



AG AMHARC SIAR, AG DUL CHUN TOSAIGH

Cairt na hEorpa do Theangacha Réigiúnacha nó Mionlaigh
Feidhmiú na Cairte i leith na Gaeilge 2001-2013

Tuairisc ar an Chomhdháil, Feabhra 2014

LOOKING BACK, MOVING FORWARD

The European Charter for Regional or Minority Languages
Application of the Charter in Respect of Irish 2001-2013

Report of the Conference, February 2014

It is not an exaggeration to say that without the information provided by the active NGOs in Northern Ireland, and in the case of Irish, POBAL in particular, the work of the Committee of Experts in evaluating the UK's Charter fulfilment in Northern Ireland during the last two monitoring rounds would have been even more difficult than it already was as a result of the substantial gaps in the UK State reports. I very much hope that a way can be found to ensure that POBAL's work continues. Its work on the Charter is in my opinion an exemplar of how an NGO should engage with the Committee of Experts.

Emyr Lewis

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Janet Muller

Príomhfheidhmeannach POBAL

Réamhrá

Tá cur i gcrích Chairt na hEorpa do Theangacha Réigiúnacha nó Mionlaigh ag croílár obair POBAL ó dhaingnigh rialtas na Breataine í i 2001. Uirlis idirnáisiúnta dlí atá sa Chairt, a thugann cosaint ar leith do theangacha réigiúnacha nó mionlaigh. Mar sin, bíonn eochair ról le himirt aici faoi thosca éagsúil na stáit difriúil ina bhfuil sí i bhfeidhm.

Agus an tuairisc seo a cur le chéile san earrach 2014, tá 13 bliain de mhonatóireacht shonrach ar an Chairt curtha isteach ag POBAL. D'fhoilsigh muid ceithre thuairisc mhionsonrach, faisnéis-bhunaithe a thugann eolas agus osradharc ar cur i gcrích na Cairte thar dhá thréimhse dhifriúla d'fheidhmiú Thionól TÉ (2000-2002 agus 2007-13), chomh maith leis an thréimhse cúig bliana nuair a cuireadh na hinstitiúidí cineachta ar fionraí agus go raibh Riail Díreach ó Westminster ann.

Bhailigh muid eolas agus faisnéis ar an Chairt agus d'imir ár gcuid oibre tionchar ar scairsealbhóirí éagsúla. Aithníonn pobal na Gaeilge POBAL mar an eochair fhoinse eolais agus réiteoir fadhbanna maidir leis an Chairt. Thar thréimhse blianta, chomh maith le heolas a scaipeadh ar an Chairt, thug muid faoi líon mór de ceisteanna agus, faraor, líon nach beag de ghearáin ó chainteoirí Gaeilge maidir le rochtain ar sheirbhísí bunúsacha faoin Chairt. Níl amhras ar bith orainn ach go bhfuil eolas ar go leor polaiteoirí agus státseirbhísigh, mar thoradh ar cur chuige leanúnach POBAL i leith chur i gcrích na Cairte, leanúnachas a bhí i gcónaí mar ghné na hoibre POBAL. Chomh maith, rinne muid cuid mhaith obair ardú feasachta le státseirbhísigh agus le fostaithe na gcomhlachtaí poiblí maidir lena gcuid dualgas.

Is tábhachtaí, b'fhéidir, thar 13 bliana, an caidreamh atá bunaithe idir muid féin agus Coiste na Saineolaithe ar an Chairt (COMEX). Tacaíonn Comhairle na hEorpa le hionchur ó eagrais neamhrialtasacha agus go háirithe, aithníonn sé feabhas ar obair eiseamláireach POBAL. Mar phríomhfheidhmeannach POBAL, thug Comhairle na hEorpa cuireadh dom labhairt le grúpaí san Eoraip agus

Janet Muller

CEO POBAL

Introduction

The application of the European Charter for Regional or Minority Languages in respect of the Irish language has been a central plank of POBAL's work since the Charter was ratified by the British government in 2001. The Charter is an international legal instrument which provides specific protections for regional or minority languages. As such it has had a key role to play in a variety of situations in different ratifying states.

By the time of writing in 2014, POBAL has completed significant monitoring of the Charter for over 13 years. We have published four detailed, evidence-based monitoring reports giving information and an overview of the application of the Charter across two different periods of operation of the NI Assembly (2000-2002 and 2007-2013) and during the five-year suspension of devolution and Direct Rule from Westminster.

Our evidence-gathering and information work on the Charter has influenced a number of different stakeholder groups. The Irish speaking community recognises POBAL as the key source of information and problem-solving regarding the Charter. Over a period of years, in addition to distributing information about the Charter, we have successfully dealt with many queries and sadly, also a number of complaints from members of the public regarding the availability of basic services under the Charter. We have no doubt that the Charter is known to many politicians and civil servants because of POBAL's consistent approach to its application and the continuity which has been a feature of our work. We have also carried out much awareness raising with civil servants and employees of public bodies about their responsibilities.

Perhaps most significantly of all, over 13 years, we have established a dialogue with the Committee of Experts on the Charter (COMEX). The Council of Europe is supportive of input into monitoring by non-governmental organisations and in particular, it recognises the excellence and exemplary nature of our work. As POBAL's CEO, I have been invited by the Council of Europe to speak to groups in

i gCónaidhm na Rúise ar na bealaigh a thug muid, mar eagras neamhrialtasach, faoi mhonatóireacht na cairte, agus ar an dóigh a ndeachaigh an cur chuige seo i bhfeidhm ar ár gclár oibre.

Sa chéad dhá thuairisc de chuid POBAL, déantar cur síos agus tagarmharcáil ar cad é mar a bhí ag éirí le comhlachtaí stáit agus poiblí i leith na Cairte. Ach, ina dhiaidh sin, sa tríú agus sa cheathrú tuairisc, léirítear méadú leanúnach ar an atmaisféar deacair ina bhfuil an Ghaeilge agus an Chairt féin ó thuaidh ó athbhunaíodh cineachadh i 2007. D'éirigh naimhdeas in éadan na Gaeilge ó fhoinsí éagsúla níos polaitiúla, agus chomh maith, thar dhá thréimhse faireacháin, theip Tionól TÉ teacht ar chomhaontú maidir le tuairiscí do Chomhairle na hEorpa ar chur i bhfeidhm na Cairte. De dheasca na dteipeanna seo, bhí moill fhada agus aththuairiscíú fabhtach ann ar chur i bhfeidhm na Cairte ag an Ríocht Aontaithe, rud ann féin a sháraíonn an Chairt. Sa chomhthéacs seo, d'éirigh monatóireacht neamhspleách POBAL ar an Chairt níos rí-thábhachtaí ná riamh roimhe.

I 2013, d'fhoilsigh POBAL ár gceathrú tuairisc monatóireachta, don thréimhse 2009-2013. Cuireadh amach go poiblí torthaí Choiste na Saineolaithe (COMEX) de chuid Chomhairle na hEorpa i mí Eanáir 2014. Ar thorthaí na Saineolaithe, cáinte go géar rialtas na Breataine agus na hinstiúidí cineachta as an easpa dul chun cinn atá déanta maidir le cosaint agus le cothú na Gaeilge ó bhí 2009 ann. Gríosáíonn go láidir na Saineolaithe le hAcht na Gaeilge a thabhairt isteach gan moill. Maidir le Cuid III na Cairte, a thugann sainchosaint don Ghaeilge ó thuaidh, tá cáineadh tromchúiseach déanta ag na Saineolaithe maidir leis an soláthar reatha i dtaca leis na meáin, le hoideachas, leis na cúirteanna, le riar na n-instiúidí polaitiúla, ag leibhéal an Tionóil agus ag leibhéal áitiúil, agus ar theip Westminster agus an Tionól i dtaca le hathuairiscíú do Chomhairle na hEorpa mar is dual dóibh faoin reachtaíocht idirnáisiúnta.

Ina dhiaidh sin, thug POBAL cuireadh labhartha ag ócáid in Óstán an Europa, Béal Feirste do Chéad Leas-Chathaoirleach Choiste na Saineolaithe, Sigve Gramstad agus chuig Emyr Lewis, ionadaí neamhspleách ar an Choiste ón Ríocht Aontaithe (2001-13). Bhí sé mar aidhm againn mionscrúdú a dhéanamh ar chur i gcrích na Cairte le trí bliana déag anuas ionas go dtiocfadh bogadh chun tosaigh agus tuiscint níos fearr againn ar impleachtaí thorthaí an COMEX go dtí seo. Cuimsíonn an tuairisc seo an méid a bhí le rá an lá sin faoi cad é mar a sheasann cosaint reatha na Gaeilge faoin Chairt.

Faraor, i mí Eanáir 2014, fuair POBAL scéal ó Fhoras na Gaeilge go dtiocfadh deireadh le bunmhaoiniú POBAL ar 30 Meitheamh 2014. is é ár dtuairim go gcaillfear saineolas agus saintaithí, poist, seirbhísí agus guthanna neamhspleácha san earnáil dheonach Ghaeilge.

Europe and the Russian Federation on the way in which as a non-governmental body, we have undertaken monitoring of the Charter and the way it has informed our work programme.

Whilst POBAL's first two reports sought to document and bench mark the early performance of state and public bodies in respect of the Charter, our third and fourth reports have reflected the increasingly difficult atmosphere in which the Irish language, and the Charter, exists in the North of Ireland, following the re-establishment of devolution in 2007. In addition to an increasingly politicised hostility towards Irish from some quarters, these two monitoring periods have also been characterised by a failure at NI Assembly level to agree reports on Charter implementation to the Council of Europe. This has in turn led to long delays and inadequate reporting of the UK application of the Charter, in breach of the convention itself. In this context, POBAL's independent monitoring of the Charter has become even more crucial.

In 2013, POBAL published our fourth monitoring report, covering the period 2009-2013. The report of the Council of Europe Committee of Experts (COMEX) was made public in January 2014, and among other findings, the Experts sharply criticise the British government and NI Assembly for the lack of progress made in relation to the protection and promotion of Irish since the previous report in 2009. The Experts strongly urge that the Irish Language Act should be introduced without delay. In relation to Part III of the Charter which makes specific provision for Irish in the north, the Experts make significant criticism in relation to current provision in relation to the media, to education, to the courts, to the administrative practice of the political administrations both at the assembly level and local council level - and to the failure of Westminster and the Assembly to report back to the Council of Europe as required under international legislation.

POBAL subsequently invited First Vice-Chair of the COMEX, Sigve Gramstad and Emyr Lewis, the independent representative to the COMEX from the UK (2001-13), to come and speak at an event in the Europa Hotel in Belfast. Our intention was to examine the application of the Charter over the previous thirteen years in order to move forward with a better understanding of the implications for the Irish language of the COMEX findings over this period. The following is the report of the presentations made on that day regarding the current position of protection of Irish under the Charter.

Sadly, POBAL was informed in January 2014 that our core funding from Foras na Gaeilge would end on 30th June 2014. We believe that this decision will result in the loss of expertise and specialised knowledge, and of jobs, services and independent voices in the Irish language sector.

Janet Muller

Príomhfheidhmeannach POBAL

Cúlra na Cairte

I Márta 2001, dhaingnigh Rialtas na Breataine 36 foráil de chuid na Cairte. Is Coinbhinsiún í an Chairt ar chuspóir di cosaint agus cothú a thabhairt do theangacha réigiúnacha nó mionlaigh. Tá 2 phríomhchuid ann - i gCuid II cuirtear síos na prionsabail ghinearálta a bheadh mar dhúshraith ag polasaí teanga, agus i gCuid III cuirtear síos ar na bearta dearfa a bheidh dírithe ar chothú na dteangacha atá sonraithe. Nuair a shíníonn stát ar bith an Chairt, luaíonn sé gach teanga atá le clúdach faoin Chairt agus luaíonn sé aon teanga acu siúd a thagann faoi Chuid III. (Baineann Cuid II den Chairt le gach teanga a luaitear). Ar an ábhar sin, sna sé chontae, sonraítear an Ghaeilge agus Albainis Uladh faoi Chuid II den Chairt, ach baineann Cuid III den Chairt leis an Ghaeilge amháin. Tháinig an Chairt i bhfeidhm sa Tuaisceart i Mí Iúil 2001.

Cé gur fháiltigh muid go mór roimh dhaingniú na Cairte Eorpaí i leith na Gaeilge, tá sé ina ábhar imní go fóill an roghnú a rinneadh ar na forálacha a bhaineann leis an Ghaeilge i gCuid a Trí. Is léir ó Thuairisc Mhínithe na Cairte chóir forálacha Chuid a Trí den Chairt a roghnú 'de réir staid gach teanga ar leith'. Léiríonn ionstraim dhaingnithe na Ríochta Aontaithe gur roghnaíodh 36 paragraf don Ghaeilge, rud nach mó go mór ná an t-íosmhéid (35 paragraf) a leagadh síos chun daingniú a dhéanamh ar an Chairt. Ní amháin gur roghnaíodh a laghad agus ab'fhéidir de na forálacha, ach i gcásanna áirithe roghnaíodh an leagan is laige a bhí ar fáil taobh istigh de na forálacha sin.

I gcás Alt 8 den Chairt, mar shampla, feicimid nach bhfuil barántas ar bith tugtha faoi sholáthar scolaíochta Gaeilge ar achan leibhéal cionn is gur roghnaíodh an freastal ab'ísle acu do chúrsaí oideachas na Gaeilge (feach Alt 8, para. a-d). I láthair fhás buan na Gaelscolaíochta ó thuaidh, ní léir ar chor ar bith cad chuige nach bhfuil sin san áireamh sna forálacha Cairte ar glacadh leo don Ghaeilge.

Mar a gcéanna atá an scéal i gcás úsáid na Gaeilge i gcúrsaí riaracháin (Feach Alt 10 den Chairt). Níl i gceist ach seirbhís íosta do lucht a labhartha. Mar shampla, cé go bhfuil sé d'fhiacha ar na húdaráis riaracháin glacadh le comhfhreagras i nGaeilge, níl sé d'fhiacha orthu freagraí a thabhairt sa teanga chéanna. Is é dearcadh POBAL é gur

Janet Muller

CEO POBAL

Background to the Charter

In March 2001 the British Government ratified 36 provisions of the Charter. The Charter is a convention that is designed to protect and promote regional and minority languages. It is divided into two substantive parts – in Part II, the general principles that should inform language policy are outlined and Part III consists of a range of concrete measures to promote the designated languages. In signing up to the Charter, States specify which language(s) are to be covered under the Charter and which language(s) qualify for inclusion under Part III (Part II of the Charter applies to all designated languages). Thus, in the six counties, Irish and Ulster-Scots are specified under Part II of the Charter, while Part III applies only to Irish. The Charter came into effect in the North in July 2001.

While the ratification of the European Charter to apply to the Irish language was a very welcome development, the selection of provisions to apply to Irish under Part III gives some cause for concern. It is clear, from the Explanatory Report on the Charter that the provisions of Part III should be selected 'according to the situation of each language'. The UK ratification instrument shows that 36 paragraphs have been selected to apply to Irish, while States are required to select a minimum of 35 paragraphs in order to ratify the Charter. Apart from the minimal number of provisions selected, in a number of cases those adopted for Irish are the 'weakest' of the options available.

Thus, in relation to Article 8, Irish medium education at the various levels is not guaranteed, as the least definitive of the available options was chosen for Irish (see Art 8, parags a-d). Given the ongoing growth in Irish-medium education, it is not clear why this is not more closely reflected in the educational provisions adopted for Irish in the Charter.

Similarly, with regard to the use of Irish in the administration (covered under Article 10), the measures selected to apply to Irish imply a minimal level of service for Irish speakers. For example, while the Administrative authorities are required to accept correspondence in Irish, the State has not undertaken to provide replies in the

fada é seo ón tiomantas a rinneadh faoin Chairt chun an Ghaeilge a chothú, agus gur chóir daingniú na Cairte a láidriú.

Tuairisciú

Déanann Comhairle na hEorpa monatóireacht ar an fheidhmiú trí mheán an Choiste Saineolaithe, dream a dhéanann scrúdú ar na bearta a dhéanann na Stáit éagsúla mar chomhlíonadh ar a gcuid gealltanais. Mar chuid den phróiseas seo, iarrtar ar na Stáit tuairisc thosaigh ar fheidhmiú na Cairte a chur i láthair bliain amháin i ndiaidh an túsdata feidhmithe. Is éigean tuairiscí a chur i láthair gach trí bliana ina dhiaidh sin. Os rud é go dtugann an Chairt ról monatóireachta do ghrúpaí neamhrialtasacha chomh maith, ullmhaíonn POBAL tuairiscí le cur i láthair Chomhairle na hEorpa. Cuireann tuairiscí s'againne pictiúr iomlán d'fheidhmiú na Cairte i leith na Gaeilge ar fáil agus tugann sí freagra ar an tuairisc atá déanta ag Rialtas na Breataine. Bíonn ár dtuairiscí bunaithe ar thorthaí ár gcuid monatóireachta agus ar an eolas atá againn faoi na fadhbanna laethúla a bhíonn ag na cainteoirí Gaeilge. Os

same language. It is POBAL's view that this falls short of the commitment made under the Charter to actively promote the Irish language, and that the ratification for Irish should be strengthened.

Reporting

Charter implementation is monitored by the Council of Europe, through a Committee of Experts that examines the measures taken by participating States to fulfil their commitments under the Charter. As part of this procedure, States are required to submit an initial report on implementation of the Charter one year after the Charter comes into effect. Subsequent reports must be presented at three yearly intervals. As the Charter also makes provision for input from non-governmental language groups, POBAL prepares reports for submission to the Council of Europe. Our reports provide an overall assessment of the implementation of the Charter with regard to the Irish language and offers a response to the British government's report. Our reports are based on the results of our monitoring work as well as on our awareness of the issues faced by Irish speakers on a daily basis. As an

In regard of Northern Ireland, POBAL's contributions have been essential, I would say, for the monitoring of the situation here because when you don't have an official report from the authorities and you don't have any contributions from the NGOs you have nothing, and then of course monitoring becomes almost impossible; we would have to spend weeks here to be able to acquire necessary information. So, especially in these last two monitoring rounds, POBAL's contribution has been essential for our work.

Sigve Gramstad

As well as these substantive issues, there has been a profound procedural issue which relates to the use of Irish. As indicated above, during the last two monitoring rounds, the work of the Committee of Experts in assessing how implementation is happening for Irish (and also for Ulster Scots) has been hampered by the absence of information in the UK state report about most of the activities and areas covered by the Charter.

Emyr Lewis

scátheagras é POBAL, féadann sé tairbhe a bhaint as an eolas atá bailithe aige faoi thaithí gach Gaelghrúpa ar fud na 6 chontae chun breithiúnas a thabhairt ar na deacrachtaí atá sa bhealach ag pobal s'againne.

B'éigean do rialtas an RA an Ceathrú Tuairisc a chur ar fáil i mí Bealtaine 2012. Ach, níor cuireadh isteach í go mí an Mhárta 2013, deich mí mall. Seo an dara tréimhse faireacháin as a chéile lenar tharla moill den chineál.

Torthaí COMEX 2010

Sa Tríú Tuairisc aige, luann COMEX i 2010 (parag. 13, leath. 5), 'Léiríonn an socrú déabhlóide in TÉ constaicí áirithe ar chur chun cinn agus chosaint teangacha réigiúnacha nó mionlaigh.' Tugann na Saineolaithe le fios ansin gur theip ar rialtas an RA Acht Gaeilge do TÉ a achtú mar a gheall sé i gComhaontú Chill Rímhinn 2006. Deir na Saineolaithe gur cosúil 'mar atá cúrsaí fá láthair, gur éadócha go ndéanfaidh Tionól TÉ reachtaíocht ar chosaint agus chur chun cinn na Gaeilge. Thiocfadh le Parlaimint an RA, áfach, sin a dhéanamh faoina hinniúlacht chomhthreomhar.' Áitíonn na Saineolaithe ansin ar údarás an RA, 'bonn oiriúnach reachtach a sholáthar i gcomhair chosaint agus chur chun cinn na Gaeilge in TÉ' (parag 15, leath 6).

umbrella organisation, POBAL can draw on the experiences of Irish language groups throughout the north of Ireland in commenting on issues of concern to the Irish speaking community.

The UK government was required to provide its Fourth Report in May 2012. However, it was not submitted until March 2013, ten months late. This is the second consecutive monitoring period in which such delays have occurred.

COMEX Findings 2010

In its Third report, the COMEX notes (parag 13, page 5) that, 'The devolution settlement in NI presents certain obstacles in the promotion and protection of regional or minority languages.' The Experts go on to outline the failure of the UK government to enact the Irish Language Act for NI to which it commits itself in the St Andrews' Agreement 2006. The Experts note that it appears that 'as things currently stand, legislation on the protection and promotion of the Irish language is unlikely to be made by the NI Assembly. It could however be made by the UK Parliament under its parallel competence.' The Experts go on to urge the UK authorities, 'to provide an appropriate legislative base for the protection and promotion of Irish in NI' (parag 15, pg 6).

Torthaí POBAL 2009-2013

Nuair a athbhunaíodh Tionól TÉ i 2007, ghlac an Páirtí Aontachtach Daonlathaigh (DUP) freagracht ar an Roinn Cultúir, Ealaíon agus Fóillíochta (RCEF). Áiríonn polasaithe agus cáipéisí oifigiúil an pháirtithe seo easpa bá – naimhdeas, fiú - don Ghaeilge. I 2011, ceapadh Aire de chuid Shinn Féin don Roinn Cultúir, Ealaíon agus Fóillíochta. Ainneoin go bhfuil atmaisféar níos tacúla don Ghaeilge fá láthair sa RCEF ná a bhíodh nuair a tuairiscíodh an Tríú Timthriall Faireacháin, maireann an diúltachas agus an doicheadall céanna fós i Ranna eile agus i gcuid de struchtúir na bhforas cineachta.

Mar shampla, léiríonn miontuairiscí an Ghrúpa Idir-Rannach um Feidhmiú na Cairte an méid seo:

Leanann **bunús** na Ranna le héascú iarratas ar aistriú. Athraíodh Aire roinnt de na Ranna agus tugadh faoi deara go mbíonn méid chur chun cinn na Gaeilge agus Albainis Uladh **ag brath ar thiomantas na nAirí** faoi seach don teanga/do na teangacha. Dúirt RCEF athuair gur chóir do na Ranna cloí lena 'gCóid Chúirtéise' **oiread agus is féidir**.

(le POBAL an bhéim: 27ú cruinniú GIFC, 13ú Deireadh Fómhair 2011)

Ar thorthaí eile de chuid POBAL, tá:

- Níl cur chuige córasach trasna rialtas TÉ / Comhairlí srl le hiarratais béil agus scríofa i nGaeilge a láimhsiú
- Ní bhíonn i gcónaí an síneadh fada in úsáid mar ba chóir
- Úsáid na Gaeilge ag cruinnithe i gcomhairlí - níl aon cleachtas seasmhach sna comhairlí
- Tionól – níl ateangaireacht comhuaineach ar fáil ach don Cheannchomhairle – ní chluineann na feisirí, na meáin, ná an pobal é
- Sráidainmneacha - moill 8 mbliain i mBaile Meánach; diúltú glan in Aontroim; constaicí roimh chomharthaíocht turasóireachta san lúr, An Dún srl
- As 16 bhfreagra atá faighte ag POBAL ó chomhairlí éagsúla, níl ach 736 sráidainm dátheangach in airde thar 8 gceantar

POBAL's Findings 2009-2013

When the NI Assembly was re-established in 2007, the Democratic Unionist Party (DUP) took responsibility for the Department of Culture, Arts and Leisure (DCAL). Both official policies and documents issued by the party show a lack of sympathy - even outright hostility - to the Irish language. In 2011, a Sinn Féin Minister was appointed for the Department of Culture, Arts and Leisure. Whilst there is currently a more supportive atmosphere for the Irish language within the Department of Culture, Arts and Leisure than was the case during reporting for the Third Monitoring cycle, the same negativity and hostility towards the Irish language persists in other Departments and throughout some of the structures of the devolved institutions.

For example, the minutes of the Inter-departmental Charter Implementation Group show the following:

'The **majority** of Departments continue to facilitate translation requests. Several Departments have had a change in Minister and it was noted that **the degree of promotion of Irish and Ulster-Scots is dependent on their respective Minister's commitment** to the language(s). DCAL reiterated that Departments should abide by their 'Codes of Courtesy' **as much as possible**.'

(POBAL's emphasis: 27th meeting of the ICIG, 13th October 2011)

Other findings included:

- There is no systematic approach to handling oral and written applications in Irish across the NI administration / Councils etc
- Many bodies do not correctly use the stress mark
- Use of Irish in council meetings – no consistent practice in councils
- Assembly – simultaneous translation only available to the Speaker – not to MLAs, the media or the public
- Streetnames - 8 year delay in Ballymena; refusal in Antrim; obstacles to tourist signage in Newry and Down etc
- Of 16 councils who replied, there were a total of 736 bilingual street names in place across 8 council areas

- Nuair a ceapadh Aire nua, Danny Kennedy ón Pháirtí Aontachaithe Uladh (UUP) sa Roinn Forbartha Réigiúnaí i 2011, cuireadh deireadh le próiseas comhairliúcháin ar chomharthaíocht dátheangach agus cinneadh gan gníomh ar bith a dhéanamh le comharthaíocht dhátheangach a éascú¹

Torthaí COMEX 2013

Arís eile, cáinte an t-eolas a chuir rialtas na Breataine ar fáil do Chomhairle na hEorpa. Bhí sé mall agus neamhiomlán; ní raibh eolas ann faoi chomhlíonadh dhualgais cineachta ar bith i leith na Gaeilge ná i leith Albainis Uladh sa tuaisceart; agus ní amháin sin, ach deir na Saineolaithe gur chuir an moill isteach ar fheidhmiú éifeachtach na Cairte fud fad an RA (alt 2).

Dar leis na Saineolaithe, titeann freagracht nach beag ar na hinstiúidí cineachta maidir le cur i gcrích praiticiúil na Cairte, ach mar sin féin, luíonn críoch fhreagracht faoin dlí idirnáisiúnta le rialtas na Breataine (alt 10).

Áiríonn na Saineolaithe nach bhfuil comhaontú polaitiúil ann faoi thábhacht na Gaeilge agus nár tugadh Acht Gaeilge isteach go fóill. Deir siad, “Áitíonn COMEX ar na húdaráis bonn oiriúnach reachtach a sholáthar i gcomhair chosaint agus chur chun cinn na Gaeilge i dTÉ” (alt 14).

Molann Coiste Aireachta de chuid Chomhairle na hEorpa gur cheart polasaí a fhorbairt don Ghaeilge, a chuimsíonn cosaint reachtaíochta le cearta phobal na Gaeilge a chosaint.

¹ Tá torthaí iomlán POBAL don thréimhse 2009-13 ar fáil ar shuíomh POBAL sa thuairisc, *An Chairt Eorpach do Theangacha Réigiúnacha nó Mionlaigh: Feidhmiú na Cairte i Leith na Gaeilge 2009-13*, <http://pobal.org.gridhosted.co.uk/english/wp-content/uploads/2013/11/2009-13-POBAL-ar-CETRM-POBAL-report-ECRML.pdf>

- When a new Minister for Regional Development Danny Kennedy, Ulster Unionist Party (UUP) was appointed in 2011, he put an end to a consultation process on bilingual signage and decided not to facilitate bilingual signage¹

Torthaí COMEX 2013

Once again, the information provided by the UK to the Council of Europe was sharply criticised. It was both late and incomplete. It contained no information about devolved responsibilities in respect of Irish or Ulster Scots in the north. Not only this, but the COMEX snote that; “The delay has hampered the process of timely and effective application of charter provisions throughout the UK” (para 2)

The COMEX state that responsibility for the practical implementation of the Charter lies mainly with the devolved administrations, but the UK Government nevertheless has the final responsibility under international law (para 10)

The Experts say that there is no political consensus on the importance of Irish and no Act adopted yet. They recommend, “The Committee of Experts strongly urges the authorities to provide an appropriate legislative base for the protection and promotion of Irish in Northern Ireland” (para 14)

The Council of Europe Committee of Ministers recommends that a policy for the development of Irish is developed, based in legislation in order to protect the rights of Irish speakers.

¹ All of POBAL’s findings for the period 2009-13 can be found on POBAL’s website, in the report, *European Charter for Regional or Minority Languages: The Application of the Charter in Respect of the Irish Language 2009-13*, <http://pobal.org.gridhosted.co.uk/english/wp-content/uploads/2013/11/2009-13-POBAL-ar-CETRM-POBAL-report-ECRML.pdf>

The four monitoring rounds show that the protection and promotion of Irish started out optimistically at first, with substantial efforts to implement the chosen undertakings for Irish in Northern Ireland. However, after the restoration of devolved government in 2007, there has been a negative development. No strategy has been adopted, no Irish language act has been proposed, and the number of fulfilled undertakings has decreased.

Sigve Gramstad



Sigve Gramstad

PROTECTION OF IRISH UNDER THE EUROPEAN CHARTER FOR REGIONAL OR MINORITY LANGUAGES

An Chéad Leas-Chathaoirleach, Coiste na Saineolaithe ar Chairt na hEorpa do Theangacha Réigiúnacha nó Mionlaigh

Tá Sigve Gramstad ina 1ú leas-chathaoirleach faoi láthair ar Choiste na Saineolaithe ar an Chairt Eorpach do Theangacha Réigiúnacha nó Mionlaigh. Tá ceithre théarma caite aige mar chathaoirleach ar Choiste na Saineolaithe, ó 1998-2006, agus ceapadh é mar leas-chathaoirleach i 2006. Bhí sé ina chathaoirleach agus / nó ina bhall de réimse sainchoistí Chomhairle na hEorpa, lena n-áirítear an Comhghrúpa oibre Rúisigh-Eorpaigh le daingniú na Cairte ag an Rúis a ullmhú; agus Coiste na Saineolaithe agus an Painéal Comhairleach ar Éagsúlacht na Meán. Tá sé ina chomhairleoir speisialta do Chartlannaí Náisiúnta na hIorua agus is cathaoirleach é ag comhlacht deartha agus chumarsáide.

First Vice-Chair, Committee of Experts on the European Charter for Regional or Minority Languages

Sigve Gramstad is currently 1st Vice-Chair of the Council of Europe Committee of Experts on the European Charter for Regional or Minority Languages. He has now served four terms as chair of the COMEX from 1998-2006, and was appointed deputy chair in 2006. He has been chair and /or member of a range of Council of Europe expert committees, including the Joint Russian-European working group to prepare Russian ratification of the Charter; and the Expert Committee and the Advisory Panel on Media Diversity. He is a special advisor to the National Archivist of Norway and chair of a design & communication company.

I am aware that this event is dedicated to the last monitoring round of the application of the Charter in regard of Irish in Northern Ireland. However, since we have just finished the fourth monitoring round, it might be worthwhile to take a closer look at the application of the Charter in relation to Irish during these almost 13 years since the UK ratification of the Charter.

I should mention already here, that the documents on which I base my presentation, are the evaluation reports of the Committee of Experts and the Recommendations adopted by the Committee of Ministers. All these are available at the Council of Europe's website.

UK ratified the Charter on March 27 2001. In the instrument of ratification, the UK Government declared that specifically listed provisions under Part III of the Charter should apply to Welsh, Scottish-Gaelic and Irish. 52 provisions should apply to Welsh, 39 to Scottish-Gaelic and 36 to Irish.

Regarding Irish, it was mentioned in the instrument of ratification that 30 of the undertakings related to matters that were the responsibility of the devolved administration in Northern Ireland, the remaining six undertakings related to matters being the direct responsibility of the "UK Government in Northern Ireland".

36 Undertakings chosen for Irish

- **Article 8 Education**
- 8 NI responsibility, 1 London responsibility
- **Article 9 Judicial authorities**
- 1 NI responsibility
- **Article 10 adm. Authorities/public services**
- 9 NI responsibilities
- **Article 11 Media**
- 4 NI responsibilities, 3 London responsibilities
- **Article 12 Cultural activities and facilities**
- 7 NI responsibilities
- **Article 13 Economic and social life**
- 1 NI responsibility
- **Article 14 Transfrontier exchanges**
- 2 London responsibilities

The ambition of a ratifying state is of course that the undertakings chosen either are fulfilled already, or will be fulfilled in the near future. The experience of the Committee of Experts is that this is rarely the case. However, we see in all countries positive development and measures taken that result in a growing number of fulfilment cases.

If we look at the application of the Charter in Northern Ireland, the picture is slightly different.

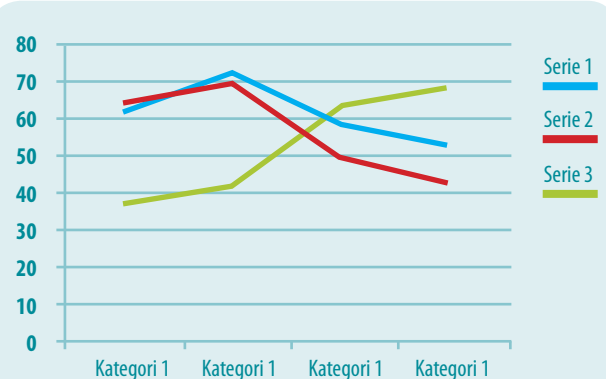
Fulfilment cases for Irish

	1) Monitoring 2003	2) Monitoring 2006	3) Monitoring 2009	4) Monitoring 2013
All 36 undertakings	22	26	21	19
30 NI resp.	19	21	15	13
6 London resp.	3	5	6	6

In the first monitoring round, the Committee of Experts found that 22 of the 36 chosen undertakings were fulfilled, while in the fourth monitoring round the number of fulfilled undertakings had been reduced to 19. During the same period, there was an increase in the number of fulfilment cases regarding the six undertakings dealt with directly by the UK Government, from three to six fulfilled undertakings. The reduction of fulfilment cases in this period has therefore solely taken place within the undertakings administered by the devolved government in Northern Ireland.

The development of fulfilment cases in regard of Scottish-Gaelic is closer to a “normal” development. If we compare Scottish-Gaelic with Irish in this respect, you see the difference.

Comparison with Gaelic in Scotland



The Committee of Ministers of the Council of Europe may forward recommendations to the states concerned, pointing to measures which the authorities should consider in their work to protect and promote the language or languages in

question. The Committee of Ministers normally adopts a set of recommendations for each country at the end of every monitoring round. If we take a look at the recommendations directed towards the protection and promotion of Irish, we observe that in the three latest monitoring rounds, the recommendation to develop, adopt and implement a comprehensive Irish language policy is highlighted. Since it has been the only recommendation regarding Irish in the last three monitoring rounds, there is reason to believe that this issue is considered by the Council of Europe to be of the highest priority.

Recommendations

1) Monitoring 2003

- Improve the public service television provision and facilitate the broadcasting of private radio in Irish

2) Monitoring 2006

- Develop a comprehensive Irish language policy, including measures to meet the increasing demand for Irish-medium education;
- Increase support for the printed media in (..) Irish

3) Monitoring 2009

- Adopt and implement a comprehensive Irish language policy, preferably through the adoption of legislation

4) Monitoring 2013

- Adopt and implement a comprehensive Irish language policy, preferably through the adoption of legislation providing statutory rights for the Irish speakers

The repetition of the recommendation indicates that there has been no substantial positive reaction from the authorities, nor that any positive development has been observed. Even though the recommendations deal with the same issue, the wording changed slightly each time. In the second monitoring round, the Committee of Ministers recommended the UK authorities to “develop a comprehensive Irish language policy”; in the third monitoring round to “adopt and implement a comprehensive Irish language policy, preferably through the adoption of legislation”, and in the last monitoring round to “adopt and implement a comprehensive Irish language policy, preferably through the adoption of legislation providing statutory rights for the Irish speakers”.

The Committee of Experts sums up the main points of their monitoring in a number of so-called Findings. The Findings might be compared to an executive summary, and they contain both detailed and general issues of importance. I have tried to single out the more general issues regarding Irish that are highlighted in the findings for each monitoring round.

General Findings 1

1) Monitoring 2003

B. (...) In contrast to Wales, both Scotland and Northern Ireland still have basic needs as regards the development of language policy

F. The Comex observed that the Northern Ireland administration is thorough in its work to fulfill its undertakings in relation to Irish. The work is taken seriously and, despite some shortcomings, the authorities are taking steps to improve the situation. However, sufficient information has not always been available to the Comex, since the movement for protecting Irish is a recent one, developing rapidly. At this stage, therefore, it would be difficult for the Comex to propose any concrete recommendations for the Irish language.

2) Monitoring 2006

F. The Northern Ireland administration is conscious of its obligations with regard to the Irish language through affirmative action. While commending the authorities for facilitating an increase in the number of Irish-speakers, by creating favourable conditions, the Comex gains the impression that the authorities do not sufficiently consider the consequences of this growth, for example in the field of Irish-medium education. Irish is still lacking a comprehensive language policy.

In the first monitoring round, it was pointed out that both Scotland and Northern Ireland had basic needs as regards the development of language policy. The Northern Ireland administration was commended for its efforts to protect and promote Irish, but since this work had just recently started, it was difficult for the Committee of Experts to provide concrete recommendations.

The general finding in the second monitoring round reflected the observed positive approach by the Northern Ireland administration. Shortcomings were mentioned, but also partly explained by the seemingly unexpected increase in the number of Irish speakers.

The findings in the third evaluation report start by mentioning that the national report by the UK was submitted almost a year after it was due, and that it did not contain any information on devolved matters in Northern Ireland relevant to Irish, or for that matter Ulster Scots. The restoration of the devolved administration in 2007 had resulted in difficulties in the promotion of Irish and Ulster Scots, "and the languages seem to have become hostages to party politics". The positive developments detected in the previous round seemed to have been put on hold or even reduced in many areas. In Finding H it was referred to the St Andrew Agreement Act requiring the adoption of a strategy to enhance and protect the development of Irish. With reference to the value of the language acts for Scottish-Gaelic and Welsh, it was mentioned that a similar statutory basis was needed for Irish.

General Findings 2

3) Monitoring 2009

A. (...), the Comex regrets the fact that the third periodical report was submitted almost a year after it was due, and did not contain any information on devolved matters in Northern Ireland relevant to Irish and Ulster Scots. (...)

D. In Northern Ireland, the devolved administration was restored in 2007 as a consequence of the St Andrews Agreement. This has resulted in difficulties in the promotion of Irish and Ulster Scots and the languages seem to have become hostages to party politics. The 1737 Act prohibiting the use of Irish in courts in Northern Ireland, remains in force.

G. Regarding the situation of Irish, many of the positive developments detected in the last monitoring round seem to have been put on hold or even reduced in many areas. (...)

H. The St Andrews Agreement Act requires the adoption of a strategy to enhance and protect the development of Irish. Nevertheless, unlike the other two Part III languages Welsh and Scottish Gaelic, there is no comprehensive statutory basis for the protection and promotion of Irish in Northern Ireland. The Welsh Language Act has been vital in the positive development of Welsh and there are signs that the Gaelic Language Act is doing the same for Scottish Gaelic. A similar statutory basis is needed for Irish.

The findings in the last evaluation report start by repeating from the previous report that also the fourth national report by the UK was submitted almost a year after it was due, and did not contain any information on devolved matters in Northern Ireland relevant to Irish and Ulster Scots. Furthermore, the difficulties regarding the promotion of

General Findings 3

4) Monitoring 2013

A. (...), the Comex regrets the fact that the third periodical report was submitted almost a year after it was due, and did not contain any information on devolved matters in Northern Ireland relevant to Irish and Ulster Scots. (...)

D. In Northern Ireland, the difficulties regarding the promotion of Irish and Ulster Scots observed in the previous monitoring round have continued, especially in the case of Irish. There is still no legislative basis for the use of Irish due to the lack of political support. Unjustified restrictions on the use of Irish in some fields covered by the Charter, including in courts, still persist.

G. The Committee's work has been hampered by a lack of information from the authorities, but it seems that (...) little has been done to implement the recommendations (...) referred to in the previous monitoring round (...).

Irish had continued, there was no legislative basis for the use of Irish, and little had been done to implement the recommendations mentioned in the previous report.

Major obstacles

- **A negative development in the protection and promotion of Irish has taken place since the restoration of devolved government in Northern Ireland.**
- **The St Andrews Agreement Act 2006 places a statutory duty on the Northern Ireland Executive to adopt a strategy to enhance and protect the Irish language. So far no strategy has been adopted.**
- **The UK Government has failed to include a presentation of the situation of Irish in the last two national periodical reports. This is a violation of Article 15 of the treaty, and it has severely hampered the monitoring of the situation for Irish in Northern Ireland.**

The four monitoring rounds show that the protection and promotion of Irish started out optimistically at first, with substantial efforts to implement the chosen undertakings for Irish in Northern Ireland. However, after the restoration of devolved government in 2007, there has been a negative development. No strategy has been adopted, no Irish language act has been proposed, and the number of fulfilled undertakings has decreased.

In addition to the problems observed within Northern Ireland,

the UK Government has not been able to deliver the last two national reports on time, and when they have been presented, the application of the Charter on Irish in Northern Ireland has been missing. Apart from the violation of Article 15 of the treaty, it has made the monitoring much more challenging, since the Committee of Experts has no presentation from the UK authorities of how their chosen undertakings in regard of Irish in Northern Ireland have been implemented.

Needless to say, the situation is of concern to all who would like to see the UK authorities protect and promote Irish and Ulster Scots as they do with the other regional or minority languages in the country.

So what are the ways forward from this difficult situation?

If the devolved government in Northern Ireland does not act in accordance with the obligations under the Charter, and the negative development we have witnessed through the last two monitoring rounds continues, the pressure on the UK Government to do something will grow. Internationally it is embarrassing for a country like the UK to perform so badly in regard of these obligations that the country has voluntarily taken upon itself. The UK Government may well feel it has to act.

This is not necessarily a happy solution, since it will illustrate the inability of the devolved government to deal with difficult devolved matters. Regarding the promotion of Irish, it would nevertheless be better than the existing situation.

Another possibility is that the Northern Ireland Executive manages to solve the political problems that block their ability to act, and that they will move forward, in line with the Charter. A positive sign in this respect could be an adopted plan or a language act for the protection and promotion of Irish, presented in the forthcoming national report from the UK, delivered on time.

In the first monitoring round, the Committee of Experts found that 22 of the 36 chosen undertakings were fulfilled, while in the fourth monitoring round the number of fulfilled undertakings had been reduced to 19. During the same period, there was an increase in the number of fulfilment cases regarding the six undertakings dealt with directly by the UK Government, from three to six fulfilled undertakings. The reduction of fulfilment cases in this period has therefore solely taken place within the undertakings administered by the devolved government in Northern Ireland.

Sigve Gramstad

The Committee of Ministers normally adopts a set of recommendations for each country at the end of every monitoring round. If we take a look at the recommendations directed towards the protection and promotion of Irish, we observe that in the three latest monitoring rounds, the recommendation to develop, adopt and implement a comprehensive Irish language policy is highlighted. Since it has been the only recommendation regarding Irish in the last three monitoring rounds, there is reason to believe that this issue is considered by the Council of Europe to be of the highest priority. The repetition of the recommendation indicates that there has been no substantial positive reaction from the authorities, nor that any positive development has been observed.

Sigve Gramstad



Emyr Lewis

GENERAL ELEMENTS OF THE CHARTER: SOME STRENGTHS AND WEAKNESSES

Ionadaí neamhspleách ar Choiste na Saineolaithe don Ríocht Aontaithe 2001-2013

Is dlíodóir agus file é Emyr Lewis ón Bhreatain Bheag. D'éirigh sé le déanaí as a phost mar Ionadaí neamhspleách na Ríochta Aontaithe ar Choiste na Saineolaithe, post a bhí aige ó 2001 go 2013. Is comhpháirtí é sa ghnólacht aturnaetha Morgan Cole agus is Comhalta Sinsearach é ag Ionad Rialachais na Breataine Bige in Ollscoil Caerdydd. Bhí sé ina phríomhstocaire le haghaidh reachtaíochta do chur chun cinn agus do chosaint na Breatnaise, agus is stiúrthóir é ag an eagraíocht neamhrialtasach Bhreatnaise Dyfodol i' r laith.

Independent representative to the Committee of Experts for the United Kingdom 2001-2013

Emyr Lewis is a lawyer and a poet from Wales. He has just stepped down from being the UK's independent member of COMEX, having held that post from 2001 to 2013. He is a partner in the firm of solicitors Morgan Cole, and also holds the post of Senior Fellow at the Wales Governance Centre in Cardiff University. He has been a leading figure in lobbying for legislation to promote and protect the Welsh language, and is a director of the Welsh language NGO Dyfodol i' r laith.

I would like to echo Sigve Gramstad's words about POBAL. It is not an exaggeration to say that without the information provided by the active NGOs in Northern Ireland, and in the case of Irish, POBAL in particular, the work of the Committee of Experts in evaluating the UK's Charter fulfilment in Northern Ireland during the last two monitoring rounds would have been even more difficult than it already was as a result of the substantial gaps in the UK State reports. I very much hope that a way can be found to ensure that POBAL's work continues. Its work on the Charter is in my opinion an exemplar of how an NGO should engage with the Committee of Experts.

When the United Kingdom ratified the European Charter for Regional and Minority Languages in 2001, the reason that it did so was the Irish language. That is because it ratified as a consequence of the Good Friday Agreement. That Agreement also contained specific commitments by the UK Government to foster Irish in Northern Ireland. The speakers of other indigenous minority languages in the UK have reason to thank those Irish language activists who helped achieve this. It is a sad irony, therefore, that the

language which appears to have benefitted least from that ratification is Irish.

Along with much else that stemmed from the Good Friday Agreement, the ratification signalled, or at least appeared to signal, a shift in the way in which the UK as a state positioned itself - in this instance in respect of the Irish language. Whatever the actual policy considerations at work may have been, here was the UK not only explicitly recognising a responsibility under international law to protect and promote Irish, but also making certain specific undertakings about what it would do.

The decision to do this must have reflected some kind of policy aims to do something to draw the sting from discussion and debate in Northern Ireland about Irish, and to allow greater space for the language and those who speak it within the Northern Ireland polity.

Such aims would clearly chime with the Charter's Preamble (to which in my view we should always turn our mind when considering the more detailed legal questions of

implementation, to stop us getting bogged down). It is worth repeating parts of it now:

- Considering that the protection of the historical regional or minority languages of Europe, some of which are in danger of eventual extinction, contributes to the maintenance and development of Europe's cultural wealth and traditions;
- Considering that the right to use a regional or minority language in private and public life is an inalienable right conforming to the principles embodied in the United Nations International Covenant on Civil and Political Rights, and according to the spirit of the Council of Europe Convention for the Protection of Human Rights and Fundamental Freedoms;
- Stressing the value of interculturalism and multilingualism and considering that the protection and encouragement of regional or minority languages should not be to the detriment of the official languages and the need to learn them;
- Realising that the protection and promotion of regional or minority languages in the different countries and regions of Europe represent an important contribution to the building of a Europe based on the principles of democracy and cultural diversity within the framework of national sovereignty and territorial integrity;

In any event, whether or not these aspirational principles were necessarily embraced by the UK Government when it ratified the Charter, it can nevertheless be fairly said that policy aims of the type I have described were evident in the early days following the UK ratification of the Charter, when there was direct rule, and were reflected in some of the more optimistic assessments made by the Committee of Experts. It is rather more difficult to see these at work in the present situation. There seems to have been another shift.

In this talk, I shall consider this latter shift, concentrating not on the implementation or otherwise of the Part III undertakings for Irish (which Sigve Gramstad has discussed), but rather on what one might call the more general elements of the Charter, including Article 7 (Objectives and Principles) and Article 15(1) (the obligation on the State to present a report to the Secretary General

of the Council of Europe on how it is complying with the Charter). I hope to show how the flexibility of the Charter as a legal instrument has helped make some progress at least in pushing certain issues at an international level, but also show the limits of the Charter. I also hope to demonstrate how the UK's failure to report on devolved issues relating to Irish (and indeed Ulster Scots) is not only regrettable, but also difficult to justify in terms of the UK Government's own rationale.

During the four monitoring rounds which have taken place over the past twelve years, several substantive issues relating to Irish have been raised by representatives of the speakers of Irish, which do not sit easily within any Part III undertakings chosen by the UK for Ireland. The Committee of Experts has nevertheless found ways of addressing these issues in its reports. They include:

- Section 75 of the Northern Ireland Act 1998, or rather the way in which it has been interpreted in some cases so as to frustrate measures in support of Irish for fear of contravening equality legislation;
- the use of a perceived need to reach parity between Irish and Ulster Scots as an argument to prevent doing things for Irish – an approach which is seen by both Irish-speakers and Ulster Scots speakers as being contrary to the interests of both languages;
- the call for an Irish Language Act;
- the fact that Irish cannot be used to take a UK citizenship test; and
- last but certainly not least, the continued prohibition on the use of Irish in the Courts, because of the Administration of Justice Act 1737.

As well as these substantive issues, there has been a profound procedural issue which relates to the use of Irish. As indicated above, during the last two monitoring rounds, the work of the Committee of Experts in assessing how implementation is happening for Irish (and also for Ulster Scots) has been hampered by the absence of information in the UK state report about most of the activities and areas covered by the Charter.

Because of the constraints of time, I shall deal with only one of the substantive issues, namely the 1737 Act. That is because it remains in my mind the clearest example of a failure to achieve the (assumed) policy objectives of drawing the sting from discussions surrounding the Irish language in Northern Ireland and allowing the language

and those who speak it a greater space within the Northern Ireland polity. It is also the clearest example of where a rights-based solution is required.

The 1737 Act, as most of you will be aware, does not prohibit the use of Irish in courts in so many words. It prohibits the use of any languages other than English. The policy objective behind the Act, it seems, was not to stop members of the public using Irish in Courts, but to stop lawyers using Latin. It appears that, in terms of that explicit objective, it has achieved its policy goal. I am not aware that lawyers here in Belfast have been trying to present cases in Latin recently. Doubtless they are deterred from doing so by the £20 fine they would incur if they tried. The simple fact is that in recent times, the Act has been used to prevent people from using Irish in Court.

The UK in ratifying the Charter could have addressed this issue. Every state which adopts a Part III menu must choose at least one undertaking under Article 9 of the Charter, which deals with judicial authorities. Article 9 contains provisions which would have allowed the UK to undertake for instance to guarantee the right of the accused in criminal proceedings to use Irish, with interpretation to be provided if necessary; similarly in respect of a litigant in civil or administrative proceedings.

The UK did not choose to do this. Instead it ratified only to ensure the translation of the most important legal texts into Irish. This was a good symbolic gesture, but of little practical use. This is perhaps the clearest example of a general criticism of the UK ratification in respect of Irish, namely that it was minimal: more “What can we get away with?” than “What’s the right thing to do for Irish?” In this respect, of course, the criticisms levelled at the UK are no different from those levelled by regional and minority language speakers at other states.

It is perhaps one of the most often-recited mantras about the Charter that it is a dynamic and flexible instrument. This is reflected in the reference in the Charter to treating languages according to their specific situations. This feature is used to justify a number of things, such as tolerance on the part of the Committee of Experts in early reports towards lack of implementation. It is also used by the Committee of Experts as the basis for encouraging states parties to do more, where the ratification (as in the case of the UK for Irish) appears to be a minimal one. In the early days of the Charter, the Committee of Experts

took this upbeat encouraging approach to the 1737 Act. So, in its first report on the UK, the Committee of Experts stated, without referring expressly to the Act:

The Committee of Experts commends the UK authorities on their dynamic approach to the instrument of ratification. This can be seen in the inclusion of the Isle of Man and thereby Manx. The same approach can be seen in the recognition of Cornish. The Welsh Language Board has adopted the same dynamic approach in recommending positive changes regarding the ratification for Welsh. The Committee of Experts hopes that the authorities will extend this approach to the use of Irish and Scottish Gaelic before the courts.

Now, this seems a bit of non-sequitur, but at least it shows the Committee of Experts, in a typically low-key way for an early report, trying to nudge the UK in the right direction, perhaps on reflection, over-optimistically.

A similar encouragement-based approach was taken in the second report, but on that occasion the Committee of Experts had more specific observations to make. It made them under Article 7.2, which starts:

The Parties undertake to eliminate, if they have not yet done so, any unjustified distinction, exclusion, restriction or preference relating to the use of a regional or minority language and intended to discourage or endanger the maintenance or development of it.

The Committee of Experts linked this to the (somewhat qualified) statement in the Good Friday Agreement that the UK Government would:

seek to remove, where possible, restrictions which would discourage or work against the maintenance or development of the [Irish] language;

and encouraged the authorities to remove the restriction which the 1737 Act presented.

By the third round, however, the Committee of Experts had much more to say. It stated in plain words that the continuing prohibition on the use of Irish in courts was an unjustified distinction, contrary to the spirit and the objectives of the Charter, and noted rather tersely in its fourth report that nothing had been done to remedy this.

The Committee of Experts did not however expressly call for the Act to be repealed in order to comply with Article 7.2. That perhaps would have been a step too far in the eyes of some international lawyers. They would argue that the Committee of Experts cannot under cover of a more general undertaking in effect require compliance with a specific undertaking which the state has not chosen to ratify, since that would amount to second guessing a state party's ratification.¹

This example shows both the possibilities and the limitations of the Charter. The broad language of the Preamble to the Charter and Article 7 can form the basis for the Committee of Experts expressing views on matters outside the strict limitations of the State ratification. It does not however permit the Committee to undermine that ratification.

The 1737 Act needs to be repealed, but of course repeal will not be enough. An express right to use Irish in courts is needed. We know that from bitter experience in Wales where, until an express statutory right to use Welsh was created, a sequence of cases held that only English could be used in court by those who could speak it, as a matter of common law.

In considering the 1737 Act, the authorities first need to address the question what policy aim is furthered by not repealing the Act? Its original purpose has been fulfilled centuries ago. Its current effect is to deny Irish speakers the exercise of a fundamental civic right (the right to be heard in Court) through their language. Maintaining such a state of affairs does not contribute to drawing the sting out of discourse about the Irish language in Northern Ireland, nor to allowing the language and those who speak it a greater space within the Northern Ireland polity.

There is another justification in my mind for the right to use Irish in courts in Northern Ireland. I have become increasingly convinced that, notwithstanding the differences between the situations of the various Part III languages in the UK, it is reasonable to expect a certain degree of parity of treatment for these languages throughout the state in relation to what one might call fundamental civic rights, where the state impacts on the citizen, and that includes the right to use your language in the courts.

I would like to turn now to the procedural problems. In terms of complying with international law, the UK traditionally likes to be compliant, and what's more, to be best in class. This means not only substantive compliance, but also procedural compliance. Indeed, this was evident in the first two monitoring rounds under the Charter, where the UK presented its reports on the dot.

In the third round, it did not do this. Eventually a report was produced a year late with gaps in it. No information was made available about the situation of Irish and Ulster Scots in connection with devolved matters. Something similar happened in the fourth round. This caused practical issues for the Committee of Experts, in that it had to organise its monitoring activity very quickly in order to avoid further delay. It is also the case that the UK is now out of step with the Charter's three-year monitoring cycle. As the Committee of Experts has commented, this has hampered evaluation in respect of all regional and minority languages in the UK.

The reasons given for the delay and for the omissions were that the UK Government expected the Northern Ireland Executive to prepare that section of the report which dealt with Irish and Ulster Scots, and that there had been a failure to agree a text at that level, which meant that that section of the report had not been prepared.

The situation faced by the Committee of Experts was unprecedented. The UK Government is obliged under international law to report on how the Charter is implemented. This is what Article 15 says:

The Parties shall present periodically to the Secretary General of the Council of Europe, in a form to be prescribed by the Committee of Ministers, a report on their policy pursued in accordance with Part II of this Charter and on the measures taken in application of those provisions of Part III which they have accepted.

The Committee of Experts is used to circumstances where state reports contain gaps or inadequate information. That is often because state officials may not know or be aware of what is happening; or where, such as in several central European states, there has been an over-ambitious Part III ratification for a language that has very few speakers in the state. This was not one of those cases

¹ The second round report's encouragement to the authorities to remove the restriction which the 1737 Act presented would, in accordance with the Committee of Experts' practice, usually have led to a stronger formulation in the third report. The Committee of Experts did not do this, despite strengthening its argument against the 1737 Act.

however. The UK authorities are able themselves to access information about the implementation of “devolved” Part III undertakings for Irish, and the situation of Ulster Scots. This was not a case where reporting was impossible nor indeed particularly difficult. It was a case where reporting was deliberately not done.

The Committee of Experts’ observations on this situation in the third and fourth monitoring rounds reflect what international law says: it is the responsibility of the state to report.

In its response to the Committee of Experts’s fourth report, the UK Government explained its position as follows:

The difficulties experienced by the UK Government in obtaining comprehensive input from the devolved administration in Northern Ireland in relation to the compilation of the Report have already been explained to members of the Committee of Experts.

The UK Government hopes that the pressure we have exerted, and will continue to exert, with the aim of ensuring the Northern Ireland Executive provide input is understood. However, while the Committee’s frustration at the lack of comprehensive information relating to Northern Ireland is appreciated, the UK Government cannot – and will not – act unilaterally when responsibility rests properly with one of the UK’s devolved administrations.

The UK Government takes its responsibilities in relation to language promotion and development seriously, but needs to balance that with recognition of the boundaries of the devolution settlement. Our commitment to the importance of respect, understanding and tolerance in relation to linguistic diversity has, we believe, been demonstrated in relation to non-devolved policy areas, including broadcasting infrastructure.

It is an important feature of the political settlement in Northern Ireland that difficult or divisive issues are taken forward through agreement between the Northern Ireland political parties. The UK Government requests that the Committee of Experts, and the Council in finalising its recommendations, remains cognisant of the wider context in which these issues exist.

If the UK were explaining why it was not going to promote legislation in Westminster to repeal the 1737 Act, then this might be an understandable position for the UK to take (even though it would leave unaddressed the question of how it can be right in the light of the commitments it made in the Good Friday Agreement to maintain this divisive and restrictive status quo until there is political agreement to get rid of it).

That is not however what the UK Government is doing. It is, rather, explaining why it did not include information about most of the undertakings concerning Irish in its periodical report.

In that context, the assertion that *the UK Government cannot - and will not - act unilaterally when responsibility rests properly with one of the UK’s devolved administrations* is ill-founded. Responsibility properly lies, in the context of reporting obligations under the Charter, with the UK Government. Furthermore, there would be nothing to prevent it from reporting factual information about developments, nor indeed reporting on the stated policies of various Northern Ireland Ministers in respect of Irish and Ulster Scots, while making it clear, if necessary, that these are not UK Government policies. The fact that the devolved administration cannot agree on the text of part of a report required from the UK by an international treaty should not be a reason for omitting any text whatsoever.

The Good Friday Agreement and ratification of the Charter signified a shift in the UK Government’s approach to Irish, but many of the obstacles which existed then continue now and, as Sigve Gramstad has demonstrated, compliance with Part III undertakings has weakened. If the UK is serious about this it needs to take some action, not only as a matter of compliance with international law, but also so as to start to reconnect with the policy aims that it ostensibly embraced when it ratified the Charter. Taking an interest in what’s happening about Irish, so as to be able to report on it, would be a good first step on this journey.

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Emyr Lewis

Moltaí POBAL

- 1) Titeann príomhfhreagracht maidir le cur i gcrích agus monatóireacht na Cairte ar rialtas na Breataine. Tá gá le gníomh éifeachtach uaidh leis an fhreagracht seo a fhíorú. Ba chóir iarrachtaí poiblí a dhéanamh i dtaca le tuairisciú ón Tionól; ba chóir maoiniú a chur ar fáil do ghrúpaí neamhrialtasacha neamhspleácha le monatóireacht a dhéanamh; ba chóir pionós a ghearradh ar an Tionól mura ndéantar tuairisciú mar is ceart faoin Chairt.
- 2) Ní mór sprioc dháta aontaithe le haghaidh reachtú Acht na Gaeilge ag Westminster a fhoilsiú.
- 3) Craoltóireacht - go gcuirtear tagairtí do chraoltóireacht Gaeilge isteach i reachtaíocht chuí Westminster, mar shampla i nAcht Cumarsáide an RA 2003 agus i gCairt Ríoga an BBC 2005.
- 4) Go gcuirtear leor buanmaoiniú ar fáil do Chiste Craoltóireachta na Gaeilge.
- 5) Go n-aisghairmítear Acht 1737 Riar na Córa agus go dtugtar isteach reachtaíocht (Acht na Gaeilge TÉ) le ceart a chruthú maidir le húsáid na Gaeilge sna cúirteanna. Ba chóir beartais forbartha agus traenála a chur in áit le húsáid na teanga a éascú agus a spreagadh.
- 6) Go bhfoilsíonn an Roinn Cultúir, Ealaíon agus Fóillíochta (RCEF) teorach agus moltaí le cinntiú nach mbeidh an Ghaeilge thíos le cur i gcrích Athbhreithniú ar Riaracháin Poiblí.
- 7) Go dtugtar isteach polasaí cuimsitheach don Ghaeilge, fréamhaithe i reachtaíocht chuimsitheach, láidir.
- 8) Go nua-shonraíonn agus go n-afhoilsíonn an RCEF Treoir ar Chur i gCrích na Cairte (2005) agus go reáchtáiltear seisiúin traenála do na húdaráis cuí, i dtreo pleananna aicín.
- 9) Go gcuireann an Roinn Oideachas a dualgais féin i gcrích maidir le Gaelscolaíocht, agus go bhforbraíonn sí pleanáil straitéiseach bunaithe ar fhás na hearnála ag gach leibhéal, ar bhonn na tairiscintí réamhghníomhaí.
- 10) Go n-eisíonn RCEF treoir deifnídeach ar Mhír 75 agus an Ghaeilge, le hardú suntasach feasachta a chinntiú faoi chearta teanga i gcomhthéacs an chomhionannais.
- 11) Go sábháiltear saineolas agus saintaithí na n-eagrais Gaeilge ó thuaidh, agus go gcuirtear maoiniú sonrath ar fáil do na heagrais bunmhaoinithe Gaeilge, POBAL san áireamh, i ndiaidh 30 Meitheamh 2014.

POBAL's Proposals

- 1) Responsibility for implementation and monitoring of the Charter falls on the British government. There is a need for effective action to fulfil this responsibility. There should be public attempts made in relation to NI Assembly reporting; funding should be made available to independent, non-governmental organisations to carry out funding; the NI Assembly should be fined if it continues to fail to report as it should on the Charter.
- 2) An agreed target date for introduction of the Irish Language Act at Westminster must be published.
- 3) Broadcasting – that references to Irish language broadcasting be inserted into appropriate Westminster legislation, for example the UK Communications Act 2003 and the BBC Royal Charter 2005.
- 4) That adequate, long term secure funding for the Irish Language Broadcast Fund be provided.
- 5) That the 1737 Administration of Justice Act be repealed and rights-based legislation is introduced (The Irish Language Act NI) including the use of Irish in courts. Developmental and training measures should be put in place to encourage and facilitate use of Irish in the courts.
- 6) That the Department of Culture, Arts and Leisure (DCAL) publishes guidance and proposals to ensure that provision for Irish will not be reduced because of Review of Public Admin.
- 7) That a comprehensive Irish language policy be introduced, grounded in legislation.
- 8) That the DCAL updates and re-issues its Guidance on the Implementation of the Charter (2005) and that it organises training sessions for appropriate authorities, leading to action plans.
- 9) That the Department of Education fulfils its duties for Irish Medium education and plans strategically for growth at all levels based on active offer.
- 10) That DCAL issues definitive guidance on Section 75 and the Irish language, to ensure a substantial increase in awareness of language rights in the context of equality.
- 11) That the expertise and experience of the organisations in the north is safeguarded, and that significant funding is made available to the core-funded organisations, including POBAL, after 30th June 2014.



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