



REPORT ON LINGUISTIC RIGHTS IN CATALONIA

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EL DEFENSOR
DE LES
PERSONES

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Síndic de Greuges de Catalunya

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PREAMBLE

This report arises from the experience accumulated by the Catalan Ombudsman since its creation until today. It accumulates many years of knowledge on the grounds of legal framework, public policies, people's wishes and concerns, and on the complaints received, which despite being very few in absolute and in relative terms, they are also an indicator of how we can move towards a democratic, pluralistic and functional language regime. Therefore, this monographic report collects the contributions made each year to the annual reports of the Catalan Ombudsman submitted and debated in the Parliament of Catalonia, as well as the considerations expressed in complaints and ex-officio actions and specific reports on other subjects submitted during this period.

It is worth mentioning that the institution of the Catalan Ombudsman has always been interested in the work and recommendations of other institutions which also supervise this matter. Thus, it has been studied what other Ombudsmen institutions have developed, such as the Spanish Ombudsman, with a lower volume of complaints than the Catalan Ombudsman. This data confirms the very low rate of social concern generated by this issue. Additionally, the work done by international bodies, which praise the language situation in Catalonia in their reports, has also been analysed on an ongoing basis.

It should be noted that, in spite of the small number of complaints received, as a result of the low rate of social concern, the Catalan Ombudsman has deemed appropriate to compile an analysis of the language situation in Catalonia, according to the assignment entrusted by the Statute to the institution and, for the first time, presenting it in a monographic report. This report is motivated by a desire to compile the most relevant issues published on language rights in Catalonia along with the defence of these rights by the Catalan Ombudsman and other institutions.

Catalonia is a society with its own language, Catalan, pursuant to the Statute, and with two official languages, Catalan and Spanish, throughout the territory, and a third one, Occitan-Aranese, on its territory. It is a complex society with a historical tradition of receiving population through different waves of immigration with their corresponding cultures

and languages. It was so since the time of the Spanish March, with subsequent migrations from France, with migrations from the rest of the Spanish State in the early 20th century and during the Franco regime, and with migrations from third countries for more than twenty years, so that in the period 2000-2010 Catalonia has been one of the areas of Europe receiving more migration in percentage terms. During many of these stages, Catalan Government did not have mechanisms to develop policies of reception and promotion of respect for the language regime. Quite the contrary, during long periods, such as the Franco dictatorship, Catalan language was banned and persecuted.

Also for these reasons it is necessary to highlight the value of the excellent situation of language cohabitation existing in Catalonia after a stage of self-government and policy aimed at ensuring it. These policies have almost always had the support of the unanimity of the democratic forces of the Parliament or, at least, the support of a vast majority. And so it is shown in this report, also following what authorities and institutions at the international, state, and national level have ruled.

It is worth mentioning, however, that there is a constant lack of these policies in the treatment of the language diversity of Spain on the part of State authorities. The 1978 Constitution establishes very clear commands (such as those of articles 3.3, 20, or 149.2) so that public authorities develop promotion, dialogue and understanding policies amongst all languages and cultures of the multinational State. Even so, these policies have not been implemented yet and these commands have often been contradicted by some other policies, such as the organic law for the improvement of the educational quality (LOMCE), which could interfere with Catalan Government's competences because it calls into question its ability to determine and organize the vehicular language in education. So it confirms also this report, in parallel with what international reports point out about language rights in Spain, such as those of the Council of Europe, which repeatedly criticize the shortcomings and violation of language rights produced by Spanish public policies.

On the other hand, we must remember that language rights in our country must be observed also in accordance to the international treaties on minority languages.

Catalan is not strictly speaking a minority language (it is more accurate to say that it is a minorized language), but it is true that it has some features in common with these languages. Firstly, almost all inhabitants know Spanish although part of the population does not know Catalan. Secondly, the territories of the Catalan language domain belong to larger States, where the majority language is another and where the knowledge and use of Spanish or French are mandatory. Moreover, Catalan language domain does not correspond to a single State. And, finally, Catalan language has a sparse presence in some of the sectors of social life.

The results obtained in Catalonia in the last thirty years with the policy of immersion and language conjunction in schools – which does not separate children and facilitates the equal knowledge of the two languages – are an example of the function of the language regime as an instrument of social cohesion.

The results of the tests show that in Catalonia the level of knowledge of Castilian among the school population not inferior to that of monolingual regions. And at the same time,

the policy of immersion language conjunction is an instrument that contributes to the cultural, social and equal opportunities in the workplace, and an opportunity of mobility and social climbing by means of the knowledge of the two languages.

For this reason, this report recommends the consolidation of this language regime in the future, whatever the institutional, election or consultation orientation this country may have. At the same time, it raises the need for the State Government to firmly develop the above mentioned constitutional commandments and the need to comply with international recommendations.

We can move forward learning from more developed realities. So was evidenced in the constitutive IALC meeting (International Association of Language Commissioners), which was presented in Barcelona in March 2014, within the framework of the Symposium on Language Rights, organised by the Catalan Ombudsman. This report, which was presented on that occasion as a speech, also collects the views expressed in the contributions and discussions.

CONCLUSIONS

a) The Catalan linguistic model is characterized by great balance, and has been praised by the Council of Europe as a guarantor model that is respectful of citizens' rights. The low number of complaints that the Síndic de Greuges (hereafter Catalan Ombudsman) has received over the years is an indication of the low or non-existent level of social conflict generated by the Catalan linguistic model.

b) Pursuant to Article 33.1 of the Statute of Autonomy of 2006, in Catalonia citizens have a right to linguistic choice, and this right is binding for institutions, organizations and public administrations, including the administration of Spain in Catalonia, and in general, private organizations when they perform any public duty.

c) Although Article 3.2 of the Constitution of Spain acknowledges that Spanish languages other than Castilian are also official, this official status is only established within the territory of the autonomous communities, which, as such, have qualified them as such in their statutes. This acknowledgment of the official status of the rest of Spanish languages being limited to autonomous community territories diminishes their effectiveness and leads to the conclusion that the Constitution itself has established a hierarchy between Castilian and all other languages, as the duty to know them is only stipulated for the former.

In other countries such as Canada or Finland, the official languages are official in the entire State, thus preventing any grievances among citizens of the same state who speak different languages because they all have the same legal consideration.

d) Articles 3.3 and 20 of the Constitution, meant to guarantee a special respect and protection of the different languages of the State and to promote linguistic pluralism in communication media have yet to be developed. This generates a negative impact that, with the passage of time, accumulates grievances, precisely to the detriment of the protection required by all languages of the state. This neglect even affects the Council of Languages, a body created in 2007 and now in a state of obvious inactivity.

e) The Spanish state has shown apathy toward its duty to promote and facilitate cultural communication among autonomous

communities, pursuant to the terms of Article 149.2 of the Constitution, specifically as refers to communities that share the same co-official language.

f) The State's clear inactivity in anything related to the recognition and promotion of plurilingualism shows a lack of sensibility toward the pluricultural and plurilingual reality of the State.

g) According to reports of the Council of Europe on regional or minority languages, the Spanish state fails to meet the requirements of the constitution insofar as linguistic rights are concerned.

h) In the educational realm, the model of linguistic combination received the approval of the Constitutional Court in 1994. On another note, the ruling handed down by the same court on the Statute of Autonomy of Catalonia in 2010 stipulates that nothing keeps the Statute from acknowledging the right to receive education in Catalan, and that this language be the vehicular language of learning at all levels of education. But, at the same time, nothing keeps Castilian from being the object of the same right and assuming, together with Catalan, the condition of vehicular language in education.

i) Following Ruling 31/2010, a change has become evident in the Supreme Court's doctrine, as it has moved to recognize linguistic rights on an individualized basis. Nonetheless, the Court acknowledges that it is up to the Generalitat of Catalonia (Autonomous Community Government) to agree on and implement, in the relevant proportion, the vehicular presence of the official languages in education.

j) The Organic Law for the improvement of educational quality (LOMCE), in its section 4 of the additional provision 38, the last three paragraphs of which have been challenged before the Constitutional Court, sets terms regarding education in Castilian in all autonomous communities, which are obliged to pay for students' effective enrollment in private schools when public schools do not offer Castilian in reasonable proportions.

k) Despite the fact that the same provision establishes educational administrations' obligation to guarantee students' right to receive education in Castilian and the rest of official languages in their territories, these terms are only applied in relation to Castilian,

and not the rest of co-official languages of the State, which have not received the same protection and guarantees as Castilian. This can be seen in Royal Decree 591/2014, of July 11, handed down in the development of the legal provision, which leaves these other cases without any legal coverage.

l) In spite of the courts' acknowledgment of the Catalan educational administration's competency to set the proportion in which Castilian is to be incorporated as a vehicular language in the education system, Royal Decree 591/2015 attributes this competency to the Spanish Ministry, since it will be this body that determines its sufficiency, as it ensures recognition of the right to receive compensation for the expenses of school enrollment requested in the event that the public educational offering for education in Castilian not be reasonably proportionate to teaching given in Catalan.

m) The high turnover rate of Justice Administration personnel does little to contribute to consolidating Catalan as a working language. Also detrimental are the customs of certain members of the judicial branch and prosecutor's office when they declare that correspondence and rulings drafted in Castilian already have full judicial validity, or deliberately act to prolong proceedings for a party when it alleges violation of its linguistic rights.

n) Claiming the existence of a discretionary power regarding whether or not to use Catalan in judicial proceedings, despite the explicitly expressed will of citizens for procedures to be handled in Catalan, signifies, in the case of judges and magistrates who behave this way, a lack of knowledge on autonomous community legislation in linguistic matters, and the assumption of a position contrary to the will of legislators.

o) The right of citizens to receive in Castilian, if they so desire, the correspondence and notifications addressed to natural or legal persons residing in this linguistic territory.

p) The right to linguistic choice often suffers when faced with professionals who do not have Catalan linguistic proficiency of a level adequate and sufficient for compliance with their duties of patient care.

q) Despite the years-long validity of the Linguistic Policy Act, in certain areas of the Spanish Administration in Catalonia, actions are detected that violate the right of citizens in Catalonia to use their own language and be served in it, without being required to furnish any sort of translation.

r) This violation is recurrent in the cases of some members of Spanish law enforcement agencies present in Catalonia.

s) The complaints that citizens file with the Catalan Ombudsman show their dissatisfaction at the lack of use of Catalan in forms, notifications or documentation sent to them, despite having expressly requested that they be furnished in Catalan, by such organizations as the General Social Security Administration, the Spanish Internal Revenue Administration, territorial castrate entities or the public Employment Office.

t) Oftentimes, Catalan contents are not updated on the websites of Spanish Administration bodies.

u) The breach of linguistic precepts attributable to state-owned companies, the public service companies and those of citizen services as regards signage, fixed general information panels and documents offering services is considered an administrative infringement that disciplinary measures should be applied to in the defense of consumers and users.

v) The Catalan Consumer Affairs Agency's basing its closure of the complaints filed due to an alleged infringement of Catalan-language labeling of non-food products on the grounds of Motion 16/IX of the Parliament of Catalonia is not compliant with the law, because it contradicts the terms of the Consumer Affairs Code of Catalonia as it pertains to the linguistic rights of consumers.

RECOMMENDATIONS

- I.** Public bodies (governmental, legislative and judiciary) must work to ensure the preservation and reinforcement of the bases that have underpinned the linguistic model existing in Catalonia. This model has made possible a situation of coexistence, and an absence of social conflict due to reasons of language that have been praised by international bodies like the Council of Europe.
- II.** It is necessary to preserve all actions, especially in the educational realm, aimed at facilitating knowledge of and fluency in official languages for any person with residence in Catalonia. This way, instruments valuable for the social integration of large portions of society will be made available.
- III.** The adoption of immediate measures to provide content for the precepts of the constitutional code recognizing the plurilingualism of the Spanish state is required.
- IV.** Public administrations and the companies that provide services of general interest in Catalonia must increase their efforts to guarantee that the right to linguistic choice of citizens in their relations with them be a reality.
- V.** In schools, the two official languages must have guaranteed presence in the curricula, so that students are not separated into centers or different groups by reason of their habitual language, with the objective of them being able to use both languages, normally and correctly, by the end of their mandatory education.
- VI.** Decided efforts must be made in the training of personnel who work for the Justice Administration to ensure that they have an appropriate and sufficient knowledge of the Catalan language, that would make them fit to fulfill the duties of their duty or job post.
- VII.** Members of the judiciary and prosecutor's office, in addition to secretaries and other personnel of the courts, must be aware that Catalan legislation in linguistic matters grants citizens the freedom of linguistic choice and that this binds them and obliges them to ensure that all judiciary actions and the official documentation issued be drafted in the official language requested, without causing undue delays on the grounds of the language chosen, or requiring them to furnish any type of translation.
- VIII.** The bodies of the government and court systems must act to address the lack of knowledge on the linguistic regulations of the personnel they are responsible for, and avoid the customs derived from the full judicial validity of the procedures drafted in Castilian, in such a manner that there is a requirement to respect the linguistic rights of citizens who express their explicit will to conduct procedures in Catalan.
- IX.** It is necessary for the Administration to make every effort necessary so that health care providers have sufficient proficiency of the Catalan language so as to make them fit to perform their duties without infringing the rights of patients to choice of language.
- X.** Considering that citizens have the right to be served by personnel of the Catalan public administration regardless of the official language in which they address it, it would be desirable for the spoken communication with citizens to also be conducted in the official language that they have used, even though there is no established legal requirement to this effect. To do so, the linguistic training of public servants to a proficiency that would allow them to give an effective response for the development of the tasks inherent to their post must be guaranteed. This includes spoken responses in the official language chosen by citizens.
- XI.** The applications of electronic media made available to citizens by bodies of the public sector must allow queries, participation and processing to be possible in the official language chosen by the interested party, as well as the possibility to change language at any time.
- XII.** It will be necessary to have effective cooperation from the Delegation of the Spanish Government in Catalonia to be able to respond to the complaints filed by citizens in relation to actions of bodies that belong to the Central Administration, such as law enforcement agencies, on occasion of conducting border formalities, or in relation with the renewal of documents such as the DNI (National ID card), driving licenses or passports.
- XIII.** Disrespectful attitudes on the part of Administration personnel toward citizens who, in the exercise of their rights, use Catalan in

their dealings with the personnel of these administrations, agencies or bodies, must be done away with. To do so, there must be assurance that personnel working for the Spanish state government who are stationed in Catalonia have Catalan proficiency that is appropriate and sufficient to make them fit to carry out the duties inherent to their post, for example, by investing more in training.

XIV. The Spanish Administration in Catalonia must make available to citizens forms and documents that allow them to conduct their formalities in the official language of their choice, and must keep the contents of their websites updated in Catalan.

XV. Service to consumers and users must be guaranteed regardless of the official language they use to express themselves, by the companies that render services of general interest and conduct their activities in Catalonia.

XVI. Measures must be taken so that users of the customer services of these companies may choose the language in which they want to be

helped from the beginning of the communication.

XVII. The Government of the Generalitat must guarantee compliance with the Cinema Act, in consideration of the true cinematographic offering in Catalan. The Government's activity must enable its compliance upon expiry of the five year-term from the time of its approval that the law itself called for to facilitate its progressive compliance.

XVIII. The Proportionality Principle must be applied in the implementation of the Consumer Code of Catalonia as regards labeling in Catalan of non-food products, depending on the type of product and the dimension of the company or sector involved.

XIX. There must be an analysis of the appropriateness of modifying the Consumer Code of Catalonia as regards the terms now called for regarding Catalan labeling of non-food products, in conjunction with the sectors involved, and following the relevant analyses and studies, as four years have already passed since its approval.

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