever Closer Union' in Need of a Human Rights Policy: The European Union and Human Rights', [jeanmonnetprogram.org/papers/99/990101.html]; J.H.H. Weiler & S.C. Fries, 'A Human Rights Policy for the European Community and Union: The Question of Competences', [jeanmonnetprogram.org/papers/99/990401].

² *Inter alia* G. Pentassuglia, 'The EU and the Protection of Minorities: the Case of Eastern Europe', *EJIL* 2001, 3-38; G. N. Von Toggenburg, 'A Rough Orientation through a Delicate Relationship: The European Union's Endeavours for its Minorities', in S. Trifunovska (ed.), *European Minorities and Languages*, 2001, TMC Asser Press, 205-234; B. de Witte, 'Politics versus Law in the EU's Approach to Ethnic Minorities', *EUI Working Paper*, RSC no 2000/4; A. Biscoe, 'The European Union and Minority Nations', in P. Cumper and S. Wheatley (eds.), *Minority Rights in the 'new' Europe*, 1999, Martinus Nijhoff; M.A. Martin Estebanez, 'The Protection of National or Ethnic, Religious and Linguistic Minorities', in N. A. Neuwahl & A. Rosas (eds.), *The European Union and Human Rights*, 1995.

³ See article 151 TEC, article 22 Charter of Fundamental Rights. See more generally below.

⁴ More than a dozen proposals were presented, see [db.consilium.eu.int/df/default.asp?lang=en].

⁵ See also Miroslav Kusy, 'Innate Dignity, Cultural Identity and Minority Language Rights', 6 *I.J.M.G.R.* 1999, 304-305.

1990 Copenhagen Declaration on the Human Dimension, articles 1 and 14 of the 1995 Framework Convention for the Protection of National Minorities, and of course the 1992 European Charter on Regional or Minority Languages. While neither academic articles nor minority rights instruments, reference also needs to be made to several sets of Recommendations that were elaborated by a group of international experts at the demand of the OSCE's High Commissioner on National Minorities, following up several recurrent problems he encounters. The first one that comes to mind here is the Oslo Recommendations of the Linguistic Rights of National Minorities (February 1998), but the more recent Guidelines on the Use of Minority Languages in the Broadcast Media (October 2003) are obviously on point, while paragraphs 11 to 18 of the Hague Recommendations Regarding the Education Rights of National Minorities (October 1996) concern the thorny issue of language in education.

This article will begin with a succinct description of the current stance regarding the respect and promotion of linguistic diversity by the EU, which will touch upon both competencies and actual activities supportive of linguistic diversity beyond questions of internal administration and EC judiciary. The second part will then go on to discuss the possible role of the European Language Charter as regards the interpretation (and implementation) of article 22 EU Charter of Fundamental Rights. The latter question starts from (but is not restricted to) the analysis of the possible implications of articles 52 and 53 of the EU Charter of Fundamental Rights. In a third section the desirable role of the Language charter in regard to article 22 EU Charter will be investigated on the basis of the typical characteristics of the European Language Charter. In view of the flaws identified in part III, part IV sets out to identify other sources of inspiration for the application of article 22 EU Charter, leading by way of conclusion to a nuanced stance in terms of the question posed in the title.

Prior to developing part I of this contribution, a few questions can be raised and points made regarding article 22 EU Charter of Fundamental Rights and its formulation 'The European Union shall respect the cultural, religious and linguistic diversity'. A first question one could ask is, what does it mean to 'respect'? Does it also include to promote? To what extent does it impose positive obligations on the EU institutions (to supervise what the Member States do)? A second (and to some extent already implied) question that seems pressing is what linguistic diversity is intended, at EU level or at the level of the Member States? It should definitely be underscored that, as was already hinted at above, even though article 22 is not framed in terms of minority protection, it arguably has that as underlying rationale. There is indeed a clear overlap between measures aimed at protecting and promoting population diversity on the one hand and minority protection on the other hand.⁶ Hence, it would not be unthinkable to consider minority rights provisions as additional, general sources of inspiration to give more content to article 22 EU Charter.

1. The current stance regarding the respect and promotion of linguistic diversity by the EU

An essential distinction that needs to be made in this respect is the regulation as to the status of languages at EC/EU level on the one hand and at member state level on the other hand. Regarding the former, the EU/EC has developed a certain policy on official and working languages of the EU/EC of relevance for language use within EC institutions, in secondary legislation, and in communications between the EC institutions and the EU citizens. Niamh Nic Shuibhne elaborates in her contribution on the flaws in this respect, underlining the lack of principle. While I am not going to focus on this dimension, it remains an interesting question to determine what linguistic diversity one is talking about at EU level. In other words, what is a minority language in EU context? What is the reference population against which the numerical minority is determined, the entire population of the EU member states? This issue will be touched upon by Robert Dunbar in his article in this volume.

⁶ See also K. Henrard, *Devising an Adequate System of Minority Protection: Individual Human Rights, Minority Rights and the Right to Self-Determination*, 2000, Kluwer, 31-32.

This contribution will focus mainly on the other dimension, more specifically the EU position and possible EC measures that would contribute to the respect and promotion of linguistic diversity at the level of the Member States. It should be underlined that the starting point here is that language policy is a typical state competence. Indeed, the limited competence base of the EC in domains of culture and education (in so far as it pertains to language) is limited to support of actions of member states. In other words, the EC can only adopt very weak measures in terms of articles 149-151.⁷ Notwithstanding the fact that language policy remains a typical state competence, the member states discretion in this respect is circumscribed by constraints imposed by the common market frame, as was clarified in *Groener* and *Mutsch* judgements of the ECJ.⁸ The ECJ has furthermore clarified in *Bickel/Franz*⁹ and *Angonese*¹⁰ that while the substantive implementation of minority language policy resides primarily with the Member States, the EC has a role to play. This role is rather a negative one, and consists more specifically in imposing limits on national minority policy, in the sense that the latter need to comply with the community benchmarks of non-discrimination and proportionality.¹¹

A second nuance that needs to be made to the starting point is that most EC policy is being implemented by national authorities at national level. It is indeed at the level of the member states that the actual provision of most services, the actual interface with the EU citizens is situated. This realization makes the issue of competences at EC/EU level concerning linguistic diversity within the member states more pressing. Indeed, cannot it not be argued that language policy in so far as it pertains to the implementation by member states of EU law and policy, should be in line with general EU/EC benchmarks in this regard? This would come down to a parallel development as the one that has long ago been accepted in terms of general human rights (as opposed to linguistic human rights) ...

When turning to a potential, explicit competence basis, it should be pointed out that several authors already have written extensively on the potential, slowly emerging minority protection policy in the EU. It is not the intention to do the work of people like Bruno de Witte, Niamh Nic Shuibhne (focused on language policy specifically) all over again. They have in any event identified several provisions in the TEC that could form a basis for EU policy on linguistic diversity within Member States as well.

An article with obvious direct relevance for the theme of this conference is article 151 TEC. While it is clear that culture will never be an exclusive EC competence, and subsidiarity issues will inevitably play, Shuibhne underlines in her book on EC law and minority language policy that article 151 provides ample legal scope for the EC in language matters. Paragraph one ("The Community shall contribute to the flowering of the cultures of the Member States, while respecting their national and regional diversity and at the same time bringing the common cultural heritage to the fore") arguably sets an independent objective committing the Community to contribute to cultural diversity (including linguistic diversity) in general terms. The qualification that regional diversity needs to be respected is of obvious importance here. However, the subsidiarity principle imposes several constraints, as is also reflected in the fact that only recommendations and incentive measures can be adopted in terms of article 151. Nevertheless, paragraph 4 ("The Community shall take cultural aspects into account in its action under other provisions of this Treaty, in particular in order to respect and to promote the diversity of its

⁷ Reference is made to recommendations and incentive measures (excluding harmonization measures).

⁸ *Groener v. Minister for Education and the Dublin Vocational Education Committee*, Case 379/87 [1989] ECR 3967; *Ministère Public v Mutsch*, Case 137/84 [1985] ECR 2681. See also N.N. Shuibhne, *EC Law and Minority Language Policy: Culture, Citizenship and Fundamental Rights*, Kluwer, 2000, 71-103.

⁹ *Criminal Proceedings against Bickel and Franz*, Case C-274/96, [1998] ECR, I-7637.

¹⁰ *Angonese v Cassa di Risparmio di Bolzano SpA*, Case C-281/98, 6 June 2000.

¹¹ *Angonese v Cassa di Risparmio di Bolzano SpA*, Case C-281/98, [2000] ECR I - 4139; *Criminal Proceedings against Bickel and Franz*, Case C-274/96, [1998] ECR I-7637. See also Shuibhne, 2000, at 278-288.

cultures”) could result in a more culturally (and hence also linguistically) sensitive community policy. Paragraph 4 can indeed be interpreted as a mainstreaming clause.¹²

Arguably, there is a certain, limited competence base for measures (by way of mainstreaming measures) with impact on the linguistic diversity within member states, in the sense that the latter would be required to contribute to the linguistic diversity within their respective territories.

There are furthermore several interesting developments within the domain of non-discrimination that should be noted, more specifically article 13 TEC and the Race Directive (Directive 2000/43 implementing the principle of equal treatment between persons irrespective of racial or ethnic origin) developed on that basis. Even though neither touch explicitly on discrimination on the basis of language, there are certain overlaps with discrimination on the basis of race, as has been amply recognized in the jurisprudence or quasi-jurisprudence of national supervisory bodies, like the Dutch Commission on Equal Treatment.¹³ It can furthermore be said that the entire broadening of the non-discrimination focus of EC law can be understood in the broader development of the EC from an economic organization to a political community. In the latter respect, can it not be expected that the impetus will grow to regulate linguistic diversity in member states, not in the least because of its obvious repercussions for linguistic diversity at EU level? While some see in article 13 TEC a possible opening towards the development of a general principle of non-discrimination,¹⁴ the EU Charter on fundamental Rights’ non-discrimination clause (article 21) in any event includes language as prohibited ground of discrimination.

Overall, it can be argued that there is a certain, limited competence base for measures (by way of mainstreaming) with impact on linguistic diversity within states; more specifically measures that would require Member States to contribute to linguistic diversity within their territories.

It should in any event be highlighted that, regarding possible competence base for the EU to regulate issues of linguistic diversity within the member states, article 22 Charter is not intended to provide an additional competence base (beyond to what is already there)! Indeed, the preamble also underlines that the Charter ‘reaffirms ... international obligations common to Member States’. Hence, this limits its interpretation, and more precisely the extent of the possible use of the Language Charter for its implementation in so far as it would pertain to linguistic diversity at state level because there are still several Member States who have not (yet) ratified the Language Charter.¹⁵

When considering the actual policies and regulations aimed at linguistic diversity beyond those that concern internal administration and the EC judiciary, it is in any event striking that several recent EC documents underline that ‘respect for linguistic and cultural diversity is one of the cornerstones of the EU’.¹⁶ An interesting question which comes immediately to mind then is what does this ‘respect’ entail, what level of protection is implied, and/or what level of promotion?

A brief historical overview is followed by a discussion of the Commission’s Working Paper of November 2002 and more specifically the ensuing Commission’s Action Plan of July 2003.

¹² Shuibhne, 2000, at 141-146; Gabriel N. Von Toggenburg, ‘The European Union: A Rough Orientation through a Delicate Relationship: the European Union’s Endeavours for its Minorities’, in S. Trifunovksa (ed.), *European Minorities and Languages*, TMC Asser Press, 2001, 216.

¹³ Dutch Commission on Equal Treatment, *Annual Report 1997*, Utrecht, 1998, 15.

¹⁴ L. Waddington, ‘Testing the Limits of the EC Treaty Article on Non-Discrimination’, *Industrial Law Journal* 28/2 1999, 149-150.

¹⁵ Belgium and France are two well-known examples of the older Member States, while Latvia is an example of one of the newly acceded Member States (from 1 May 2004).

¹⁶ See *inter alia* [http://europa.eu.int/comm/education/policies/lang/langmin/langmin_en.html] and [http://europa.eu.int/comm/education/policies/lang/languages/consult/action_en.pdf].

Initially, the lead was taken by the European Parliament, as manifested by the Arfé Resolutions¹⁷, the 1987 Kuijpers Resolution of the EP on the Languages and Cultures of the Regional and Ethnic Communities in the European Community,¹⁸ and the 1994 EP Resolution on Linguistic Minorities in the European Community, which was based on the Killilea Report.¹⁹ The latter called on the Commission to mainstream concerns of linguistic diversity. Over time the Commission has taken over this impetus. However, because of the lack of an explicit competence base in this respect, the Commission's activities were mostly confined to financial aid for minority languages and/or institutions.²⁰ Since 1982 the European Parliament established, following a request by the Commission to this effect, a specific budget line, which finances measures supporting lesser used regional or minority languages. It is to be noted that already this budget line was confined to indigenous languages, thus excluding immigrant languages. However, the budget line was suspended in 1998 due to a judgement of the ECJ because it did not have an appropriate legal base.²¹ DG Education of the Commission still has several initiatives concerning languages (also culture), demonstrating the potential of article 151 TEC.

Reference should also be made to the European Year of Languages, which was proclaimed in 2001 in co-operation with the Council of Europe.²² While the main focus of this Year was encouraging language learning, in view of its link with free movement rights and integration more broadly, several of its projects covered also regional and minority languages. In other words, the goal of language learning had several spin-offs which contributed to linguistic diversity and promoted minority languages.

This phenomenon, policies contributing to linguistic diversity by way of spin-off of language learning oriented projects, was taken up and further developed *inter alia* in the Commission's Staff Working Paper of November 2002. This working paper was a follow up of the report on the European Year of Languages and provides the basis for the subsequent Action Plan. It develops a triple approach to contribute to the goal of creating multilingual Europeans (which is seen as beneficial both for the actual exercise of free movement rights and for the broader European integration agenda). Two of these approaches are directly related to language learning, while the latter, entitled 'building a language friendly environment' arguably has more scope for integrating and furthering linguistic diversity concerns. In any event, contributions to linguistic diversity are obviously seen as positive by-products of the predominant goal of promoting language learning. Indeed, the Commission remarks in the Working Paper that it sets out to promoting language learning whilst respecting linguistic diversity at a European level.

The Commission's activities culminated in July 2003 in an Action Plan,²³ which is purported to adopt a new approach not only regarding language learning but also the promotion of linguistic diversity with special attention for minority languages. Once again, the focus of the action plan is on the promotion of language learning, in view of its link to the promotion of free movement of persons and services and hence the common market rationale; and once again the promotion of linguistic diversity, of minority languages seems predominantly a spin off, a more marginal point.²⁴

¹⁷ 1981 EP Resolution on a Community Charter of Regional Languages and Cultures and on a Charter of Regional Languages and Cultures and on a Charter of Rights of Ethnic Minorities (OJ 1981 No C 287, p. 106); 1983 EP Resolution on Measures in favour of Linguistic and Cultural Minorities (OJ 1983 No C 68, p. 103).

¹⁸ OJ 1987 No c 318, p. 160.

¹⁹ OJ 1994 No C 61, p. 110.

²⁰ See *inter alia* Gabriel N. Von Toggenburg, 'The European Union: A Rough Orientation through a Delicate Relationship: the European Union's Endeavours for its Minorities', 213-216.

²¹ Judgement of 12 May 1998, Case C-106/96. Any Community expenditure requires a dual basis – entry in the budget (presupposing a Community competence in the respective field) and the prior adoption of an act of secondary legislation, which was missing.

²² See [europa.eu.int/comm/education/policies/lang/year/index_en.html].

²³ Promoting Language Learning and Linguistic Diversity: an Action Plan 2004-2006, Brussels, 24 July 2003, COM (2003) 449 final.

²⁴ Action Plan, at p. 4-5.

Indeed, the action plan starts off by referring to free movement rights and underlines the importance of good language skills to take advantage of that. Furthermore, it is highlighted that intercultural and language skills are seen as necessary to be effective in the global market place.²⁵

In line with the Working Paper, three themes, three approaches are singled out: life long language learning, better language teaching and building a language friendly environment.²⁶ In the latter respect there is a call on the member states to assist regional and minority languages. While the Commission acknowledges that language policy is in the first instance something for the member states themselves, it does underline that linguistic diversity is a shared responsibility. In line with the competence provided in article 151 TEC, it is said that 'the role of the EU is not to replace action by the Member States but to support and supplement it',²⁷ resulting in mainly funding programmes in the areas of education, training and culture.

When having a closer look at the third approach 'Building a Language Friendly Environment'²⁸, it becomes apparent that the Commission adopts an outspoken mainstreaming function. Not only is envisaged that existing programmes, like Da Vinci and Socrates, can play a more active role in promoting linguistic diversity (mainly through teaching), but it is also stipulated that 'in the longer term, all relevant community programmes and the structural funds should include more support for linguistic diversity, *inter alia* for regional and minority languages, if specific action is appropriate'²⁹. Obviously, the more concrete meaning of 'relevant' and 'if specific action is appropriate' will determine how far-reaching this mainstreaming approach will be. It could (!) imply that for the implementation of (certain) EU programmes, the member states are required to contribute to the promotion of regional and minority languages (without of course impeding the fundamental freedoms).

In this respect it seems appropriate to refer to a report of ECMI and EBLUL of May 2002 on the support for minority languages in Europe,³⁰ which points out that 'in the current situation, to apply a mainstreaming approach at the level of EU actions to promote and protect regional and minority languages, there is a need for clear criteria and a set of fundamental principles'³¹. According to these organizations, 'the objective to promote and protect linguistic diversity should be clearly stated as part of the objectives of at least the language-related programmes'.³² There is furthermore a call for special measures and arrangements to ensure equal access to EU resources for small (linguistic) communities.³³

While it seems obvious that the Language Charter is particularly well-suited to provide guidance in these respects, it should definitely be highlighted that the Commission itself (in the Action Plan) explicitly encourages national and regional bodies to give special attention to measures to assist those language communities, whose numbers of native speakers is in decline from generation to generation, in line with the principles of the European Charter of Regional and Minority Languages!³⁴ Some of the actual plans envisaged by the Commission in the Action plan include a conference to promote co-operation in issues affecting regional and minority languages in education systems.³⁵ Furthermore, regarding the funding approach it is announced that in view of the annulment of the specific budget line, 'funding of projects related to regional

²⁵ Ibid.

²⁶ Action Plan, at p. 6.

²⁷ Action Plan, at p. 5.

²⁸ Action Plan, at pp. 12-14.

²⁹ Action Plan, at p. 13.

³⁰ EBLUL & ECMI, Final Report: Support for Minority Languages in Europe, May 2002, European Commission Contract no 2000-1288/001-001 EDU-MLCEV.

³¹ EBLUL & ECMI Report, at p. 3.

³² EBLUL & ECMI Report, at p. 4.

³³ Ibid.

³⁴ Action Plan, at p. 12.

³⁵ Action Plan, at p. 18.

and minority languages will go via mainstream programmes'.³⁶ While article 8 of the Language Charter arguably provides excellent guidance for the former, all the articles of part II of the Charter could be useful regarding the latter.

By way of conclusion, it can be said that the predominant rationale for a pro linguistic diversity attitude of the EU is predominantly related to benefits inherent in language learning. A societal multilingualism is felt to contribute to the broader European integration agenda, while individual multilingualism is understood to enhance the freedom of movement, the individual integration and the cross-country communication. Benefits to linguistic diversity of these approaches to linguistic diversity and the promotion of minority languages is predominantly a question of spin-offs, side-effects.

Secondly, it can be remarked that the EUROMOSAIC report³⁷ on the production and reproduction of the minority language groups in the EU came about due to the increasing acknowledgement by the Commission the growing value of diversity for economic deployment and integration...In other words, linguistic diversity is not so much seen as a good in itself, but rather as a good with high instrumental value for fundamental EU concerns, like economic growth and free movement rights.

It should in any event be highlighted that any policy geared at the promotion of minority languages is always limited to indigenous European languages. In other words, the languages of immigrants from other regions are not included. Excluding the languages of an ever growing extensive immigrant population does not seem to augur well for the broader European integration project...

2. What is the possible role of the European Language Charter as regards article 22 EU Charter of Fundamental Rights?

It should be underlined (and reminded) that during the drafting of the Charter of fundamental rights there were several (more than a dozen) unsuccessful attempts to include an explicit minority protection provision. In this respect, it can be argued that article 22, and its vague open ended formulation, was the best that could be achieved. However, the potential of this clause should not be underestimated. Who knows, maybe will on the basis of article 22 a more elaborate enumeration of 'minority' rights be developed, along the lines of the UN Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities or even better along the lines of the non-minority rights specific formulation of the European Charter on Regional or Minority Languages but then also including cultural and religious diversity.³⁸ Also positive for minority protection purposes is the inclusion of language as prohibited ground of discrimination in article 21,³⁹ which forms a valuable addition to article 13 TEC. The inclusion of the Charter of Fundamental Rights in the draft Constitution further

³⁶ Action Plan, at p. 19.

³⁷ Published by the Office for Official Publications of the European Communities, ISBN 92-827-5512-6.

³⁸ Indeed, Article 27 ICCPR is, unlike article 22 EU Charter of Fundamental Rights, an explicit minority protection clause. A further elaboration of article 22 Charter would, if at all, probably also be non-minority specific.

³⁹ Equality considerations are indeed vital from a minority protection perspective. In regard to linguistic minorities Bruno de Witte has underlined 'the primary interest of minorities is the recognition of a form of linguistic equality, rather than linguistic freedom' (Bruno de Witte, 'Conclusion: A Legal Perspective', in Sergij Vilfan (ed.), *Ethnic Groups and Language Rights: Comparative Studies on Governments and Non-dominant Ethnic groups in Europe, 1850-1940*, NY University Press, 1993, 303). This has also been translated in a progressive reading of the non discrimination principle in the sense that a refusal to use a minority language in providing a certain government service could be discriminatory if the number of people speaking that language is high enough and the disadvantage for them when the language is not used is serious enough (Fernand de Varennes, 'Equality and non-discrimination: Fundamental Principles of Minority Language Rights', 6 *I.J.M.G.R.* 1999, 313).

enhances its status,⁴⁰ which will become firmly legally binding once the Constitution is duly adopted.

While acknowledging that articles 52 and 53 of the Charter of Fundamental Rights are in themselves not the strongest or most important basis to evaluate the possible role of the Language Charter for the interpretation of article 22, they are drawn upon by way of confirmation of the broader practice of the ECJ and other EU institutions and of course because they are part of the same document as article 22. It seems in any event appropriate to evaluate the possible implications of articles 52 and 53 in this respect. Indeed, even though these articles do not apply to the Language Charter at face value, arguments can be developed for an extensive reading of (at least) article 53. It should in any event be highlighted that even though the Language Charter (nor the Framework Convention) are not explicitly mentioned in the Charter of Fundamental Rights, when scrutinizing the website of the EU pertaining the latter Charter, the so-called 'legal and political background' for it does enumerate the former documents explicitly! This highlights already the point that will be emphasized later, namely that the EU institutions have a rather long standing practice of having regard to developments in the broader European legal framework⁴¹ Especially in the domain of human rights, the Union likes to portray itself as a model and example for international human rights politics,⁴² hence it would undermine the Union's international identity as a promoter of international human rights if its own Charter of Fundamental Rights would not be in line with a perceived European consensus.

The latter is crystal clear as regards the ECHR, and is made explicit in article 52, paragraph 3 of the Charter, which confirms that the ECHR serves as a minimum standard of protection, in the sense that Charter rights corresponding to rights guaranteed by the ECHR shall have the same meaning and scope as the latter. The special status of the ECHR when considering human rights protection in the EU was long acknowledged in the jurisprudence of the ECJ⁴³ and was confirmed in article 6 TEU. Nevertheless, for our purposes this provision does not seem to be of much importance. While it cannot be said to be obvious under what conditions a fundamental right provision in the Charter "corresponds" to a right guaranteed in the ECHR,⁴⁴ it seems that article 22 of the EU Charter of fundamental Rights does not have a 'corresponding' provision in the ECHR. Indeed, it is common knowledge that not a single clause of the latter Convention amounts to a minority specific right or a cultural diversity right. On the other hand, the inclusion of 'belonging to a national minority' as a prohibited ground of discrimination arguably reveals that the Convention exhibits a certain awareness of the special needs of minorities.⁴⁵

⁴⁰ Already early on the Charter was drawn upon by Attorney Generals to the ECJ and was referred to in the judgements of both the ECJ and the Court of First Instance (e.g. Judge Lenaerts in *Max Mobil v Commission*, T 54/99, judgement of 30 January 2002, para. 48). For a forceful argumentation for already a certain legal status for the Charter, even prior to its inclusion in the draft constitution, see Augustin Jose Menendez, 'Legal Status and Policy Implications of the Charter of Fundamental Rights of the EU', Arena Working Papers WP 02/7, 2002.

⁴¹ *Inter alia* Ricardo Alonso Garcia, 'The General Provisions of the Charter of Fundamental Rights of the European Union', Jean Monnet working Paper 4/02, 2002, 27; Marika Lerch, 'European Identity in International Society – A Constructivist Analysis of the EU Charter of Fundamental Rights', [les1.man.ac.uk/conweb], ConWEB No 2/2003, at 12 and 14.

⁴² Marika Lerch, *supra* n. 37, at 17.

⁴³ *Inter alia* Dean Spielmann, 'Human Rights Case Law in the Strasbourg and Luxembourg courts: Conflicts, Inconsistencies and Complementarities', in Philip Alston (ed.), *The EU and Human Rights*, OUP, 1999, 772-7725, without denying that certain conflicts and inconsistencies between the jurisprudence of the ECJ and the ECHR exist, see *idem*, at 764-770.

⁴⁴ Erich Vranes, 'The Final Clauses of the Charter of Fundamental Rights – Stumbling Blocks for the First and Second Convention', [eiop.or.at/eiop/texte/2003-007a.htm], 10.

⁴⁵ Kristin Henrard, *Devising an Adequate System of Minority Protection: Individual Human Rights, Minority Rights and the Right to Self Determination*, Kluwer, 2000, 73. Even though the jurisprudence of Strasbourg is never mentioned in the articles of the Charter, it is worth noting that while initially that jurisprudence was not particularly 'minority protection friendly', there are several recent developments that have potential for more minority conscious interpretations of the ECHR. See *inter alia* Kristin Henrard, 'An Ever Increasing Synergy towards a stronger level of minority protection between Minority specific and non specific instruments', to be published in the European Yearbook on National Minorities 2003/4.

Article 53 goes on to stipulate that 'nothing in this Charter shall be interpreted as restricting or adversely affecting human rights and fundamental freedoms as recognized, in their respective fields of application, by ... international agreements to which the Union, the Community or all the Member States are party...'. While this provision is predominantly concerned with the levels of protection, it also can be seen to reflect once again that the EU/EC takes into account developments concerning human rights in other international fora. However, this openness is (at first sight at least) limited to Conventions ratified by ALL member states, as can be gleaned from the wording of article 53, and for example also the preamble of the Race Directive.⁴⁶

While I do not feel the need to go into the whole debate to what extent article 53 could possibly undermine the supremacy of EC law (because of its reference to the constitutional traditions of the Member States),⁴⁷ I would like to focus on the extent to which article 53 underscores and further facilitates the practice already present in EU institutions at large to take into account standards (and their interpretation) in conventions from other international organizations.

It is common knowledge that the Language Charter, like the Framework Convention, is not ratified by several older member states, which in view of the sensitivities involved are not likely going to do that soon. Similarly, one of the newly acceded countries, Latvia, has because of its linguistic sensitivities not ratified the Language Charter and this despite the impetus to respect minority rights throughout the accession negotiations.

I would not argue that the possible influence of article 53 could go as far as providing an avenue to establish new rights (especially not when that would pose a competence problem in view of article 51, paragraph 2) or broaden the rights of the Charter. However, it is quite another thing to say, also in view of the above mentioned practice of the EU institutions of having regard to other Conventions, that for the actual interpretation of in themselves vague norms in the Charter of Fundamental Rights, regard can be had (should be had?), to international instruments (and practice) with specific expertise in this respect. The latter seems the more appropriate when it concerns instruments that, while not ratified by ALL member states, are ratified by a substantial number member states, since the latter arguably points to an emerging consensus? Possibly, regard could then only be had to the general principles underlying the convention? Regarding accommodation of population diversity two Council of Europe treaties come immediately to mind, more specifically the Language Charter and the Framework Convention. Interestingly and as will be elaborated upon infra, the Language Charter in its chapter II actually has an enumeration of general principles, while it is overall not very prescriptive anyway in view of the alternative obligations that can be chosen by contracting states.

It may be clear that article 53 does not lead to any positive conclusions as to how the rights of the Charter should be interpreted. In any event, human rights require a dynamic, evolutive interpretation, which takes into account contemporary realities and attitudes.⁴⁸ This dynamic interpretation implies that there is always room for change and development. In this regard reference can be had to emerging trends, as reflected *inter alia* in the Language Charter.⁴⁹

In this respect, it remains to be seen what the impact will be of the actual accession of the 10 new countries, in view of their induced minority protection obligations and the numerous and unresolved minority issues, several of which have a linguistic dimension, that they bring in the

⁴⁶ Council Directive 2000/43/EC of 29 June 2000 implementing the principle of equal treatment between persons irrespective of racial or ethnic origin, OJ L 180/22, preamble paragraph 3.

⁴⁷ See in this regard Jonas Berig Liisberg, 'Does the EU Charter of Fundamental Rights Threaten the Supremacy of Community Law?', [jeanmonnetprogram.org/papers/01010401-02.html], June 2001.

⁴⁸ The ECHR underlines in this respect that the Convention is a living instrument, which must be interpreted in the light of present-day conditions (P. Van Dijk and G.J.H. Van Hoof, *Theory and Practice of the European Convention on Human Rights*, Kluwer, 1999, 78).

⁴⁹ See in this regard the reasoning of the ECHR in *Chapman v UK*, of January 2001, where the Court underlines in paragraph 93 that there is an 'emerging international consensus amongst the Contracting States of the Council of Europe recognizing the special needs of minorities and an obligation to protect their security, identity and lifestyle' for which it explicitly refers to the Framework Convention, and this despite the fact that this is not ratified by all member states.

EU territory. It is not unreasonable to expect that minority related tensions will come more to the forefront, maybe also in the EU institutions, which could lead to the development of a more visible and explicit minority policy internally? Indeed, although article 22 Charter does not provide a legal competence base, it could be an impetus for the EU institutions to go and look at more minority specific instruments when developing their policies in a way which would mainstream minority concerns.

Prior to getting into the discussion of the desirable role of the Language Charter when interpreting article 22 of the EU Charter of Fundamental Rights, it seems highly relevant to point out that the Commission in its recent Action Plan itself refers to the Language Charter as providing useful principles for states to assist speakers of declining languages.⁵⁰

3. What is the desirable role of the European Language Charter as regards article 22 EU Charter?

When turning to the question of desirability, it should be kept in mind that the Language Charter has certain specific characteristics, that have an impact on its desirability of guidance for article 22 EU Charter.

First of all, it should be underlined that the Language Charter is focused on the protection of languages and linguistic diversity, more specifically the recognition of state duties in this regard, rather than the granting of language rights to speakers of languages. While this has the benefit of making things less sensitive,⁵¹ it is of course difficult to neatly disentangle both dimensions.⁵² Indeed, the Explanatory Report of the Language Charter acknowledges that the Charter will have an obvious effect on the situation of the communities concerned and their individual members.⁵³ In this respect reference can also be made to the preamble of the Language Charter, which proclaims the use of minority languages in private and public life as an inalienable right. The text of the Charter itself also includes explicit references to the protection of language users in several instances.⁵⁴ As will be underscored infra, the Committee of Experts in its supervisory practice also exhibits several recognitions of subjective rights.

This characteristic of the Language Charter of being focused on multilingualism is actually very well suited to the intentions of article 22 EU Charter as that is also couched in terms of linguistic diversity, obviously for the same reasons of avoiding the sensitive minority rights talk.

A second remarkable feature of the Language Charter is the choice model used in its Part III, where the Contracting States can choose their obligations regarding the use of regional and minority languages in the respective fields of societal life (education, judicial authorities, administrative authorities, media etc.) more or less à la carte. Indeed, for each field various alternative levels of obligations are elaborated in a provision. In addition to the obligation to accept a certain number of obligations,⁵⁵ the Contracting States are also bound by the general principles set out in article 7 or Part II of the Charter, which arguably embody the core of the

⁵⁰ European Commission, Action Plan, at p 19.

⁵¹ *Inter alia* Robert Dunbar, 'Implications of the European Charter for Regional or Minority Languages for British Linguistic Minorities', 25 *European Law Review* 2000, 49, who criticizes this in a way: 'by eschewing a rights-based approach, the Charter represents a missed opportunity to advance the notion that language rights are fundamental human rights under international law.'

⁵² Kristin Henrard, *Devising an Adequate System of Minority Protection*,.... 215. See also Donall O Riagain, 'The Importance of Linguistic Rights for Speakers of Lesser Used Languages', 6 *I.J.M.G.R.* 1999, 293.

⁵³ Explanatory Report, paragraph 11.

⁵⁴ See *inter alia* article 14(a) Language Charter.

⁵⁵ Language Charter, Article 2, paragraph 2: 'in respect of each language specified at the time of ratification, acceptance or approval, in accordance with article 3, each Party undertakes to apply a minimum of 35 paragraphs or sub paragraphs chosen from among the provisions of Part III of the Charter, including at least three chosen from each of the Articles 8 and 12 and one from each of the Articles 9, 10, 11 and 13.'

Language Charter. Most articles of the Charter furthermore point out that the choices made by the Contracting States should not be arbitrary in the sense that they should be 'according to the [specific] situation of each language'.

Also this characteristic seems to have a parallel in EU law, more specifically the cardinal subsidiarity principle, which leaves enough scope for states to make decisions in line with their specific circumstances in case of non-exclusive competences.⁵⁶

A third typical characteristic of the Language Charter, further revealing the wide discretion left to Contracting States,⁵⁷ is the fact that they can choose what languages spoken in their territory can benefit of the obligations undertaken in terms of Part III.⁵⁸ At the same time, it should be underlined that the general principles of part II are applicable to all languages that satisfy the definition of 'regional or minority language' contained in article 1 of the Charter. The practice of the Executive Committee also reveals its inclusive approach in the sense that it also considers other languages than the ones elected in terms of Part III when reviewing compliance with Part II. In view of this inclusive approach, it makes sense to enumerate a few: the need of action for the promotion and safeguard of these languages, the facilitation of their use in all forms and in public and private life and also the education and study of these languages.⁵⁹

An important limitation regarding the scope of the Language Charter is the fact that its definition of regional and minority languages explicitly excludes immigrant languages, to be understood as languages not traditionally used in the country or in other words as languages of 'recent immigration'. This exclusion has led to numerous critiques not in the least for the complete lack of clarity as to what it means for a language to be traditionally used versus 'recent immigration'. Even the parameters provided by the Explanatory Report are far from concrete, leaving the determining criteria far from defined.⁶⁰ It can also legitimately be claimed that by excluding immigrant languages, the Charter actually ignores the real extent of linguistic diversity in Europe.⁶¹ Furthermore, by distinguishing implicitly between the languages of 'traditional' minorities and of more recently arrived minority groups, the Charter would have 'compromised the notion that language rights are fundamental rights'.⁶²

By way of side remark I do want to make the clarification that the reference in article 1 to languages used by nationals should not be misunderstood. In view of the fact that the Language Charter promotes the use of certain languages in certain fields of societal life, this is to the benefit of all the speakers of these languages, irrespective of their nationality or immigrant status. This has in any event been confirmed by the practice of the Committee of Experts in its

⁵⁶ Article 5 TEC. See also *inter alia* A.G. Toth, A Legal Analysis of Subsidiarity, in D. O'Keefe and P.M. Twomey (eds.), *Legal Issues of the Maastricht Treaty*, Chancery, 1994, chapter 3, 39-40.

⁵⁷ According to certain authors, the flexibility of the Language Charter is criticized because it would make it all too easy for states to hide behind the various opt-outs and alternatives to justify a most minimalist stance: see *inter alia* Tove Skutnabb-Kangas, 'Linguistic Diversity, Human Rights and the 'Free' Market', in Miklos Kontra et al (eds.), *Language: A Right and a Resource: Approaching Linguistic Human Rights*, CEU Press, 1999, 206.

⁵⁸ While in principle these languages have to satisfy the definition of article 1 (excluding official languages from its ambit), article 3, 1 enables Contracting States to apply the undertakings concerning language protection contained in part III of the Charter to 'official languages which are less widely used on the whole or part of its territory'. This can be relevant when considering the use of languages internally, in the EU institutions.

⁵⁹ Article 7 c, d and f.

⁶⁰ See *inter alia* Maria Amor Estebanez, 'Linguistic Diversity and the Council of Europe: The European Charter for Regional or Minority Languages and Council of Europe Policies', to be published in a book edited by Bruno de Witte and Miriam Aziz on Linguistic Diversity in Europe, at 13.

⁶¹ M. Nic Craith, 'Facilitating or Generating Linguistic Diversity: The European Charter for Regional or Minority Languages', in Gabrielle Hogan-Brun and Stefan Wolff (eds.), *Minority Languages in Europe: Framework, Status and Prospects*, Palgrave, 2003, 59.

⁶² Robert Dunbar, 'Implications of the European Charter for Regional or Minority Languages for British Linguistic Minorities', 50-51.

supervisory practice. This clarification is indeed important from an EU perspective as a nationality requirement could be contrary to the fundamental free movement rights.⁶³

More important is the remark that this criticized exclusion of immigrant languages of the Language Charter is actually perfectly in line with EU's initiatives in favor of minority languages which also has been confined to indigenous languages. However, this makes the exclusion not less problematic, especially when considering the increasing debates in this respect in the Member States. Moreover, the latest developments regarding the often sizeable group of third country nationals should also be taken into account.⁶⁴ The recent directive on the rights of long-term resident TCN's⁶⁵ aims at bringing their rights closer to those of the EU citizens and is pervaded by substantive equality concerns. Similar considerations would plead in favor of treating their (non-indigenous) languages along the same lines as indigenous minority languages.

An additional point that can be made when discussing the desirability of the Language Charter as source of inspiration as regards article 22 EU Charter, is that the former is focused on the use of languages with a territorial basis. Indeed, the Language Charter is only applicable to non-territorial languages *mutatis mutandis* and in a flexible manner according to article 7,5 (part II). The Explanatory Report confirms this as it indicates concerning non-territorial languages that 'in the absence of a territorial base, only a limited part of the charter can be applied to these languages'. (para. 37) Furthermore, the Charter is pervaded with expressions like 'within the territories in which such languages are used' when defining the obligational framework of the Contracting States. While it seems reasonable that the concentration of speakers of a language in a certain territory has a significant role to play in the extent of the state obligation to use that language in its services,⁶⁶ the exact identification of the respective 'territories' of languages gives -once again- a great deal of discretion to the state concerned.

In this respect it should be highlighted that the Committee of Experts has accepted the state practice to qualify the Romany language as non-territorial language, even though that language can actually easily be identified with more than one particular area in many European Countries. The rather reduced level of protection which seems concomitant to the qualification of non-territorial language, seems, however, ill at ease with the increased recognition in most European organizations (OSCE, EU and even the Council of Europe itself) of the need for special measures for the Roma.⁶⁷

In this respect it is to be welcomed that the Committee of Experts in its review practice tends to demand special attention for that language (see *infra*).

While the EU's Action Plan does not cater explicitly for the Romany language, it remains to be seen how that will play out in its implementation, as it seems defensible to identify that language as an indigenous European language.

⁶³ See in this respect Case C-274/96 Criminal Proceedings against Bickel and Franz, [1998] ECR – I-7637, para. 16.

⁶⁴ See also Patrick Thornberry, 'The Charter and the Role and Responsibility of the State', in *Conference Proceedings: From Theory to Practice – the European Charter for Regional or Minority Languages (Netherlands, 30 Nov.-1 Dec 2001)*, Council of Europe, 2002, 31-33 who points out that the Charter's focus on languages traditionally spoken may serve to alienate the group of migrants which are nonetheless also part of European society, while there is no indication when languages can cease to be regarded as a language of migrants, going back to the question of arbitrariness.

⁶⁵ Council Directive 2003/109/EC of 25 November 2003 concerning the status of third country nationals who are long term resident, O.J. L 016, 44-53.

⁶⁶ Territory in the Language Charter is seen 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.

⁶⁷ For a more elaborate review of the need and justification for the emergence of Roma specific standards, see Kristin Henrard, 'The Building Blocks for an Emerging Regime for the Protection of a Controversial Case of Cultural Diversity: the Roma', 10:3. *I.J.G.M.R.* 2004.

It is in any event difficult to ignore that the Language Charter by excluding all immigrant language and relegating the Romany language to the reduced protection of a non-territorial language (quasi-) ignores a large portion of the European linguistic realities from its scope. In this respect, it would not seem desirable to give the Language Charter too leading a role in the interpretation of article 22 EU Charter of Fundamental Rights.

Nevertheless, when considering this desirability it is important to also take into account the advisory practice in terms of the Language Charter as that not only nuances and softens some of the above characteristics but also reveals certain broad themes that could provide guidance in a more general mainstreaming approach in favor of linguistic diversity at EU level.

At first sight the supervision system of the Language Charter⁶⁸ is rather weak because the ultimate supervision is in the hands of a political body, the Council of Europe's Committee of Ministers, while the actual review is done by the Committee of Independent Experts. Furthermore, the Committee of Ministers cannot do more than making non-binding recommendations.⁶⁹ Nevertheless, the de facto authority of these Recommendations in combination with the habit of the Committee of Ministers to referring back to the views of the Committee of Experts strengthens the system. Furthermore, the Committee of Experts has developed not only rather intrusive procedures of review,⁷⁰ but has also adopted very progressive approaches as regards substantive obligations of states. First of all, the Experts have taken an inclusive approach as regards the general principles contained in part II of the Language Charter, which are deemed to be applicable to all 'regional or minority' languages irrespective of States wishes. This further confirms the broad validity of these principles, and hence their usefulness for implementation of article 22 of the Charter of Fundamental Rights. Secondly, in terms of part III of the Language Charter, several themes can be identified in the supervisory practice of the Committee of Experts, which could also be seen as offering broad guidelines for the interpretation and implementation of article 22 EU Charter. These themes include calling for special protective measures for endangered languages on the basis of substantive equality considerations,⁷¹ also looking at the actual practice and hence calling for necessary implementation measures, pertaining to issues of staffing, text books, adequate teacher training and so on.

The common denominator of these themes is that the Committee of Experts sets out to circumscribe the discretion, which is at first sight left to the states, while nevertheless respecting the flexible system of the Charter. In this regard the Committee invites states to adapt their obligations to the specific needs of each language (thus not treating them all alike), and sometimes even suggest them to adopt a more far reaching option. Would it not be possible to understand this practice as a closely supervised subsidiarity?

Despite the beneficial influence of the actual supervisory practice, the Language Charter has several shortcomings as regards the goal of respecting linguistic diversity in the sense that vast chunks of linguistic realities are not covered.

Nevertheless, both the general principles of part II and the broad themes of the supervision in terms of part III seem to offer interesting guidelines for the mainstreaming implementation of article 22 EU Charter.⁷²

⁶⁸ For a more elaborate analysis, see Kristin Henrard, "An Ever Increasing Synergy Towards a Stronger Level of Minority Protection between Minority Specific and Non Specific Instruments", forthcoming in the European Yearbook on National Minorities 2003/2004, 39 p.

⁶⁹ See also Snezana Trifunovska, 'Factors Affecting the Applicability and Efficiency of International Norms Protecting Linguistic Rights of Minorities', 9 *I.J.G.M. R.* 2002, 250.

⁷⁰ The Committee of Experts has taken on the habit of visiting the country of which it reviews the periodic report, interacting with the representatives of minorities and has been open for a broad gamma of sources of information.

⁷¹ See also Francois Grin, *Language Policy Evaluation and the European Charter for Regional or Minority Languages*, Palgrave, 2003, 82.

⁷² See also Robert Dunbar, who underlines that 'the Minority Languages Charter has significantly broadened and deepened our understanding of the sorts of measures of positive [linguistic] support which

4. Identification of other sources of inspiration for the interpretation and implementation of article 22 EU Charter?

Finally, and in order to overcome the possible flaws of the Language Charter identified above, certain proposals are formulated of documents that could further give guidance as regards the interpretation of article 22 of the Charter of Fundamental Rights.

First of all reference should be made to significant and parallel developments in terms of ICESCR, CERD and CRC,⁷³ which are ratified by all member states of the EU. Following article 53 EU Charter, article 22 of that Charter should be interpreted so as to be in line with these conventions. The broad themes that emerge from the supervisory practice of these conventions are in line with those identified concerning the Language Charter and concern *inter alia* the need to adopt special measures aimed at full equality, the acknowledgement of the importance of mother tongue education and its actual realization, the need to be able to use the minority language in dealings with the public authorities etc. These broad principles obviously contribute to linguistic diversity and are the more important because they are not limited to indigenous languages!

Secondly, reference could also be made to the practice in terms of the language rights provisions of the Framework Convention for the Protection of National Minorities. However, here one is confronted with the similar problem as the Language Charter, namely several EU member states have not ratified this Convention. Nevertheless, it seems worthwhile to point out that also here similar themes in support of linguistic diversity emerge from the supervisory practice.

Finally, regard should also had to several of the above mentioned Recommendations made by a group of international experts on demand of the HCNM. Indeed, while they are not the product of an intergovernmental body, they are meant to reflect the existing international law standards and their interpretation.⁷⁴ While the Oslo Recommendations seem most in point, it may be obvious that there are linguistic rights components to the Hague Recommendations and the most recent recommendations on Media.

Conclusion

While it has to be acknowledged that there is only a limited competence base for adopting measures to enhance linguistic diversity at state level by EU institutions, there are provisions with considerable potential, like article 151, para. 4 TEC. So far the support for linguistic diversity has mainly been of a financial nature, and/or has consisted of actions aimed at language learning and hence individual and societal multi-lingualism with certain spin offs for linguistic diversity. There also seems a certain tendency to mainstream linguistic diversity concerns. The 2003 Action Plan of the Commission takes over the approach of focusing on language learning, while nevertheless explicitly envisaging broader 'linguistic diversity' mainstreaming activities.

States may employ', while acknowledging the wide discretion left to states as to the actual choice of measures etc. (Robert Dunbar, 'Minority Language Rights in International Law', 50 *I.C.L.Q.* 2001, 112-113).

⁷³ For a full analysis in this regard, see Kristin Hennard, "An Ever Increasing Synergy Towards a Stronger Level of Minority Protection between Minority Specific and Non Specific Instruments", forthcoming in the European Yearbook on National Minorities 2003/2004, 39 p.

⁷⁴ See *inter alia* Rolf Ekeus, 'Respect for Diversity – Harmony between Peoples', in *Conference Proceedings: From Theory to Practice - the European Charter for Regional or Minority Languages (Netherlands, 30 Nov. –1 Dec. 2001)*, Council of Europe Publishing, 2002, 16. Note however the critical note made by Miklos Kontra concerning the use in these recommendations of undefined and thus problematic terms: 'Some Reflections on the Nature of Language and its Regulation', 6 *I.J.G.M.R.* 1999, 285.

Against this background the possible and desirable role of the Language Charter as interpretative guide to article 22 EU Charter of Fundamental Rights, and its obligation to respect *inter alia* linguistic diversity, has been investigated.

When analyzing the possible role of the Language Charter towards the interpretation of article 22 EU Charter of Fundamental Rights, articles 52 and 53 of the latter Charter do not seem to be directly on point. However, article 53 can be seen as confirming the broader practice of EU institutions to take into account developments in other international for a. Even though the attention is mostly confined to those instruments that have been ratified by ALL member states, it seems arguable that for the actual interpretation of in themselves vague norms in the Charter of Fundamental Rights, regard can also be had to international instruments (and practice) with specific expertise in this respect which are ratified by a substantial number member states, since the latter arguably points to an emerging consensus?

It should in any event be highlighted that the Commission actually already calls on the Member States to follow the principles of the Language Charter in its Action Plan of 2003. In this respect it would seem that drawing on the Language Charter for the interpretation and implementation of article 22 EU Charter of Fundamental Rights definitely belongs to the realm of possibilities.

An investigation of the desirable role of the Language Charter towards article 22 EU Charter focuses on the Language Charter's specific characteristics. The latter do reveal numerous shortcomings as regards the goal of addressing linguistic diversity while being largely in line with the current stance of the EU in this regard. The flexible approach of the Charter seems especially appropriate in view of the subsidiarity principle, while the General Principles of part II as well as certain themes emerging from the supervisory practice appear particularly well suited for the broad interpretative guidance that can be sought from an instrument that is not quite ratified by all member states.

Nevertheless, when one wants to broaden the scope of the linguistic diversity which is catered for at EU level on the basis of article 22, it seems definitely valuable to have a look at other instruments, some of which are covered by article 53 EU Charter of Fundamental Rights (and are not limited to indigenous languages).