

THE PROTECTION OF CATALAN BY THE EUROPEAN CHARTER FOR REGIONAL OR MINORITY LANGUAGES: AN OVERVIEW OF SEVENTEEN YEARS IN FORCE IN SPAIN

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Abstract

This paper aims to evaluate the experience of seventeen years of the European Charter for Regional or Minority Languages in Spain. The starting point is the complex parliamentary procedure for the Charter's approval by the Spanish Parliament in order for the Spanish Government to then ratify it. The political difficulties and tensions generated by the issue of linguistic diversity in Spain are examined, as well as the lack of an effective policy for national recognition and promotion of linguistic pluralism and also the survival of the regulations and practices typical of the old model of monolingual imposition. The four monitoring rounds of the Committee of Experts and the analysis of the recommendations by the Council of Ministers enable us to draw conclusions about the role played by the European Charter. Firstly, we note the need to appreciate its legal nature as an international treaty. This leads us to conclude it may be applicable to national public authorities based on the arguments provided by the Committee of Experts. Another aspect examined is the right to effective legal protection of Charter-based rights in national courts. The experience of these monitoring rounds in the courts, education and public administration allows us to grasp the logic of the analysis by the Committee of Experts and criticise the sluggishness of the system in responding to its constructive contributions as a minimum standard of protection.

Keywords: European Charter for Regional or Minority Languages; treaty application; treaty monitoring and supervision; minimum standard of protection; Council of Europe.

LA PROTECCIÓ DE LA LLENGUA CATALANA PER LA CARTA EUROPEA DE LES LLENGÜES REGIONALS O MINORITÀRIES: UNA MIRADA ALS DISSET ANYS DE L'ENTRADA EN VIGOR A L'ESTAT ESPANYOL

Resum

Aquest treball intenta avaluar l'experiència de disset anys en vigència de la Carta europea de les llengües regionals o minoritàries a l'Estat espanyol. El punt de partida és el complex procediment parlamentari de l'autorització de les Corts Generals perquè el Govern la ratifiqui. Destaca les dificultats i tensions polítiques que desperta la qüestió de la diversitat lingüística a Espanya, l'absència d'una política efectiva de reconeixement estatal i promoció del pluralisme lingüístic, i la supervivència de les normes i pràctiques típiques de l'antic model d'imposició monolingüe. Els quatre cicles de supervisió de la Comissió d'Experts i l'anàlisi de les Recomanacions del Consell de Ministres ens permeten concloure sobre el paper que exerceix la Carta europea. Primer, expressem la necessitat de comprendre la seva naturalesa legal com un tractat internacional. D'aquesta naturalesa traiem la conclusió de la seva aplicabilitat davant els poders públics de l'Estat utilitzant com a arguments els proporcionats pel Comitè d'Experts. El requisit de la tutela judicial efectiva davant els tribunals nacionals pels drets derivats de la Carta és un altre dels aspectes analitzats. L'experiència d'aquests cicles de supervisió en matèria de justícia, educació i Administració pública ens permet comprendre la lògica de l'anàlisi del Comitè d'Experts, i criticar la lentitud del sistema, per atendre les seves contribucions positives com un estàndard mínim de protecció.

Paraules clau: Carta europea de les llengües regionals o minoritàries; aplicació tractats; monitoratge i control de tractat; estàndard mínim de protecció; Consell d'Europa.

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Summary

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Bibliography

1 Introduction: a Charter à la carte

The date is almost upon us – 1 August 2018 – when seventeen years will have passed since the European Charter for Regional or Minority Languages¹ (hereinafter referred to as the “European Charter” or with the abbreviation ECRML), entered into force in Spain² following a lengthy and complex³ ratification process, dominated by parliamentary debate about authorising the government to ratify the treaty.⁴

According to the special legislative technique used in the Charter⁵ in which the States, at the time of ratification, must specify the languages for which they assume commitments and the level of protection to which they agree to be bound for each one – when a State consents to be bound, it must obligatorily also make a declaration in relation to Articles 2.2⁶ and 3.1⁷ of the European Charter. Spain’s Congress of Deputies, at the proposal of the government, in response to the reservations expressed by the Partido Popular (Popular Party, PP), who held a parliamentary majority, regarding which languages should be afforded protection, avoided taking a stance on this issue by referring to the relevant provisions of the Statutes of Autonomy⁸ and declared, for the purposes of Article 2.2 of the European Charter, that regional or minority languages would refer to the languages with official status in the Statutes of Autonomy of the autonomous communities of the Basque Country, Catalonia, the Balearic Islands, Galicia, the Valencian [Community] and the Chartered Community of Navarre” . [...] “Also, Spain declares, to the same effects, that regional or minority languages are also understood as those that are protected and covered by the Statutes of Autonomy in the territories where they are traditionally spoken.”⁹

Although it is clear that the languages to be afforded protection under the European Charter are determined politically – which, as we shall see, will condition its future application¹⁰ – overall, the commitments acquired

1 The European Charter was approved by the Parliamentary Assembly of the Council of Europe (PACE) on the initiative of the Congress of Local and Regional Authorities of the Council of Europe, and adopted as a convention or treaty by the Committee of Ministers of the Council of Europe on 25 June 1992. It was opened for signing by the Member States of the Council of Europe on 5 November 1992 in Strasbourg, and entered into force on 1 March 1998. The unofficial Catalan version of the text can be found at: http://llengua.gencat.cat/web/.content/documents/legislacio/recull_de_normativa/altres/cartaeur.pdf

2 Spain deposited its ratification instrument, signed by the King as Head of State and endorsed by the then Minister of Foreign Affairs, Josep Piqué i Camps, on 2 February 2001, with the Secretary General of the Council of Europe on 9 April 2001, and, in accordance with Article 19.2 of the European Charter, which establishes a three-month period of *vacatio legis* (“this [Charter] will enter into force on the first day of the month following expiry of the three-month period after the date on which the ratification instrument was deposited, accepted or approved”), the rights and undertakings assumed by Spain came into force on 1 August 2001. See BOE no. 222, of 15 September 2001, p. 34733 et seq. See <http://www.boe.es/boe/dias/2001/09/15/pdfs/A34733-34749.pdf>.

3 The Spanish members of parliament who were members of the Parliamentary Assembly of the Council of Europe at that time, such as Lluís Maria de Puig, played an active role in the process for negotiating and adopting the European Charter in the assembly, and it was therefore logical that Spain was one of the first signatories to the treaty, signing on 5 November 1992, the date on which the Charter was proclaimed and opened for subsequent signing and ratification, acceptance or approval by the Member States of the Council of Europe.

4 For more information about the ratification process, see CASTELLÀ SURRIBAS, Santiago J. “La ratificació de l’Estat espanyol a la Carta europea de llengües regionals o minoritàries”. CIEMEN – Mercator. Linguistic Rights and Legislation, with the support of the European Commission. Working document no. 8, 2002.

5 It is usual scientific practice to qualify this technique with the metaphor, “A Charter à la carte.”

6 European Charter, Article 2.2: “In respect of each language specified at the time of ratification, acceptance or approval, in accordance with Article 3, each Party undertakes to apply a minimum of thirty-five paragraphs or sub-paragraphs chosen from among the provisions of Part III of the Charter, including at least three chosen from each of the Articles 8 and 12 and one from each of the Articles 9, 10, 11 and 13.”

7 European Charter, Article 3.1: “Each Contracting State shall specify in its instrument of ratification, acceptance or approval, each regional or minority language, or official language which is less widely used on the whole or part of its territory, to which the paragraphs chosen in accordance with Article 2, paragraph 2, shall apply”.

8 As can be seen in the corresponding session reports of the Congress of Deputies and the Senate, the parliamentary debates were interrupted by the end of the 6th legislative term (the first governed by the PP, with José María Aznar as prime minister, and with the explicit parliamentary support of the CiU, PNV and Coalición Canaria political groups, which ensured a more favourable relationship with the autonomous communities) and were then resumed during the 7th legislative term (in which the PP had an absolute majority). The different political groups reached a pragmatic consensus, which focussed on the idea of how to avoid specifying the languages which would be subject to protection by referring to the languages recognised as official or protected and covered by the different Statutes of Autonomy.

9 *Supra* note 1, BOE no. 222, of 15 September 2001, p. 34733 et seq. Note: Translation by author.

10 See, among others: Deop Madinabeitia, Xavier. “España ratifica la Carta Europea de las Lenguas Regionales o Minoritarias”. *Revista Vasca de Administración Pública*, no. 62 (2002), pp. 349-360; López Basaguren, Alberto: “La Carta Europea de las Lenguas Regionales o Minoritarias: ¿un modelo para las sociedades multilingües más allá de la protección minoritaria?”. In: López Castillo, Antonio (dir.): *Lenguas y Constitución Española*. Valencia: Tirant Lo Blanch, 2013 pp. 129-149

fall into the highest level of protection,¹¹ with just two major exceptions: on the one hand, for university education, where the belief exists – mistakenly in my opinion – that the autonomy of the university should prevail over the legal regime for languages established by the Spanish Constitution and the respective Statutes of Autonomy,¹² and, on the other hand, in relation to the support and funding of the media.¹³

Following the publishing of the initial report during the first year of entry into force of the treaty, the States were required to submit reports on their compliance with the undertakings agreed at three-yearly intervals (“on the policy followed, in accordance with Part II of this Charter, and on the measures adopted in application of the provisions of Part III that they have accepted”).¹⁴ Spain had to present its first report on its application of the European Charter, in accordance with Article 15.1 of the treaty, during the first year of its entry into force, that is, at the latest in August 2002. However, the Spanish Government presented its report on 23 September 2002.¹⁵ The first report of the Committee of Experts was issued on 8 April 2005,¹⁶ and, on 21 September 2005, the Committee of Ministers delivered its recommendations to Spain.¹⁷

The second round of monitoring and control, which was supposed to begin with the presentation of the government report by 1 January 2005, was delayed by the State until 30 April 2007.¹⁸ The Committee of Experts presented its report on 23 April 2008¹⁹ and the Committee of Ministers issued its recommendations on 15 December 2008.²⁰ In the third monitoring round, Spain was scheduled to submit its report on 1 August 2008 but did not deliver it until 30 July 2010.²¹ On 2 December 2011²² the Committee of Experts presented its report while the Committee of Ministers handed down its recommendations on 24 October 2012.²³ The fourth round began with the presentation of the government report on 9 May 2014 (also delayed from the scheduled date of 1 August 2011); the Committee of Experts gave their opinions on 20 March 2015²⁴ and the recommendations of the Committee of Ministers were issued on 20 January 2016.²⁵ And, finally, the last and current round, which also began later than the scheduled date²⁶ – 1 August 2014, was submitted by the government on 9 February 2018.²⁷

11 According to the declaration by the Spanish State, it agreed to be bound to the following provisions: Article 8, paragraph 1, sections *a.i, b.i, c.i, d.i, e.iii, f.i, g, h, i* and paragraph 2; Article 9, paragraph 1, sections *a.i, a.ii, a.iii, a.iv, b.i, b.ii, b.iii, c.i, c.ii, c.iii, d*, and paragraph 2, section *a* and paragraph 3; Article 10, paragraph 1, sections *a.i, b, c*, paragraph 2, sections *a, b, c, d, e, f, g*, paragraph 3, sections *a, b*, paragraph 4, sections *a, b, c*, and paragraph 5; Article 11, paragraph 1, sections *a.i, b.i, c.i, d, e.i, f.ii, g*, paragraph 2 and paragraph 3; Article 12, paragraph 1, sections *a, b, c, d, e, f, g, h*, paragraph 2 and paragraph 3; Article 13, paragraph 1, sections *a, b, c, d*, and paragraph 2, sections *a, b, c, d, e*; and finally, Article 14, sections *a* and *b*. For languages protected and covered by the statutes but lacking recognition as official languages in these texts, protection is reduced to “all the provisions in part III of the Charter that can reasonably be applied in line with the objectives and principles established in Article 7.”

12 For university education, the Spanish Declaration has adopted the option in Article 8, paragraph 1, section *e.iii*.

13 The option chosen is in line with Article 11, paragraph 1, section *f.ii*, “to apply existing measures for financial assistance also to audiovisual productions in the regional or minority languages”, instead of opting for the other possibility “to cover the additional costs of those media which use regional or minority languages, wherever the law provides for financial assistance in general for the media”, justified by the absence of the legal provision required by the precept.

14 See Article 15 of the European Charter.

15 Report on the application by Spain of the European Charter for Regional or Minority Languages, of 22 August 2002. Text in Spanish: <https://rm.coe.int/CoERMPublicCommonSearchServices/DisplayDCTMContent?documentId=09000016806d817d>

16 <https://rm.coe.int/CoERMPublicCommonSearchServices/DisplayDCTMContent?documentId=09000016806dba66>

17 <https://rm.coe.int/CoERMPublicCommonSearchServices/DisplayDCTMContent?documentId=09000016806d854b>

18 <https://rm.coe.int/CoERMPublicCommonSearchServices/DisplayDCTMContent?documentId=09000016806d8198>

19 <https://rm.coe.int/CoERMPublicCommonSearchServices/DisplayDCTMContent?documentId=09000016806dba69>

20 <https://rm.coe.int/CoERMPublicCommonSearchServices/DisplayDCTMContent?documentId=09000016806dba69>

21 <https://rm.coe.int/CoERMPublicCommonSearchServices/DisplayDCTMContent?documentId=09000016806d819b>

22 <https://rm.coe.int/CoERMPublicCommonSearchServices/DisplayDCTMContent?documentId=09000016806dba69>

23 English and French language versions only: https://search.coe.int/cm/Pages/result_details.aspx?ObjectId=09000016805c9c07

24 English and French language versions only: <https://rm.coe.int/16806f0659>

25 English and French language versions only: https://search.coe.int/cm/Pages/result_details.aspx?ObjectId=09000016805c1c06

26 The sixth government report should have been submitted on 1 August 2017, in strict compliance with Article 15 *in fine* of the European Charter. “The first report shall be presented within the year following the entry into force of the Charter with respect to the Party concerned, the other reports at three-yearly intervals after the first report”, however, the fifth and sixth monitoring rounds not only overlap but have also been subsumed and exhausted.

27 Currently, only the Spanish-language version exists: <https://rm.coe.int/spainpr5-es-docx/1680788433>

Let us then make an overall assessment of these past seventeen years since the Charter entered into force in relation to the Catalan language as a whole, that is, as one of the official languages established in the Statute of Autonomy of Catalonia,²⁸ as one of the official languages recognised in the Statute of Autonomy of the Autonomous Community of Valencia under the name “Valencian”,²⁹ as one of the official languages of the Balearic Islands³⁰ and as a protected language in the Autonomous Community of Aragon.³¹ This evaluation is based on the five government reports – rather than six, as would have been expected – and the four reports issued by the Committee of Experts, which provided the basis for the four recommendations made by the Committee of Ministers to the Spanish Government.

Taking into account all the documents available, and following the completion of four monitoring rounds, can we conclude that the European Charter has become an effective legal instrument for the protection of the Catalan language in the different legal regulations governing its status and use? To answer this question adequately and accurately, we need to reflect on the international legal nature of the Charter, which should enable us to understand the commitments acquired by the State and the possible consequences of a failure to comply with these commitments, the peculiarities of the Catalan language in all the countries that have ratified the European Charter and the differences resulting from the different legal statutes governing the use of Catalan, and finally the specific observations made by the Committee of Experts and the Committee of Ministers to the Spanish Government.

2 Catalan under the ECRML: the complex declaration by the Spanish State

The fact that almost ten years elapsed between the signing of the European Charter by the State and its definitive ratification is a clear indication of the political difficulties surrounding ratification of the treaty in Spain. Homogeneity was lacking in the way that language policies had been developed in the different

28 “Article 6. Own language and official languages. 1. Catalonia’s own language is Catalan. As such, Catalan is the language of normal and preferential use in Public Administration bodies and in the public media of Catalonia, and is also the language of normal use for teaching and learning in the education system. 2. Catalan is the official language of Catalonia, together with Castilian, the official language of the Spanish State. All persons have the right to use the two official languages and citizens of Catalonia have the right and the duty to know them. The public authorities of Catalonia shall establish the necessary measures to enable the exercise of these rights and the fulfilment of this duty. In keeping with the provisions of Article 32, there shall be no discrimination on the basis of use of either of the two languages. 3. The Generalitat and the State shall undertake the necessary measures to obtain official status for Catalan within the European Union and its presence and use in international organisations and in international treaties of cultural or linguistic content. 4. The Generalitat shall promote communication and cooperation with the other autonomous communities and territories that share a linguistic heritage with Catalonia. To this end, the Generalitat and the State may, as appropriate, sign agreements, treaties, and other collaboration instruments for the promotion and external dissemination of Catalan. 5. The Occitan language, known as Aranese in Aran, is Aran’s own language and is official in Catalonia, as established by this Estatut and by the laws of linguistic normalisation.” Organic Law 6/2006, revising the Statute of Autonomy of Catalonia, of 19 July 2006 (DOGC no. 4680, of 20 July 2006).

29 “Article six. 1. The Valencian Community’s own language is Valencian. 2. *The Valencian language is official throughout the Valencian Community*, as is Spanish, which is the official language of the Spanish State. Everybody has the right to know and use them and to be educated on and in the Valencian language. 3. The Generalitat will guarantee the normal and official use of both languages and shall take the necessary measures to ensure their knowledge. 4. No one may be discriminated against on the basis of their language. 5. Special protection and respect to the recovery of Valencian will be granted. 6. The law shall establish the criteria for the application of the language in the Administration and teaching. 7. The territories in which the use of one or other language predominates, as well as those which can be exempted from the teaching and use of the own language of the Valencian Community, shall be established by law. 8. The Valencian Language Academy is the institution that regulates the Valencian language.” Organic Law 1/2006 of 10 April, revising Organic Law 5/1982 of 1 July, of the Statute of Autonomy of the Autonomous Community of Valencia (2006/4177, DOGV no. 5238, of 11 April 2006).

30 “Article 4. Own Language. 1. *The Catalan Language, the own language of the Balearic Islands, is, together with Castilian, an official language.* 2. Every person has the right to know it and use it and no one can be discriminated against on the basis of language. 3. The institutions of the Balearic Islands will guarantee the normal and official use of both languages and shall take the necessary measures to ensure their knowledge, and they will create the required conditions for full parity between the two languages to be reached in terms of the rights of citizens of the Balearic Islands.” Organic Law 1/2007 of 28 February, revising the Statute of Autonomy of the Balearic Islands (BOIB no. 32 ext., of 1 March 2007, erratum BOIB no. 29, of 28 February 2008). Note: Translation by author.

31 “Article 7. Own languages and linguistic modalities 1. . The own languages and linguistic modalities of Aragon are one of the most significant manifestations of the Aragonese historical and cultural heritage and reflect a social value of respect, coexistence and understanding. 2. A law of the Aragonese Corts will establish areas where the use of Aragon’s own languages and linguistic modalities will predominate; it will regulate the legal system and the rights of speakers of those languages in those territories, it will promote the protection, recovery, teaching, promotion and dissemination of the linguistic heritage of Aragon, and will favour, in the areas where use predominates, the use of own languages in communications between the citizens and the public administrations of Aragon. 3. No one shall be discriminated against on the basis of language.” Organic Law 5/2007 of 20 April, revising the Statute of Autonomy of Aragon (BOA no. 47, of 23 April 2007). Note: Translation by author.

Autonomous Communities, which, combined with indifference on the part of the State and an absence of any kind of legislative framework for the existing linguistic pluralism, as well as a continuing social and political culture that had little time for linguistic diversity, created a situation where numerous legal and practical provisions favoured the use of Spanish and impeded and excluded the use of other regional or minority languages.

There was initial optimism upon ratification of the European Charter as it represented a step towards creating a legal framework for linguistic pluralism throughout Spain, and represented a minimum, internationally guaranteed, standard that would avoid any delays in the lengthy and costly process of linguistic normalisation that was already underway, and finally because of the contribution it would make – due to its scientific rigour and proven policies – to the debate surrounding language policy in Spain. By having a sound understanding of the legal nature of the Charter and the role assigned to the Committee of Experts, as well as to the Committee of Ministers, and of the monitoring and control processes in use, it will be much easier to understand what was to be expected and evaluate the progress made during the seventeen years since the Charter was ratified in Spain.³²

Firstly, we can state unequivocally that the European Charter is a convention-based international standard, that is, an international treaty, with all that that entails. The most important aspect, as far as our analysis is concerned, is that it is the result of a consensus – *consensus ad idem* – of the States that took part in the negotiations to adopt the treaty in the Parliamentary Assembly of the Council of Europe. Other countries may also subsequently participate in the treaty if they agree to adhere to it.³³ Secondly, given its status as a convention-based international standard, it is regulated by the set of rules governing the application and interpretation of treaties established in the Vienna Convention on the law of treaties of 1969.³⁴ However, what interests us the most in terms of its legal status as a convention is how it has been directly integrated into our own state legal framework over which it prevails.

Indeed, convention-based international standards, such as the European Charter, are integrated directly into our legal system without the need for any acceptance protocol or conversion – transposition – into national law. Only one small formality is required for an international standard to be fully effective; that is its publication in an official journal so that it is openly publicized and everyone is made aware of all the rights and obligations arising therefrom. Accordingly, once published in the *Official State Gazette* (BOE), the European Charter became part of our legal system. In fact – and I wish to insist here – publication is only a requirement to make the standard fully effective, given that its validity is dictated by the internationally- and domestically-followed procedure – in this case, Article 94.1 of the Spanish Constitution and the constitutional checks that may have been put in place – so that since its ratification by the Spanish State on 9 April 2001, the Charter has been fully valid and enforceable from the date on which it entered into force. Therefore, since its entry into force on 1 August 2001, all citizens and public authorities have been bound by the European Charter, and the judiciary must have ensured its correct application and given effective legal protection to those harmed by any failure to comply with this standard.³⁵

As an international treaty, the European Charter prevails over all domestic legislation and is only subject to the Constitution, to the extent that in a hypothetical case of incompatibility between the text of the Charter and the Constitution – in a matter of constitutionality or in a writ of *amparo* – the European Charter would cease to be applicable – and, accordingly, it could be breached – until reported, and then Spain would have to withdraw from the treaty, or until the text of the Constitution was changed to make the two compatible. However, this hypothesis is highly unlikely as the Council of State is responsible for analysing the standard before its ratification and pointing out any possible conflicts of interest with the Constitution, which will, if applicable, be ruled on by the Constitutional Court. However, the pre-eminence of treaties over all infra-

32 CASTELLS ARTECHE, José Manuel. “Efectos jurídicos de la ratificación por España de la Carta Europea de las Lenguas Regionales o Minoritarias”. *Revista Vasca de Administración Pública*, no. 69, 2 (2004), pp. 223-238.

33 This situation has yet to occur. Of the forty-seven current members of the Council of Europe, twenty-five have ratified the European Charter and are therefore bound by it in accordance with their own State declarations. Eight states have signed the European Charter – accepting the text as negotiating parties – but have not yet committed themselves to it, and are therefore not yet bound by it. Finally, fourteen States have not yet signed or ratified the European Charter. It is worth remembering that the Charter has not established any legal basis and does not have any monitoring system in countries as decisive as Turkey, Italy, France, Belgium, Bulgaria, the Russian Federation or Greece, among others.

34 Vienna Convention on the law of treaties of 23 May 1969.

35 AGIRREAZKUENAGA ZIGORRAGA, Iñaki. “La carta europea de lenguas regionales o minoritarias del Consejo de Europa como derecho interno”. In: PÉREZ FERNÁNDEZ, José Manuel (coord.): *Estudios sobre el estatuto jurídico de las lenguas en España*, 2006, pp. 105-146.

constitutional laws means that no domestic law, irrespective of its legal status – organic, ordinary, state or autonomous, or decree-laws, decrees, etc. – can be opposed to the European Charter or contradict it.³⁶ Otherwise, a domestic, unilateral law would be sufficient to put an end to what a set of States have agreed multilaterally. Therefore, in accordance with the terms and limits of the Declaration made by Spain, the European Charter cannot be breached by any institution, and no domestic law – including the organic laws of the Statutes of Autonomy– can contradict, modify or annul the provisions contained therein.

The Committee of Experts of the Charter is composed of independent experts, who are not State representatives. Created and regulated by Article 17 of the European Charter, the Committee was endowed with the autonomy to establish its own internal regulations. It is responsible for issuing periodic reports for each State and receiving information from the governments as well as from non-governmental organisations. The latter provide something akin to a “cry for help” on the basis of which the Committee prepares a report for the Council of Ministers. This report “will contain, in particular, the proposals made by the Committee of Experts to the Committee of Ministers, which the latter may use as the basis for any recommendations deemed necessary to be handed down to one or several parties”.³⁷ The Committee of Experts report has a high political and moral value because of the independent nature of the Committee members, but the possibility of making recommendations to the States remains exclusively in the hands of the Committee of Ministers of the Council of Europe.

Are the reports submitted by the Committee of Experts a “real” interpretation of the European Charter then? Only the States can interpret the content of the Charter unilaterally – with the possibility of incurring infringements if their interpretation is not appropriate – or collectively within the Committee of Ministers. However, this authentic multilateral or collective interpretation is subject to the limits of the report of the Committee of Experts, as it is an independent body with “recognised competence in the matters dealt with by the Charter”.³⁸ Therefore, the evaluations and proposals made by the Committee of Experts, as well as the recommendations delivered by the Council of Ministers, are much more than just a technical working document, or mere recommendations to the State in the case of the latter; they are highly valuable instruments for determining a State’s non-fulfilment of the European Charter.

In other words, when the Committee of Experts reports a non-fulfilment by a State – whether or not this is subsequently a basis for the Committee of Ministers to make a recommendation to said State – this provides key data for the State to use in its internal application of the European Charter. Any injured party may claim before the ordinary courts or the Constitutional Court the existence of a non-fulfilment, as detected by the Committee of Experts. This will then need to be investigated by a national court, and even if the court considers that no breach has taken place, it will have to provide reasons to counteract the arguments of the Committee of Experts who are in charge of this interpretation *prima facie* and, in accordance with common standards in the rest of the States, of the application – that is, the fulfilment – of the Charter by the different States. In other words, any findings of non-fulfilment by the Committee of Experts, as well as any recommendations issued by the Committee of Ministers, are an excellent and powerful indicator of the degree to which the States comply or fail to comply with the Charter.

The case of Catalan, however, has some specific characteristics that are worth mentioning before going into a more detailed analysis. Catalonia’s own institutions, Catalan politicians from different groups and assemblies and academic and civil institutions have been working for many years on achieving recognition for linguistic diversity in Europe as a way of recognising and protecting the Catalan language and as an expression of respect for diverse identities within the concept of human rights. The rejection of the concept of national languages led the Congress of Local and Regional Authorities to refer to minority languages – Catalan is not, in the strictest sense, a minority language in all the territories where it is spoken, although it often shows the traits of a minoritised language – and the term “regional” was clearly more European in scope than sub-state. This fitted in well with the situation of a language such as Catalan, which is spoken in four Member States of the Council of Europe – Andorra, where it is official; Spain, where it is co-official and/or protected in four

³⁶ As clearly stated in Article 96.1 of the Spanish Constitution, “Their provisions [of the treaties] may only be repealed, amended or suspended in the manner provided in the treaties themselves or in accordance with the general rules of international law”.

³⁷ Article 16.4 of the European Charter.

³⁸ Article 17.1 of the European Charter.

autonomous communities (Catalonia, the Valencian Community, the Balearic Islands and Aragon); France and Italy. The fact that Catalan is so widely spoken and is subject to many different legal statutes, as well as its position compared to other regional and/or minority languages, make it markedly different and result in it having a significant number of speakers – around 7 million – compared to other languages, very few of which exceed the one million mark. All these points affect how the European Charter is applied and must be taken into consideration.

The first point worth mentioning is that, among the States where Catalan is spoken, only Spain has ratified the European Charter. Andorra, despite being a member of the Council of Europe since 10 November 1994, was unable to sign the Charter because it had not participated in its completion process, and has not yet decided to ratify it. France³⁹ and Italy are signatories to the Charter – 7 May 1999 and 27 June 2000, respectively – but neither has ratified it. In addition, upon signing, France included an interpretative statement, which if maintained – as indicated – at the time of ratification, would limit the extent to which the Charter is applied in France.

The second point is that some of the provisions in the European Charter regarding the use of Catalan in Spain are less stringent or offer lower levels of protection than in the domestic legislation. However, the provisions envisaged in this Charter shall not affect any more favourable provisions concerning the status of regional or minority languages, or the legal regime of persons belonging to minorities which may exist in a Party or are provided for by relevant bilateral or multilateral international agreements⁴⁰. The European Charter therefore represents a minimum level of protection and a standard which, through the continuous monitoring rounds, will adapt to the current legal situation of each of the protected languages with different and variable levels of demand.⁴¹

3 A look at the Catalan language during the four monitoring rounds

Analysing the elements that have been recurrent in the four reports of the Committee of Experts and the four recommendations of the Council of Ministers issued to date, we can focus on the aspects discussed below with regard to the Catalan language.⁴² First of all, the different ways in which the Catalan language is treated in the different autonomous communities initially caused some confusion in the movements and institutional groups and actors working to promote and protect the language, especially due to the use of the name “Valencian”. This confusion was particularly evident following the release of the first report, which was the first attempt at dealing with the situation of the regional languages in Spain and which treated Basque (*Euskera*), Catalan, Valencian,⁴³ Galician, Asturian (*bable*), Aragonese (*fabla*) and Aranese as separate languages. The circumlocutions to avoid calling Valencian “Catalan” contrast with the omission of the Carche region of Murcia, which was rectified in subsequent reports. From the second report onwards, although hinted at in the first report, the Committee of Experts was quick to adapt its report to the Declaration

39 See LECUCQ, Olivier. “El régimen jurídico de las lenguas regionales en Francia y el problema de la ratificación de la Carta europea de las lenguas regionales y minoritarias. ¿Es necesario revisar la constitución?”. *Revista Catalana de Dret Públic*, no. 51 (2015), pp. 142-154.

40 Article 4.2 of the European Charter.

41 For more on this issue see RUIZ VIEYTEZ, Eduardo J. “La carta europea para las lenguas regionales o minoritarias”. In: GÓMEZ ISA, Felipe (ed.) *et al. La protección internacional de los derechos humanos en los albores del siglo XXI*, 2004, pp. 527-546.

42 See ARP, Björn. “Derecho Internacional Público y Relaciones Internacionales. La práctica española ante el mecanismo de control de la Carta Europea de lenguas regionales o minoritarias: procedimiento y ámbito de aplicación”. *Revista Española de Derecho Internacional*, vol. 57, no. 2 (2005), pp. 1117-1122, and LEBSANFT, Franz “¿Europeización de los conflictos lingüísticos españoles? las Españas central y periférica ante la Carta europea de las lenguas regionales o minoritarias”. In: SÜSELBECK, Kirsten; MÜHLSCHLEGEL, Ulrike; MASSON, Peter (eds.): *Lengua, nación e identidad. La regulación del plurilingüismo en España y América Latina*, 2008, pp. 111-130.

43 “The lexical and grammatical characteristics of the Valencian Language do not differ substantially from those of Catalan. The Valencian Language Academy recognises that Valencian forms part of the same linguistic system used in the following territories after their incorporation into the Crown of Aragon: Catalonia, the Balearic Islands, the Principality of Andorra, the Eastern Strip of Aragon, the city of Alguer in Sardinia and the territory that currently makes up the French department of the “Eastern Pyrenees”. The Valencian Language Academy emphasises that by giving the name “Valencian” to the language spoken in Valencia, this sets apart the Valencian identity established many centuries ago, and compares its situation to the relationship between the Portuguese and Brazilians.”

of Spain, in line with the Statutes of Autonomy, and move away from any digressions that may be politically and academically unwise.⁴⁴

As a general rule, the Committee has repeatedly stated the need to adopt a legal framework for promoting and protecting the Catalan language (and Aragonese), and has been particularly critical of Law 3/2013 governing “the use, protection and promotion of the languages and linguistic modalities of Aragon”, which substitutes Law 10/2009 regarding “the use, protection and promotion of the languages used in Aragon”.⁴⁵ The Committee has also shown interest in receiving information about how the European Charter is applied in the region of Carce (Murcia), where Catalan is traditionally spoken in three municipalities – Yecla, Jumilla and Abanilla – situated around the Carce mountain range, and where Catalan courses have been running for some years, with the support of the Valencian Academy for Language (AVL).

In terms of the justice system, dealt with in Article 9 of the European Charter, the Committee of Experts, right from its initial report,⁴⁶ has indicated that the Charter is being wrongly applied in all of the territories with co-official languages and has also expressed its continuing disagreement with the regulation established by Article 231 of the Organic Law on judiciary power. It has also stated that the main obstacle to a full and effective application of Article 9 of the European Charter in Spain⁴⁷ is the limit on the use of these languages in criminal, civil and administrative legal proceedings in the autonomous communities which have co-official languages. The Council of State⁴⁸ had already warned of this issue in its last report, stating that the current system of rotation and merit for judges did not guarantee that legal proceedings could be carried out effectively in the co-official languages

Another recurrent theme in the reports issued by the Committee of Experts is its concern regarding the lack of adequate language training for legal staff posted to the autonomous communities with co-official languages. It makes the same general observation regarding government agencies reporting directly to the central government and public services – Article 10 of the European Charter – and the last report emphasises that this issue is particularly relevant among the emergency medical services.

Article 8 of the European Charter deals with education and this sphere is tackled differently in each autonomous community. In the Committee’s first report, it rates positively the “full-immersion” model implemented in Catalonia, highlighting how this model has reversed the trend to minoritise the Catalan language and confirming that it complies with all the requirements set out in the European Charter.⁴⁹ With

44 See. MANENT ALONSO, Lluís. “El Valenciano Ante La Carta Europea De Las Lenguas Regionales O Minoritarias”. *Revista Valenciana d’Estudis Autònoms*, no. 59, 2 (2014), pp. 92-117, and OCHOA MONZÓ, Josep. “La Carta europea de las lenguas regionales o minoritarias. Reflejo en el País valenciano”. *Lengas: Revue de Sociolinguistique*, no. 59 (2006), pp. 83-104.

45 LÓPEZ SUSÍN, José Ignacio. “Antecedentes y estudio de la Ley 10/2009, de 22 de diciembre, de uso, protección y promoción de las lenguas propias de Aragón”. *Revista de Llengua i Dret*, no. 54 (2010), pp. 203-243, and, by the same author, “A Lai 3/2013, de 9 de mayo, u a infraproteuzió churidica de as luengas minoritarias d’Aragón”. *Revista de Llengua i Dret*, no. 63 (2015), pp. 186-199. Note: Translation by author.

46 See the initial ECRML report, *supra cit.*, paragraph 235 *in fine*: “The Committee of Experts encourages the Spanish authorities:

- to amend the legal framework with a view to making it clear that the criminal, civil and administrative judicial authorities in Catalonia will conduct the proceedings in Catalan at the request of one party;
- to formally guarantee the accused the right to use Catalan even where he or she has a command of Castilian;
- to take the necessary measures to ensure, as appropriate, that the parties to a proceeding are specifically informed of the obligation of the judicial authorities in Catalonia to conduct the proceedings in Catalan if one of the parties so requests, in conformity with the undertakings entered into by Spain under Article 9 para. 1.a.i, 1.b.i and 1.c.i of the Charter;
- to take the necessary measures to increase the proportion of judicial staff in Catalonia, at all levels and particularly among judges and prosecutors, able to use Catalan as a working language in courts ; and
- to develop adequate training schemes for the judicial staff as well as for lawyers.”

47 See the fourth ECRML report, *supra cit.*, paragraphs 201 et seq. and paragraph 268: “That article states that in any judicial procedure, judges, magistrates, prosecutors, clerks and other officers will use the Castilian language. The co-official language will only be allowed if neither of the parties objects to it. It therefore has not been made clear that the criminal, civil or administrative judicial authorities will conduct the proceedings in any of the Autonomous Communities in the co-official language at the request of one party.”

48 Council of State: verdicts, File 1492/1992 (Foreign Affairs), relating to the European Charter for Regional or Minority Languages, was opened for signing in Strasbourg on 5 November 1992, of 3/12/1992.

49 See the initial ECRML report, *supra cit.*, paragraphs 208 and 209: “The Committee of Experts observes that this system points to

regard to Valencia, on the other hand, the Committee points out that the triple option system is incompatible with the European Charter and indicates that only the immersion model complies with the undertakings established in the Charter, while the other two models are contrary to it, as ratified, and are characteristic of regimes that offer a lower level of protection than agreed.⁵⁰ Also, in relation to education in Catalan in the Balearic Islands, the first report clearly states that the existing model is markedly inferior to the undertakings accepted in the European Charter, which at least, require parity between the two co-official languages.⁵¹

The Committee's last report, however, warned that the new Organic Law on education, which reinforces teaching in Castilian, may have a negative effect on the Catalan educational model⁵² and the Committee, therefore, requested further information to enable it to evaluate to what extent the ruling by the Supreme Court⁵³ might affect the model, given that it states that the use of the Spanish language must be proportional and equal to the use of Catalan at all educational levels.⁵⁴

With regard to Valencian, in its third and fourth reports, the Committee highlights the need to be vigilant that the trilingual educational model (Spanish-Valencian-English) does not have a disproportionate impact on the teaching of Valencian. The reports also insist on the need to guarantee education in Valencian throughout the territory, and especially to guarantee linguistic continuity in the move from primary to secondary education. The Committee also expressed its concerns over the trilingual model implemented in the Balearic Islands and therefore requested more information in this respect.

In the field of education, it is clear that the Committee of Experts evaluates the extent to which the different teaching models have effectively adapted to the European Charter, and strongly rejects any models where regional or minority languages are afforded less protection. Above all, the Committee is vigilant to detect any regression and is observant of any regulatory, judicial or political changes that may jeopardise the use of regional or minority languages at all levels of education.

The areas identified are the focus for the recommendations that the Committee of Ministers makes based on observations by the Committee of Experts, following informal diplomatic dialogue with the State. These recommendations allow conclusions to be drawn on the effectiveness of the Charter in the face of repeated non-fulfilments by the State over the seventeen years since the European Charter came into force.

an impressive reversal of the trend: a regional/minority language that was still oppressed just 30 years ago has become the default language in the educational system in its traditional territory and the first language of instruction for the larger part of the last generation of young people who have been educated in Catalonia. Such a development is extremely rare in Europe's history and confirms the special interest of Spain in this domain."

50 See the initial ECRML report, *supra cit.*, paragraphs 744 et seq.: "The Committee of Experts considers that with the exception of the "full-immersion" model up to a certain stage of primary school, none of the other models attains the level which is required by the specific undertakings entered into by Spain and even where Valencian is more present, the models in question are actually closer to bilingual forms of education of the type implied in the lower level of obligation laid down in Article 8 para. 1.a/b/c (that is, the obligations contained in Article 8 para. 1.a.ii, 1.b.ii and 1.c.ii). In addition, it is unclear whether the "full-immersion" model is available throughout the territory of the Autonomous Community."

51 See the initial ECRML report, paragraph 620 et seq.: "The Committee of Experts encourages the competent authorities to develop educational models essentially in Catalan for pre-school, primary school and secondary school in the Balearic Islands, in conformity with the specific undertakings entered into in these areas."

52 See the fourth ECRML report, *supra cit.*, paragraph 190: "The Committee of Experts was informed that the Organic Law 8/2013 provides for a stronger presence of education in Castilian throughout Spain. The Committee of Experts is concerned that it may negatively affect the offer of education in regional or minority languages."

53 "Supreme Court Ruling of 19 February 2013, Chamber 3^a (appeal no. 1615/2012) which rejects the appeal against the Order of the Plenary Session of the Administrative Chamber of the Supreme Court of Catalonia of 8 March 2012, delivered to enforce a ruling by the High Court. "See also "Supreme Court Ruling of 26 February 2013, Chamber 3^a, in relation to appeal no. 2825/2012 brought by the Counsel representing and on behalf of the Generalitat of Catalonia, against the Ruling handed down by the Fifth Chamber of the Administrative Chamber of the Supreme Court of Justice of Catalonia, dated 29 May 2012, in relation to administrative appeal no. 71/2009." A brief analysis of this ruling can be found in PONS, Eva, and POU, Agustí. "Jurisprudència del Tribunal Suprem, Any 2013". *Revista de Llengua i Dret*, no. 61 (2014), p. 215 et seq.

54 See the fourth ECRML report, *supra cit.*, paragraph 191: "In its previous evaluation report the Committee of Experts considered these undertakings fulfilled. The Committee of Experts asked the authorities to report on how much practical impact the decision of the Supreme Court asking for Castilian to be introduced as the language of instruction "proportionately and equally to Catalan at all class levels" has had on the Catalan language education."

4 Some conclusions: effectiveness and failings of the ECRML

The European Charter fulfils different functions with regard to the examples mentioned, in the fields of education, justice, the administration and public services, the extension of protection to areas outside the legal field, as well as those that we would find in other areas such as the media, cultural activities and facilities, economic and social life, and transfrontier exchanges.

Firstly, it establishes a European public policy in this domain, which State policies and regulations must respect, and which can be interpreted dynamically in conjunction with other human rights instruments – domestic and international – and especially with Article 22 of the Charter of Fundamental Rights of the European Union.⁵⁵

This step to provide a minimum standard of rights marks a progressive and evolutionary interpretation of the application of the European Charter by the Committee of Experts, and in terms of the recommendations made by the Committee of Ministers, and acts as a conceptual impediment to any attempt by the States to introduce policies which represent a step backwards for the promotion and protection of national or minority languages.

It also acts as a kind of alarm system in relation to regulatory changes or the implementation of new policies, which will be evaluated taking into consideration the European Charter, thanks to the rigour and meticulousness of the Committee of Experts.

The lack of State response to certain failures to comply with the European Charter, and effective international mechanisms to correct them, cannot be considered as merely a shortcoming of the Charter. The existence, or not, of effective legal protection at State level must also be taken into account, as well as the technical and legal arguments offered by the Committee of Experts in presenting these failings to the State authorities and courts to call for an end to them and repair the damage caused.

Lastly, seventeen years of history have taught us that this mechanism works sluggishly and is hampered by delays on the part of the State, when areas as sensitive as linguistic diversity and the coexistence of different identities require more agile political stances. While we value the expertise gained by the Committee of Experts in the different languages under protection and in the different spheres of protection, partly thanks to its in situ visits, we should now start to think in terms of using the Charter to generate prompt warning systems that would undoubtedly facilitate the “cry for help” model of the Committee of Experts, already in existence, and free it from the slow routine pace of the monitoring rounds.

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⁵⁵ CASTELLÀ SURRIBAS, Santiago J. “La Carta Europea de les Llengües Regionals o Minoritàries i l’article 22 de la Carta dels Drets Fonamentals de la Unió Europea”. *Llengua, Societat i Comunicació. Revista de Sociolingüística de la Universitat de Barcelona*, no. 4 (2006), pp. 61-69: *La Unió Europea i l’articulació de la diversitat lingüística*.

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