



Limbörgse Academie
Implementation European Charter for Regional or Minority Languages
Netherlands Responses to Recommendations for Immediate Action
NGO Report on the Netherlands Responses regarding Limburgish

Limbörgse Academie

The Limbörgse Academie (Limburgish Academy) is a volunteer-run nonprofit established in 2007 as a foundation (*stichting*) under Dutch law. Our aim is to make Limburgish accessible to both linguistic researchers and the wider general public to contribute to the preservation and further development of the language. The Limbörgse Academie is a member of the 'steering committee' of the Hoes veur 't Limburgs (House for Limburgish), an organization in formation comprising several volunteer-run Limburgish language organizations.

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Introduction

For over 25 years the Dutch government has not implemented its obligations for Limburgish under the Charter. It continues to do so in its most recent Responses to the Council of Europe's Recommendations for Immediate Action. The Dutch government has based its position as regards Limburgish (as well as Low Saxon¹) on the following premise: '*Language policy in the Netherlands is designed in such a way that primary responsibility lies with subnational authorities, such as provincial and municipal authorities.*'²

In previous NGO Reports (see Appendix I) we have submitted that the Dutch government's position is contrary to international law, including its obligations under the Charter, and Dutch national law. We would like to stress that in our report we make the (international) law arguments explicit, mainly for other (language) partners who will also be recipients of this report, in order to clarify the reason why we take a particular position in making certain arguments.

The Dutch government's position violates international law, especially Article 26 of the 1969 Vienna Convention on the Law of Treaties, which states that "*[e]very treaty in force is binding upon the parties to it and must be performed by them in good faith.*" Its position also violates article 27 of the Vienna Convention, whereby "*[a] party may not invoke the provisions of its internal law as justification for its failure to perform a treaty.*" The committee of experts has also reminded the Dutch government that '*the Dutch national authorities are responsible for the implementation of the provisions of the Charter under international law*'³.

The Dutch government's position is also a direct violation of the ECRML itself. Only the Dutch government is a Party to the ECRML, not subnational authorities. Article 7.1 of the Charter requires Parties to base "*...their policies, legislation and practice...*" on the ECRML's objectives and principles and, according to Article 7.1.c ECRML, Parties have agreed to "*...the need for resolute action to promote regional or minority languages...*". Limburgish has been recognized under Part II, not Part III, which still means that '*States Parties are required to undertake to match their policy, legislation and practice to a number of principles and objectives*'⁴.

Competencies in the Netherlands for language policy fall under Dutch national legislation and are reserved for the national government. National legislation currently does not allow for language policy to be delegated to a subnational authority. The Dutch government, when discussing ratification of the ECRML in Parliament, recognized that implementation of the Charter's provisions would entail amending existing legislation.⁵ In the past 25 years the national government has amended national legislation to make exceptions for Frisian, a regional language also recognized under the Charter, and has structurally provided financial resources in order to implement its obligations for Frisian.⁶

Since the ratification of the Charter, the Dutch government has adopted a separate position for Limburgish. In the 2019 *Convenant inzake de Nederlandse erkenning van de Limburgse taal* ('Covenant regarding the Dutch recognition of the Limburgish Language'), an administrative agreement between the Ministry of the Interior and the province of Limburg, the Dutch government has enshrined this separate position for

¹ Many of the legal arguments will be similar for Low Saxon, but the focus here will be on Limburgish, since we are only familiar with the particulars for Limburgish.

² See e.g. European Charter for Regional or Minority Languages, Information Document on the implementation of the Recommendations for Immediate Action based on the 7th monitoring cycle Submitted by the Netherlands, MIN-LANG (2024) IRIA 1, 21 February 2024, p. 3.

³ See e.g. Committee of Experts of the European Charter for Regional or Minority Languages, Seventh Evaluation Report on the Netherlands adopted on 18 November 2022, p. 5.

⁴ Explanatory Report ECRML, no. 39.

⁵ *Kamerstukken II* 1994-1995, 24092, 3 (MvT).

⁶ Although Frisian has been recognized under Part III and Limburgish under Part II, for both Parts the Charter requires Parties (national governments) to match their policy, legislation and practice to comply with their obligations under the Charter, which would include amending them if they are incompatible with the obligations under the Charter. We are familiar with reports regarding the incomplete implementation for Frisian, but the point we are submitting here is that the Dutch government does amend national legislation to implement its obligations for one regional language recognized under the Charter (Frisian) and not for another (Limburgish).

Limburgish. The province has been made 'voortrekker', the authority primarily responsible for Limburgish language policy, but without the enactment of new laws and regulations.⁷ The national government declared to be prepared to fulfil a practical or complementary role if necessary.⁸ The Covenant does not contain a provision dealing with financial considerations. In practice, the Dutch government has made a subnational authority responsible for the implementation of the obligations for Limburgish under the ECRML, whereas this authority has hardly any competencies in legislation to enact language policy and fewer financial resources.⁹ In a 2024 review¹⁰ of the Covenant the province of Limburg also indicates that it lacks resources and capacity for a comprehensive language policy. Moreover, the Covenant is not legally binding nor subject to any regular bureaucratic control mechanisms. The province has therefore no recourse if the national government does not cooperate in its execution. The Ministry and the province agreed to evaluate the Covenant within two years after its entry into force, but so far the Ministry has not cooperated and the province has conducted its own evaluation.

As long as the Dutch government continues to take this separate position for Limburgish, as it has for the past 25 years, it will prevent the Charter from having the effect it is intended to have for Limburgish. The committee of experts and the Council have been informed by other organizations that the situation for Limburgish is becoming increasingly dire due to the substantial decline in the intergenerational transmission of the language. Therefore, if the committee of experts and the Council agree with our assessment, we would like to call on the committee and the Council to urge the Dutch government to change its position regarding Limburgish so as to be in compliance with international law and the Charter.

⁷ Artikel 2 Convenant inzake de Nederlandse erkenning van de Limburgse taal 27 november 2019, Staatscourant 2019 nr. 64467.

⁸ Ibid, Toelichting, para 5.

⁹ See e.g. Michielsen-Tallman, Y. (2018). Nieuw Limburgs taalbeleid: Een convenant is drijfzand voor het Limburgs, in *Neerlandistiek. Online tijdschrift voor Nederlandse taal- en letterkunde*, 7 February 2018. <https://neerlandistiek.nl/2018/02/nieuw-limburgs-taalbeleid-een-convenant-is-drijfzand-voor-het-limburgs/> (retrieved 6/3/2024); Michielsen-Tallman, Y. (2020). Het Convenant voor de Limburgse Taal en de juridische en politieke status van het Limburgs in *Neerlandistiek. Online tijdschrift voor Nederlandse taal- en letterkunde*, 30 January 2020. <https://neerlandistiek.nl/2020/01/het-convenant-voor-de-limburgse-taal-en-de-juridische-en-politieke-status-van-het-limburgs/> (retrieved 6/3/2024).

¹⁰ See <https://limburg.bestuurlijkeinformatie.nl/Document/View/017fb171-6bd0-4020-bc10-bc7c04d9df4b> (retrieved 3/3/2024).

Recommendation 2a. Prepare a strategy to ensure the teaching and study of Limburgish as a subject at all levels of education and promote its use in preschool education

First of all, we would like to point out that the Dutch government's response has failed to provide the Council of Europe with a national strategy for teaching and studying Limburgish. This is consistent with the Dutch government's position in all previous State Reports.

The Dutch government and Dutch laws governing education, contrary to the government's assertion in its response, do not comply with Article 7.1 of the Charter, which requires Parties to base "...their policies, legislation and practice..." on the Charter's objectives and principles.

The Dutch government's argument that "[a]s schools have the freedom to make their own choices here, they cannot be required by law to teach regional (...) languages" is spurious. The Vienna Convention, as indicated in the introduction, does not allow a Party to invoke the provisions of its internal law as justification for its failure to perform a treaty. Moreover, Frisian, also recognized as a regional language under the Charter, is included in the compulsory curriculum¹¹, next to Dutch and English.

Although Dutch educational laws do not preclude pre-schools and primary schools from using a '*streektaal*' ('dialect') as a language of instruction, this legislation is inadequate and insufficient to fulfil the obligations under the Charter. The arguments for its inadequacy can be found in our previously submitted NGO Reports and are included in Appendix II.

Dutch educational legislation for Limburgish is insufficient, because it does not ensure the inclusion of the teaching and study of Limburgish in education, but leaves it to the discretion of the schools. This means first of all that the Dutch government continues to fall foul of Article 7.1.c ECRML and "...the need for resolute action to promote regional or minority languages...". It is the Dutch government's responsibility to promote Limburgish in schools and this cannot be left to the discretion of schools boards on a voluntary basis. The province of Limburg does not have any competencies to compel schools to introduce Limburgish in education. Moreover, we submit that a province emphasizing the importance of including the regional language in the voluntary curriculum or the Ministry of Education's assistance in pointing out existing grants does not constitute a practice that is sufficient to ensure Limburgish in education.

In addition, Dutch educational law prescribes a compulsory curriculum.¹² In practice schools have few educational or financial means to offer other subjects next to the compulsory curriculum. In its review of the Covenant for the Limburgish language the province of Limburg indicates that, except for a few pilot projects and project-based attention to Limburgish in schools, there is actually no room yet to give shape to the recommendation of the expert committee of the Council of Europe to develop Limburgish as a school subject.¹³

We therefore have to conclude that the Dutch government's response to this Recommendation of the Council of Europe is partly unsatisfactory, because it has not prepared a national (or provincial) strategy to ensure the teaching of Limburgish. Moreover, the government's response is also partly inaccurate, since it has the obligation under international law and is the only level of government with the competencies and means under national law to implement its ECRML obligations for education.

¹¹ *Ibid.*, Article 9.

¹² See e.g. Wet op het primair onderwijs as recently amended on 10-05-2023, *Stb.* 2023, 183.

¹³ See <https://limburg.bestuurlijkeinformatie.nl/Document/View/017fb171-6bd0-4020-bc10-bc7c04d9df4b> (retrieved 3/3/2024), p. 6, para. 6.3.

Recommendation 2b. Set up a body responsible for representing the interests of Limburgish speakers at national level

We would like to cite, *verbatim*, the provisions from the ECRML and its Explanatory Report dealing with the establishment of a body to represent the interests of regional or minority languages.

Article 7.4 ECRML *"In determining their policy with regard to regional or minority languages, the Parties shall take into consideration the needs and wishes expressed by the groups which use such languages. They are encouraged to establish bodies, if necessary, for the purpose of advising the authorities on all matters pertaining to regional or minority languages."*

Explanatory Report ECRML, no. 75. *"The CAHLR thought it important that in each State mechanisms should exist whereby the public authorities take account of the needs and wishes expressed by the speakers of regional or minority languages themselves. Consequently, it is recommended that for each regional or minority language there should be a promoting body responsible for representing the interests of the language at national level, carrying out practical measures to promote it, and monitoring the implementation of the charter in relation to that particular language. The expression "if necessary" indicates *inter alia* that, where such institutions already exist in one form or another, it is not intended to encourage States to establish new ones which would duplicate them."*

We deduce from these provisions that the body in question is meant to be composed of members of a group which use the regional language. Since the explanatory report juxtaposes *"the public authorities"* with *"speakers of regional languages themselves"*, we interpret the ECRML to mean that such a body is not an existing public (regional) authority acting as a representative of the speakers. Moreover, the Charter, the explanatory report (and international law as argued in the introduction) and the Recommendation also state that the body should be established at a national level.

The Dutch government refers in its response to this Recommendation to the *"Covenant on Limburgish, which form[s] the basis for the collaboration between the central government and the local authorities involved"*. The Covenant is an administrative agreement between two public authorities. We would argue that this does not seem to qualify under the Charter as a *"body representing the interest of Limburgish speakers"*. Moreover, the province of Limburg operates at the regional level, not the national level and as such also does not appear to fulfil the criteria under the Charter.

The Dutch government refers in its response to this Recommendation to the *Hoes veur 't Limburgs* (House for Limburgish). The Limburgish Academy is a member of the steering committee establishing the *Hoes*. The *Hoes* has not been established by the national government. It is being established at the request of the Limburgish regional government as an umbrella organization of volunteer-run Limburgish language organizations, mainly to avoid overlapping overhead cost in funding Limburgish language activities. The province provides some structural funding for some of the activities of (the language organizations represented in) the *Hoes*. The national government has given the *Hoes* a one-off contribution of €75000. Activities for Limburgish still mostly depend on volunteers. Furthermore, the *Hoes* represents regional language organizations that operate at a regional level. It develops, documents and produces (educational) products about and in the Limburgish language.¹⁴ The *Hoes* does not have the capabilities to review nor does it focus on national language policy.

We therefore fail to see how the Dutch government's response refers to the Recommendation regarding having *'set up a body responsible for representing the interests of Limburgish speakers at national level'* as mentioned under the applicable provisions of the Charter and the Explanatory Report.

¹⁴ See <https://hoesveurtlimburgs.nl/nl/over-t-hoes> (retrieved 6/3/2024).

APPENDIX I General remarks on the implementation of the ECRML

Legal framework: the LA supports repeated statements from the Council of Europe that the Dutch national authorities are responsible for the implementation of the ECRML. The Dutch government's refusal to implement its obligations for Limburgish under the ECRML falls foul of different legal requirements:

1. Under international law the Dutch State, as High Contracting Party, is required to fulfill its obligations under a signed and ratified international instrument. This was also the position of the Dutch government when discussing ratification of the ECRML in the Dutch Parliament.¹⁵ The Limburgish regional government is not a Party to the ECRML nor an independent and sovereign State responsible for implementation;
2. Dutch constitutional or statutory provisions lack a basis for delegation to regional governments of the implementation of international obligations;
3. Under national law the Dutch government is in violation of the Dutch legal order and article 1 of the Dutch Constitution, which states that:

"Allen die zich in Nederland bevinden, worden in gelijke gevallen gelijk behandeld. Discriminatie wegens godsdienst, levensovertuiging, politieke gezindheid, ras, geslacht of *op welke grond dan ook*, is niet toegestaan." (*All persons in the Netherlands shall be treated equally in equal circumstances. Discrimination on the grounds of religion, belief, political opinion, race or sex or on any other grounds whatsoever shall not be permitted.*)

'Language' is not specifically mentioned as a protected class, but case law of the Dutch Supreme Court (*Hoge Raad*) has generally interpreted 'classical human rights' based in international legal instruments as being directly applicable within the Dutch legal order.¹⁶ The prohibition of discrimination on the basis of 'language' is such a 'classical human right'. 'Language' is contained in various international treaties to which the Kingdom of the Netherlands is a Party¹⁷, including article 14 European Convention on Human Rights (ECHR)¹⁸, as well as article 1 Protocol No. 12 ECHR¹⁹. The prohibition of discrimination based on 'language' is therefore part of the Dutch legal order and, we would maintain, also a protected class under article 1 Dutch Constitution included in the phrase '*or on any ground whatsoever*'.

Both Limburgish and Frisian have been recognized as a 'regional language' under the ECRML. Although the Dutch government has declared only Part II ECRML applicable to Limburgish and both Parts II and III to Frisian, the fact that Frisian was granted more extensive rights under the ECRML does not mean that legally speaking Limburgish is a 'lesser' regional language. The ECRML legal concept of 'regional language' itself does not distinguish different categories, but is a 'single notion'.²⁰ This is irrespective of whether a contracting party has decided to apply more legal provisions to one regional language than another. The ECRML legal term 'regional language' is therefore separate from the legal rights that are declared applicable to a recognized regional language. Put differently, both Frisian and Limburgish are similarly and equally 'regional languages' as defined by the ECRML, even though they enjoy unequal rights under the ECRML.

Within the Dutch legal order, the recognition as a 'regional language' under the ECRML has further legal effects. Based upon the ECRML and its incorporation into Dutch law, both Dutch and Frisian are legally

¹⁵ *Kamerstukken II 1994-1995, 24092, 3 (MvT)*.

¹⁶ See e.g. HR 30 mei 1986, NJ 1986, 688; and citing case law on the applicability of 'classical human rights' within the Dutch legal order: Chébtí, M. (2014). *Rechterlijke toetsing aan een ieder verbindende internationale verdragsbepalingen*, *WB Bundel Wetenschappelijke Bijdragen*, pp. 83-124; Emmerik, van, M.L. (2008). *De Nederlandse Grondwet in een veellagige rechtsorde*, *Rechtsgeleerd Magazijn THEMIS*, pp. 145-161.

¹⁷ This includes e.g. articles 2, 24, 26 and 27 International Covenant on Civil and Political Rights of 1966; Internationaal Verdrag inzake burgerrechten en politieke rechten, *Trb.* 1978, 177.

¹⁸ Verdrag tot bescherming van de rechten van de mens en de fundamentele vrijheden, *Trb.* 1990, 156.

¹⁹ Protocol nr. 12 bij het Verdrag tot bescherming van de rechten van de mens en de fundamentele vrijheden, Rome, 04-11-2000, *Trb.* 2001, 18. See e.g. Rb Den Haag, 11 juli 2012, LJN BX0977 for the direct applicability of its article 1 in the Dutch legal order.

²⁰ Article 1 ECRML and Explanatory Report ECRML, no. 20.

recognized as a 'regional language' within the Dutch legal order.²¹ Since the ECRML's concept of 'regional language' is legally a 'single notion', separate from the rights declared applicable under the ECRML, also within the Dutch legal order both Frisian and Limburgish are similarly and equally, without distinction, a 'regional language'.

Since both Frisian and Limburgish are similarly and equally a 'regional language' within the Dutch legal order and based upon our argumentation above that a prohibition of discrimination based on 'language' is part of the Dutch legal order, we assert the following:

a) the Dutch government is acting contrary to the Dutch legal order by implementing ECRML provisions for speakers of the Frisian regional language but not for speakers of the Limburgish regional language;

b) the Dutch government is acting contrary to the Dutch legal order by granting speakers of one regional language (Frisian) rights under Dutch law that it does not grant to speakers of another regional language (Limburgish);

c) *au fond*, the Dutch government has acted contrary to the Dutch legal order by having declared different Parts of the ECRML applicable and thereby granting different rights to speakers of the Frisian regional language and speakers of the Limburgish regional language.

4. The argument of the Dutch government that the Limburgish regional government is responsible for the implementation of the obligations for Limburgish under the ECRML, because the regional government initiated the request for the recognition of Limburgish is invalid, because:

a) for Frisian the national government fulfills its obligations under the ECRML and the Frisian recognition under the ECRML is the outcome of repeated requests made by the Frisian regional government ever since the 1950s for more political and legal recognition of Frisian as a language;

b) Dutch constitutional or statutory provisions lack a basis for delegation to regional governments of language policies. Dutch Acts of Parliament (*wetten in formele zin*) and regulations (*Algemene Maatregelen van Bestuur*, etc.) currently disallow the implementation of the language policy obligations under the ECRML. Only the national authorities can amend these and assure implementation of its obligations under the ECRML, not the Limburgish regional government.

5. The argument of the Dutch government that the regional Limburgish government is better placed to implement the obligations under the ECRML and enact language policies that allow for a 'tailor-made approach' and take into account local circumstances is invalid, because:

a) the Dutch government is also able to implement its obligations under the ECRML for Frisian in cooperation with the regional government of Fryslân tailored to the local circumstances in that province.

²¹ This is based on the *European Charter for Regional or Minority Languages of 25 June 1992, CETS no. 148*; its incorporation into Dutch law by *Wet van 26 januari 1996 tot goedkeuring van het op 5 november 1992 te Straatsburg tot stand gekomen Europees Handvest voor streektaalen of talen van minderheden*, *Trib. 1993, 1 en 199*, approval to include Limburgish via *Min. Reg. van 20 februari 1997, Stcrt. 1997, 57*, and the respective depositions of instruments for Frisian (and Low Saxon) *Declarations contained in a Note Verbale handed over by the Permanent Representative of the Netherlands at the time of deposit of the instrument of acceptance, on 2 May 1996* and for Limburgish *Declaration contained in a Note Verbale from the Permanent Representation of the Netherlands, dated 18 March 1997, registered at the Secretariat General on 19 March 1997*. The Charter entered into force in the Netherlands on March 1, 1998.

APPENDIX II Dutch education legislation

Dutch legislation (including recently enacted amendments) does not provide a valid and adequate legal basis for Limburgish to be used in education as a language of instruction and to be taught as a subject. Statutes on pre-school²² and primary²³ education mention the use of '*de Friese taal of een streektaal in levend gebruik*' (the Frisian language or a '*streektaal*' in current usage). No such provision exists for secondary education.²⁴

Prior to its recognition as a 'regional language', Dutch law allowed some use of Limburgish in education as a '*streektaal*'. However, current Dutch educational laws do not include provisions for the use of a 'regional language' other than Frisian, which is explicitly mentioned by name. '*Streektaal*' is not the same legal concept as 'regional language'. The plain text meaning of '*streektaal*' in Dutch is 'dialect', a legal concept obsolete for Limburgish since its recognition as a regional language under the ECRML. The Dutch government also views these legal concepts as distinct; the Dutch translation of the ECRML legal concept of 'regional language' was changed from '*streektaal*' in 1993²⁵ to '*regionale taal*' in 1998²⁶. The current legal basis has therefore become invalid to allow for Limburgish in education.

Since article 4(2) ECRML protects pre-existing, more favorable regimes for a regional language this would oblige the Dutch government to enact provisions to reinstate rights that Limburgish has previously enjoyed as a '*streektaal*'.

However, these pre-existing '*streektaal*' provisions are inadequate to satisfy obligations under the ECRML, since they disallow a '*streektaal*' to be used as a language of instruction in secondary education. The '*streektaal*' provisions also disallow its teaching as a regular subject at any stage of education. Finally, these '*streektaal*' provisions appear to be *prima facie* inadequate, since otherwise it would have been unnecessary in the past 60 years to increasingly enshrine additional legal provisions for Frisian in education.

²² Article 1.55(1) Wet Kinderopvang, *Stb.* 2004, 555.

²³ Article 9(13) Wet op het primair onderwijs as recently amended on 10-05-2023, *Stb.* 2023, 183.

²⁴ See Wet op het voortgezet onderwijs as recently amended on 02-04-2019, *Stb.* 2019, 119.

²⁵ Europees Handvest voor streektalen of talen van minderheden, Straatsburg, 5-11-1992, *Trb.*, 1993, 199.

²⁶ Europees Handvest voor regionale talen of talen van minderheden, Straatsburg, 05-11-1992, *Trb.*, 1998, 20.