

LANGUAGE RIGHTS IN THE SPANISH STATE (2012)

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1. Background

1.1. The importance of language in nation-building

The analysis of the socio-political organization of different societies brings the relationship between language and right to the fore, a relationship that can be either implicit or explicit. If there is cultural homogeneity in a given society, language will not be provided legal treatment, as every person is expected to have knowledge of the language concerned. However, if there is linguistic pluralism, the result can be twofold: on the one hand, plurilingualism may lead to the respect of such pluralism and consequently different languages may become official (this is the case of Switzerland); on the other hand, a language may be imposed as official, the remaining languages being limited to interpersonal communication without any official status, and their use may even be prevented or prohibited (the case of Spain in the past). In the first case the existing social pluralism would be respected, whereas the second is a very good case in point of the so-called internal colonialism or imperialism.

Imposition can accentuate linguistic strains if the political organization is not democratic. This has been the case in Spain, where during the 19th and especially the 20th centuries long dictatorships had the upper hand. The Franco dictatorship and its inherent Spanish nationalism acted harshly against the Basque and Catalan cultures above all. The Franco dictatorship would rather have a red Spain (represented by communism) than a broken one (represented by autonomy). To put it bluntly, the system could be described as French Jacobinism exacerbated by its dictatorial nature (Irujo and Urrutia, 2009).

During the Franco dictatorship signs, advertisements, or the names of people could not be written in Basque. The use of the Basque language was restricted to the family environment. The language policy of this period led to a context in which the use of other languages different from Spanish became a synonym of democracy, of opposition to the Franco regime. In this context Basque and Catalan became languages of freedom and symbols of belonging to

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minority groups whose existence was in jeopardy. Not only were public freedoms denied during the Franco dictatorship, but cultural persecution was also suffered by those cultures different from the dominant with a view to making Spanish the only language spoken in the Spanish State.

The dictatorship started in 1939 and lasted until the demise of Franco in 1975. In this long period, and in spite of severe difficulties, an important movement emerged in an attempt to protect the forbidden cultures and their languages. During the 1960s a change of elites took place in Spain, which allowed the appearance of cultural activities and events that had previously been banned. For example, in the 1960s some schools that had Basque as the medium of instruction were first established, originally as clandestine institutions but afterwards under the protective umbrella of the Church. The Catholic Church was strongly committed to the Franco regime, but still some small sectors stood up for democracy. Some members of the Catholic Church in the Basque Country were among the latter. The movement supporting the teaching of and in Basque was becoming increasingly important and Basque-medium schools were known as *Ikastolas*.

The persecution endured by the Basque and Catalan languages had a clear-cut effect that the fascist authorities had not considered: language started to play a major role in the Basque and Catalan nation-building process. This was the result of the repression of their own languages and the imposition of the Spanish language and culture as key elements of the nation-building of the Spanish State. With the advent of democracy after the demise of the dictator, the passing of a constitution which had to acknowledge the existing linguistic diversity became an indispensable condition for the new political system.

It is worth remembering that both Basque and Catalan are spoken in France. In France French has been the only official language established by the 1993 constitution, as a result of the entry into force of the Maastricht treaty. The French constitutional system is characterized by linguistic Jacobinism, as pointed out in the following expression: "In a free country, the language must be the same for one and all". Nowadays the linguistic ideology remains the same and the French Constitutional Council decided that French is the only official language in France, which entails the impossibility of ratifying the European Charter for Regional or Minority Languages. In the 2012 presidential elections, the elected candidate included the ratification of the aforementioned Charter in his political programme, which will probably require a change in the French constitution.

1.2. Official recognition of the different languages

Article three of the 1978 Spanish constitution stipulates that Spanish is the official language of the Spanish State. Spanish is mentioned in two different ways (*castellano* or *español*) and both can be used interchangeably. The constitution also establishes that all Spaniards have the duty to know Spanish and the right to use it. However, it could be argued that there is no need to stipulate this, since it is a truism to say that if a language is official, there is the right to use it. Similarly, the duty to know Spanish does not add any value to its official status, as the sociolinguistic situation after the dictatorship left Spanish as the main language of the Spanish educational system, since it had been the only language of instruction during the Franco dictatorship and, consequently, every citizen could speak it. Nevertheless, this might not always be the case. In fact, and to set an example, an individual may have a low command of Spanish that does not allow him or her to face a judicial process, because (s)he cannot understand or is unable to defend himself or herself. In such a situation the right to effective legal protection must be guaranteed by the presence of a translator who will help in the process of defense. It is worth considering that the Spanish naturalization process does not oblige to have a high level of proficiency in Spanish, which is why in court the right to effective legal protection would prevail over the purported knowledge of the official language.

When a language is established as official, public authorities acknowledge that it has to be the regular means of communication when addressing private parties or individuals. The communication in the official language has full validity and legal effects, which is not the case if the communication takes place in another language, unless there is a specific right or rule that allows its use. Spanish is therefore the habitual means of communication among public authorities and private individuals in the whole of Spain³. It should be noted that Spanish is the official language for all public authorities and institutions, not only for the central State institutions.

The second paragraph of article three of the Spanish constitution points out that the other languages spoken in Spain will also be official in their respective Autonomous Communities according to what is established in the Statutes of Autonomy. Unlike in the case of the legal and administrative structure of a federal State, in the Spanish Autonomous Communities the Statute of Autonomy becomes the rule according to the State organization established by the 1978 constitution. The Statute of Autonomy has to be passed by the Spanish Parliament, the Upper (Senate) and the Lower (Congress) Chambers, and in the case of the latter by a majority of votes. Once the Statute of Autonomy is passed, any modification requires the organic law issued by the State and, in addition, the Autonomous Community should also take part in the process.

The Statute of Autonomy is the basic institutional rule of each Autonomous Community and the determination of the official language or languages is part of its contents. In this way the official status of other languages “in” the Autonomous Community and not “of” the Autonomous Community is established. In other words, the official status of the other language obliges the Autonomous Community administration, the municipal administration and the State administration to carry out their activities both in Basque and Spanish.

In the third paragraph of article three it is granted that the richness of the linguistic modalities of Spain constitutes a cultural heritage that will be the object of special respect and protection. This article is similar to article 75.3 of the French constitution, in the sense that it was also designed as a way to protect languages other than French, but without providing them with an official status. The Statutes can establish a legal system in which more than one language can be labelled official. In the Aran Valley, located in the Pyrenees, the Catalan Statute of Autonomy designates Aranese or Occitan as official language. This is the only case in Spain in which a Statute considers two languages (Aranese and Catalan) apart from Spanish as official languages. In other Statutes the existence of language modalities is recorded and regarded as being worthy of protection⁴.

Another constitutional rule that makes reference to the plurilingual reality of the Spanish State is represented by the Preamble of the constitution, wherein it is stated that the State should protect the exercise of everybody’s human rights, customs and cultures, and of the existing languages and institutions. As far as mass media are concerned, it is established that the law will guarantee the organization and the control by the Parliament of social mass media dependent upon public authorities, while the respect for social pluralism and the diverse languages of the State should be ensured. Despite this precept having been passed in 1978, it has been systematically violated. Moreover, mass media have undergone a previously unimaginable development and this requires an in-depth reconsideration of the role of languages in mass media, including the Internet.

If we focus on the Basque Statute of Autonomy of the Autonomous Community of the Basque Country (ACBC henceforth), article six indicates that the Basque people have their own language, Basque or *euskara*, which will be co-official with Spanish. Basque is official “in” the Autonomous Community, that is, this article pertains to all public institutions located in the

³ Constitutional Court’s ruling 82/1986, Legal Basis 2.

⁴ In the Autonomous Community of Asturias the use of Asturian (also known as Bable) is regulated by Law 1/1998 of 23 March 1998. See order of the Constitutional Court 27/2010 on this linguistic issue.

territory, whether they be local, state or autonomous institutions. It further states that all the citizens have the right to know and use both Basque and Spanish, thus putting both languages on an equal footing from a legal perspective. This does not mean that this equality is guaranteed, especially if we consider the persecution and the difficulties the Basque language has had to overcome in order to survive. It has to be underscored that, apart from being official, the Basque language is defined as Basques' own language, as is the case with their own languages in other Statutes of Autonomy. The reference to the own language has no legal consequence and does not provide Basque with a different status from that of Spanish; in particular, the adjective "own" makes reference to the importance of the language for the Basque community and the bonds between Basque and this particular Autonomous Community.

Next, the Statute of Autonomy states that the institutions of the ACBC must regulate the legal regime of the language, ensuring the use of Spanish and Basque and furnishing the necessary means to ensure their common knowledge⁵. Therefore, the Parliament and the Basque Government should have jurisdiction to dictate the norm that will regulate the official status of Basque, while the remaining administrations should comply with the content of such norm. The Basque Parliament passed the Basic Law on the Normalization of Basque (10/1982) on 24 November 1982. The Statute of Autonomy came into force in 1979 and during the first legislature the 10/1982 Law was passed, which allows the co-official status of Basque. Besides the regulations concerning the co-official status, it is stated that language discrimination is forbidden, whereas the possibility of using Basque as means of communication between public authorities and other public institutions is guaranteed. This is similar to what is stated in the Catalan and Galician Statutes of Autonomy. It must be said that Basque is spoken also in the Autonomous Community of Navarre, where Basque is co-official in part of the community, and in the south of France, where Basque is protected only as cultural heritage⁶.

1.3. An overview of current debates

The most outstanding current debates have to do with the use of the co-official languages in court, in the mass media (especially in the public ones), their role on the Internet from a legal perspective, the politically motivated stumbling blocks to the normalization of the co-official languages, and the attempts to give preference to the co-official languages over Spanish.

An outstanding example is that of Basque in the Autonomous Community of Navarre. The Committee of Experts on the European Chart of regional and minority languages have taken part in this debate and, in fact, the Chart explicitly expresses that the Government of Navarre is not complying with the obligations derived from this Chart. In this Autonomous Community, the ruling party (a right wing and Spanish-centric political party) is implementing a language policy that is aimed to hinder the normal development of Basque. The reason behind this anti-Basque attitude is that they link Basque with a Basque ideology that fights for the political union of the Autonomous Community of Navarre and the ACBC (the two Spanish communities in which Basque has co-official status). Their efforts to prevent the Basque language from developing further are due to their vested political interests. From a historical point of view, it has to be remembered that the Kingdom of Navarre was the political expression of the Basque speaking territories both in the Spanish and the French States.

The use of Basque in the mass media is also a highly topical issue. In spite of the fact that its use is required by law, the mass media dependent from the central State recurrently fail to meet their linguistic obligations.

⁵ Art. 6.2. of the Statute of Autonomy of the Basque Country.

⁶ Art. 75.3 of the French constitution.

2. Language rights in compulsory education

The right to education is regulated by the constitution, which states the right and duty to have education. The duty is established by making education compulsory till the age of 16⁷, although the ruling party (*Partido Popular* in 2012) seems to have the intention to lower the age to 15. The language-teaching equation generates problems of interpretation irrespective of the languages used at school. It is a truism to say that a foreign child who wants to join the education system may have comprehension impairments. In such a situation it would not be admissible to affirm that this child has the right to education only in the official language and, if he or she does not understand the official language, it is not the public authorities' responsibility to provide the necessary knowledge, but rather his or her parents'. Consequently, the right to education cannot be interpreted as the right to education in an official language, but rather as the right to education in a comprehensible language. Public authorities are thus obliged to provide the child with comprehensible teaching, which may demand the support of the public authorities with a view to achieving such comprehensibility.

However, we will focus on the relationship between the right to education and the official languages. Although the legal systems may be diverse, especially if the language rules are based on the territoriality of the official languages, in Spain the official languages have to be taught, that is, there is teaching "of" the languages, but there is no obligation to teach "in" the languages⁷. The educational system must guarantee that the official languages are taught in their particular territories, but there is no duty to use the official languages as means of instruction or vehicular languages.

This first jurisprudence of the Constitutional Court, which is based on international jurisprudence in these matters (Lasagabaster and Urrutia, 2009), underwent an initial change when 10 years later the same Court indicated that the existence of official languages entails that teaching must be carried out "in" these official languages. The issue to be determined is which content, and how much of it, must be taught in each of the languages. In Catalonia, for example, decisions should be made on what is taught in Catalan and what in Spanish. Originally this duty to teach "in" Catalan and Spanish only referred to primary education, while Catalan was supposed to play a pivotal role due to its importance as a key actor in the normalization process of the lesser used language. In fact, the Constitutional Court has pursued this idea that teaching must take place "in" the official languages and has established that it should be applied not only in primary education but throughout the whole educational ladder⁸. Thus, it can currently be considered that the use of each of the official languages as means of instruction has yet to be determined, although the Constitutional Court is expected to make a decision within a short space of time, since the Law of the Catalan educational system has been challenged before this Court.

2.1. General legal principles

In Spain there are three co-official languages (Basque, Catalan and Galician) which are spoken in the following Autonomous Communities: Balearic Islands, Basque Country, Catalonia, Galicia, Navarre and Valencia. Our analysis of the relationship between the educational system and the teaching of official languages is going to be based on three paradigmatic cases, namely Catalonia, the ACBC and Navarre.

In Catalonia the teaching of the language takes place through immersion programmes in which Catalan is the vehicular language, whereas Spanish is only taught as a subject. Despite research studies having recurrently confirmed the effectiveness of immersion programmes in Catalonia (Huguet, Lasagabaster and Vila, 2008) and elsewhere (Cummins, 2009; Fortune and Tedick,

⁷ Constitutional Court's ruling 87/1983, Legal Basis 5.

⁸ Constitutional Court's ruling 31/2010, Legal Basis 14a and Legal Basis 24. See also the Constitutional Court's rulings of 10 and 19 May 2011.

2008), the Spanish right wing has challenged the Catalan educational system before the Constitutional Court and some ordinary or common courts have also been forced to express their views on this issue.

In the ACBC there are three linguistic models available in the educational system (Urrutia, 2005). In Model A all subjects (except for Basque) are delivered in Spanish and Basque is taught only as a subject four to five hours per week. In Model B both Basque and Spanish are used to teach content and both languages are also taught as a subject. This is the most heterogeneous model as the percentage devoted to each language may vary considerably depending on the school. In Model D⁹ Basque is the means of instruction for all subjects except Spanish, which is taught only as a subject four to five hours per week. The parents or guardians (or the students themselves depending on their age) have the right to choose which of the models is the most appropriate. Since there is the possibility to choose from one of three different linguistic models (unlike in Catalonia), no particular problems have arisen in the ACBC.

In Navarre the situation of Basque as a co-official language is quite different, as this territory is divided into three linguistic zones: the Basque zone, the mixed zone and the non-Basque zone. In the Basque zone parents or guardians have the right to choose the teaching in either Basque or Spanish, although the teaching of the non-selected language is compulsory. Thus, if the teaching is carried out in Basque, Spanish will be taught as a subject. In the mixed area a similar model is followed, but there is a fundamental difference: when the teaching is in Spanish, students are not obliged to study Basque as a subject, unless they freely decide to do so¹⁰. In the non-Basque zone it is established that the teaching of Basque will be supported and partially or fully financed by the public authorities if the students (or their parents/guardians) request its teaching. The Law specifies that there is the option to demand the teaching of Basque, but no right to be taught the minority language (for further details see Oroz and Sotés, 2008).

2.2. Special categories

2.2.1. Citizens

In the case of citizens, their language rights in compulsory education have already been detailed in section 2.1.

2.2.2. Non-citizens

In accordance with the legislative provisions in force, foreigners under the age of 16 have the right and the duty to education, which entitles them to have access to basic, free and obligatory education. All other foreigners, irrespective of their age and administrative situation, are also entitled to this right. They have the right to obtain an academic degree and are eligible for any public scholarship or grant under the public system on an equal footing with Spaniards. If the student turns 18 during the school year, foreigners retain their rights until the end of the academic year.

Foreigners aged 18 and over have the right to education in accordance with what is established in the educational legislation. This means that the rights entitled to any Spaniard should also be enjoyed by foreigners. Foreigners under 18 have all the education rights under the UN Convention on the Rights of the Child (20 November 1989). These minors have the right irrespective of their legal or illegal status. Similarly, the Law does not make any difference depending on their status in the case of those 18 and over and, consequently, they also have the right to education. The Constitutional Court has eliminated this difference by pointing out that the right to education cannot depend on the legal residence status of the person concerned. The

⁹ There is no Model C because the letter C is not part of the modern Basque alphabet.

¹⁰ Art. 25.2 of the Basque Language Law (1986).

right to education is entitled to everybody irrespective of their legal status¹¹. In conclusion, the right to education for all immigrants from other countries is recognized, whether they are refugees, asylum seekers or displaced persons.

3. Language rights in non-compulsory education (especially in higher education)

The rule grants that foreigners also have the right to post-compulsory education, to obtain a university degree and to be eligible for any public scholarship or grant aimed at non-compulsory education on an equal footing with Spaniards. Unnecessarily, the rule goes on to specify that those foreign residents aged 18 and over have the right to have access to post-compulsory education. Here it is highlighted that the rule refers to “foreign residents”.

The recognition of the rights of foreign residents does not imply that foreigners without residence permit do not have the same rights, as the ruling previously states that all foreigners share this right irrespective of their status. The education legislation cannot distinguish between legal residents and non-residents, because this would go against the Constitutional Court’s jurisprudence. Moreover, the Constitutional Court stipulates that the right to education applies to both basic and higher education, although this does not mean that education must be free or compulsory (as pointed out above, according to the Spanish constitution only compulsory education must be free). The European Court of Human Rights has recalled its member States that they have to guarantee all those under their jurisdiction access to the educational system and the possibility of having an official recognition of the degrees obtained¹². The statement that any person under the jurisdiction of a State has this right implies that non-nationals in an illegal or irregular situation also have it¹³. To sum up, the right to education is guaranteed by the constitution and it is read together with the international treaties ratified by the State: this includes compulsory and non-compulsory education (comprising higher education) and should be applied to foreigners, even if they are illegal residents¹⁴.

The ruling also grants that foreign residents with children of compulsory age school under their care must prove that those minors are in school when the former apply for the renewal of their residence permit. The certification stating that the children are in school must be issued by the relevant authorities of the Autonomous Community.

4. Conclusions

The Spanish constitution and the Statutes of Autonomy jointly establish the co-official status of languages. The co-official languages other than Spanish have undergone a long and complicated process before they were legally recognized. Still today the State central authorities do not meet their obligations concerning language use, the State-owned mass media being a very good case in point. In the same vein, State central authorities oppose in court that co-official languages other than Spanish should be given preferential treatment in the autonomous administration, despite the fact that the preferential treatment is an attempt to reduce the diglossic situation caused by the persecution endured during the Franco dictatorship.

The right to education in the co-official languages offers different models. One of them is the linguistic separation, in which parents and/or students choose their model in which they prefer to be taught. All these models must guarantee linguistic competence in both co-official

¹¹ Constitutional Court’s ruling 236/2007, Legal Basis 8.

¹² The case of *Kjeldsen* of 7 April 1976, 52.

¹³ See Art. 1 of the European Court of Human Rights with regard to Art. 14 of the European Court of Human Rights and the case *Ireland versus the United Kingdom* of 18 January 1978; and the case of *Prince Hans-Adams of Liechtenstein* of 12 July 2001, 46.

¹⁴ Constitutional Court’s ruling 236/2007, Legal Basis 8.

languages. This is the system available in both in the ACBC and Navarre, although the linguistic models differ (as pointed out in section 2.1.). However, it has to be remembered that in Navarre the autonomous government hinders the learning and teaching of the Basque language, as reported by the Committee of Experts of the European Charter for Regional or Minority Languages (see Iñaki Lasagabaster, 2012).

Everybody's right to education in the co-official languages is guaranteed by law, irrespective of the individual's age and including foreign legal residents and non-residents, refugees, asylum seekers or displaced persons. The right to education was unambiguously recognized by means of a Constitutional Court's ruling that established that the right to education is inalienably linked to human dignity, and therefore every individual is entitled irrespective of their legal situation. Nationals and non-nationals must have the same guarantees when it comes to access to non-compulsory education. However, the reality is that the university entrance exam (known as *Selectividad*) becomes, more often than not, an insurmountable stumbling block for many non-nationals because they need to demonstrate a very good command of Spanish and an in-depth knowledge of the different subjects that make up this exam. The negative impact of this exam is confirmed by the meager number of immigrant students in tertiary level¹⁵ in Spain.

References

- Cummins, J. (2009), 'Bilingual and immersion programs', in: Long M. and Doughty C. J. (eds), *The handbook of second language teaching*, Blackwell Publishing, Oxford, pp. 161-181;
- Fortune, T. W. and Tedick, D. J. (2008), *Pathways to Multilingualism: Evolving Perspectives on Immersion Education*, Multilingual Matters, Bristol/Buffalo/Toronto;
- Huguet, A., Lasagabaster, D. and Vila, I. (2008), 'Bilingual education in Spain: The present and the challenges', in: Hornberger N. and Cummins J. (eds), *Encyclopedia on Language and Education*, 2nd Edition, Volume 5: Bilingual Education, Springer Science + Business Media LLC, New York, pp. 225-235;
- Irujo, X. and Urrutia, I. (2009), *A Legal History of the Basque Language (1789-2009)*, Eusko Ikaskuntza, Donostia;
- Lasagabaster, I. (2012), 'Articles 15 to 17. Application of the Charter', in: Nogueira López, A., Ruiz Vieytez E. and Urrutia Libarona I. (eds), *Shaping language rights. Commentary on the European Charter for Regional or Minority Languages in light of the Committee of Experts' evaluation*, Regional or Minority Languages, number 9, Council of Europe Publishing, Strasbourg, France, pp. 517-532;
- Lasagabaster, I. and Urrutia, I. (2009), 'Derecho a la instrucción', in: Lasagabaster, I. (ed), *Convenio europeo de derechos humanos. Comentario sistemático*, Second edition, Civitas-Aranzadi, Pamplona, Spain, pp. 21-38;
- Oroz, N. and Sotés, P. (2008), 'Bilingual education in Navarre', *Language, Culture and Curriculum*, 21, pp. 21-38;
- Urrutia, I. (2005), *Derechos lingüísticos y euskera en el sistema educativo*, Lete, Pamplona/Bilbao, Spain.

¹⁵ Art. 9.4 Ruling 2/2009.