

THE LINGUISTIC MODEL FOR EDUCATION IN CATALONIA IN THE COUNCIL OF EUROPE. ITS EVALUATION IN THE CONTEXT OF THE COMPLIANCE MONITORING CYCLES OF THE EUROPEAN CHARTER FOR REGIONAL OR MINORITY LANGUAGES

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Abstract

This article examines the evaluations of the linguistic model for education in Catalonia, as performed within the framework of the different cycles for monitoring compliance with the European Charter for Regional or Minority Languages. More specifically, it reviews the evaluations of the model in the reports issued by the Committee of Experts and the recommendations of the Committee of Ministers of the Council of Europe.

The article comprises three sections. The first one examines the position of the European Charter for Regional or Minority Languages within the system of sources of law, with special emphasis on the legal and interpretative value recognised therefor by constitutional case-law. Based on this, the second part reviews the specific undertakings assumed by Spain in its instrument of ratification of the Charter, within the field of language use in education. The commitments made, which are legally binding and wide-ranging, are reviewed. Lastly, the article proposes a review of the evaluations of the linguistic model for education in Catalonia and also that contemplated in other Spanish autonomous communities, performed as part of the Charter's monitoring cycles. To do this, it looks at the periodic examinations included in the reports from the Committee of Experts and in the recommendations of the Committee of Ministers of the Council of Europe.

Keywords: Catalonia; European Charter for Regional or Minority Languages; linguistic law; education.


RÈGIM LINGÜÍSTIC DE L'ENSENYAMENT A CATALUNYA AL CONSELL D'EUROPA. LA SEVA AVALUACIÓ EN ELS CICLES DE CONTROL DE COMPLIMENT DE LA CARTA EUROPEA DE LES LLENGÜES REGIONALS O MINORITÀRIES

Resum

L'article revisa les avaluacions del règim lingüístic de l'ensenyament a Catalunya en seu del Consell d'Europa, desplegades en el marc dels diversos cicles de control de compliment de la Carta europea de les llengües regionals o minoritàries. Més concretament, s'hi revisarà l'avaluació del model prenent en consideració els informes del Comitè d'Experts i recomanacions del Comitè de Ministres del Consell d'Europa.

Formalment, l'article s'estructura en tres parts. La primera part revisa la posició de la Carta europea de les llengües regionals o minoritàries dins el sistema de fonts del dret, i fa un apunt especial al valor jurídic i interpretatiu que li reconeix la jurisprudència constitucional. Partint d'aquesta base, la segona part de l'article s'endinsa en una revisió de les obligacions contretes per l'Estat espanyol en el seu instrument de ratificació del conveni, en l'àmbit dels usos lingüístics en l'ensenyament. S'hi revisen els compromisos adquirits, jurídicament vinculants, d'ampli espectre. Finalment, l'article proposa una revisió de les avaluacions de què ha estat objecte el règim lingüístic en l'ensenyament a Catalunya i també el previst en altres comunitats autònomes, als cicles de control de compliment del conveni. Per fer-ho, es tindran en compte els exàmens periòdics desplegats als informes del Comitè d'Experts i a les recomanacions del Comitè de Ministres del Consell d'Europa.

Keywords: Catalunya; Carta europea de les llengües regionals o minoritàries; dret lingüístic; ensenyament.

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1 Background: forty years of a model for managing multilingualism in the classroom

This article seeks to provide a critical review of the evaluations performed of the linguistic model for education in Catalonia as part of the different cycles for monitoring compliance with the European Charter for Regional or Minority Languages (ECRML). More specifically, it will review the evaluation of this linguistic model taking into account the reports of the Committee of Experts and the recommendations of the Committee of Ministers of the Council of Europe.

As many know, this year marks the fortieth anniversary of the passing of Law 7/1983, of 18 April, on linguistic normalisation in Catalonia (Llei 7/1983, de 18 d'abril, de normalització lingüística a Catalunya),¹ a pioneering piece of legislation for its time in the legal governance of multilingualism in the newly minted Spain of the “autonomous communities”, and one that provides the foundations for the linguistic conjunction model for education in Catalonia. Crafted over the course of the Catalan parliament’s very first legislature, it was unanimously passed by all those attending the plenary session of 6 April 1983.² This unanimity, unique in the field of comparative linguistic law when debating about managing linguistic diversity, demonstrates the political and social consensus underlying the legal provisions, including those impacting the field of education. In the sense that it is legislation that in no way contradicts that which would, in the spirit of continuity, replace it some years later (the current Law 1/1998, of 7 January, on linguistic policy), it has become part of what the legislature itself would define as the “Catalan legal tradition”.³ Thus it is that Catalan, as the official and own language of Catalonia, has, from the beginning of the 1980s to today, carved itself a position as the centre of gravity, language of normal use for teaching and learning in the education system in Catalonia: a linguistic policy option backed by constitutional case-law, and one that provides a response to the primordial objective of normalising its use and social integration.

Despite the lively hermeneutic debate surrounding this linguistic model for education and the effect of the successive legal reforms and judicial challenges to which it has been subject over the last forty years, its cornerstones still remain in place today, and enjoy broad parliamentary support.⁴ Good evidence of this is provided by the numbers underpinning the passing of Law 8/2022, of 9 June, on the use and learning of official languages in non-university education (Llei 8/2022, de 9 de juny, sobre l'ús i l'aprenentatge de les llengües oficials en l'ensenyament no universitari). The parliamentary debates once again saw the proposing of a range of legislator strategies for dealing, on a protective basis, with the challenges of managing linguistic diversity in education, a public sphere that is particularly strategic in any linguistic normalisation process. These challenges are heightened if one takes into account the system of three official languages applicable in Catalonia. And there would be an emphasis, from different standpoints and leveraging different formulations, on the political will (supported by a great parliamentary majority) to protect the structural foundations of the linguistic conjunction model in Catalan schools, implemented in the early eighties, whilst also ensuring its continuity.⁵

1 DOGC (Official Gazette of the Generalitat) no. 322, of 22 April 1983, and BOE (Official State Gazette) no. 112, of 11 May. It was passed with 105 votes in favour, none against and one single abstention.

2 DSPC-Ple (Journal of Plenary Sessions of Parliament of Catalonia) no. 130, plenary session no. 66.1 of 6 April 1983.

3 See Final Provision Three of Law 1/1998, of 7 January, on linguistic policy, entitled “Replacement and validity of regulations”. DOGC no. 2553, of 9 January, and BOE no. 36, of 11 February 1998.

4 With regard to the wish to ensure the continuity of the structural principles of the linguistic model for education in Catalonia and the evolution of the legal framework and the case-law interpreting in recent decade, from 1978 to 2021, see, especially, Pla Boix, Anna M. (2021). *En defensa del model lingüístic de l'escola a Catalunya. Reflexions per a un debat crític des del dret constitucional*. Barcelona: Col·lecció de l'Institut d'Estudis de l'Autogovern, no. 13 (p. 1-491).

5 Note that the new law was passed by a plenary session of the Catalan Parliament with 102 votes in favour, 29 against and one abstention. For more specific information on the position of the different parliamentary groups, see:

Law 8/2022, of 9 June, on the use and learning of official languages in non-university education. Published in BOPC no. 329 and DOGC no. 8686 of 10 June 2022. For further details of its passage through the Catalan Parliament, see [dossier nº 202-00046/13 of the Parliament of Catalonia](#). It was approved by a plenary session of the Catalan Parliament with 102 votes in favour, 29 against and 1 abstention, in the session of 8 June 2022, DSPC-P no. 65.

Decree Law 6/2022, of 30 May, establishing the criteria for formulating, approving, validating and reviewing languages projects in education centres. For further details of its passage through the Catalan Parliament, see [dossier nº 203-00024/13 of the Parliament of Catalonia](#). The parliamentary debate, demonstrating the position of the different parliamentary groups, and the voting on its validation can be seen in DSPC-P no. 68, of 29 June 2022.

It is worth noting that both Law 8/2022, of 9 June, on the use and learning of official languages in non-university education, and Decree Law 6/2022, of 30 May, establishing the criteria for formulating, approving, validating and reviewing linguistic projects in education centres (Decret llei 6/2022, de 30 de maig, pel qual es fixen els criteris aplicables a l'elaboració, l'aprovació, la validació i la revisió dels projectes lingüístics dels centres educatius), have recently been challenged before the Spanish Constitutional Court, with an action of unconstitutionality and with a question of unconstitutionality, respectively, proceedings that are still ongoing.⁶ The upcoming controls over the constitutionality of these provisions will take place alongside the celebrations of the fortieth anniversary of the promulgation of the law that set the foundations of this model for managing linguistic diversity, a model that, over the course of the last four decades, has overcome a number of challenges to its constitutionality that have ended up defining a consolidated case-law doctrine.⁷

It is also worth stressing, for the purposes of this review, that this linguistic diversity management model for Catalonia has not only been supported, but also explicitly praised by the Council of Europe. Indeed, it is the mission of the following pages to focus on reviewing the evaluations of this model by the Council of Europe, performed as part of the different cycles for monitoring compliance with the ECRML. The article aims to perform a critical review of the evaluations of the linguistic model for education in Catalonia performed as part of the different cycles for monitoring compliance with the undertakings assumed under Article 8 ECRML.

2 The ECRML within the system of the sources of the law: a brief note on constitutional case-law

The 5th of November 2022 marked the thirtieth anniversary of the signing, in Strasbourg, of the ECRML by eleven member states of the Council of Europe,⁸ an international convention that would become a milestone in the protection of linguistic diversity in Europe. Work on thrashing out its wording was not easy, and was the focus of intense political debate, also aimed at reaching consensus on the content and scope of its provisions, establishment of its precise legal nature, the very definition of the challenges to be met and the best strategies for ensuring its acceptance by the Member States of the Council of Europe. Underlying all of this was the conviction that there was a need for a legally binding instrument of international law that would help ensure progress in protecting the continent's cultural and linguistic diversity.

It is therefore no surprise that the process of negotiating the Charter, which began in 1984, would go on for years.⁹ As of today, three decades after its signature, this international convention has been ratified by 25

6 On 13 September 2022, the plenary session of the Spanish Constitutional Court resolved to give leave to proceed to the appeal on the grounds of unconstitutionality number 5630-2022, filed by more than 50 Spanish deputies of the *Partido Popular* and *Ciudadanos* parliamentary groups against Articles 2 a) and d), 3.1 and 4.1 of Catalan Decree Law 6/2022, of 30 May, establishing the criteria for formulating, approving, validating and reviewing language projects in education centres, and Articles 2.1 and 2.4 of Catalan Law 8/2022, of 9 June, on the use and learning of official languages in non-university education. See [BOE no. 227 of 21 September 2022, p. 129576](#). The representations formulated by the Parliament of Catalonia can be consulted in [BOPC \(Official Gazette of the Parliament of Catalonia\) no. 423 of 4 November 2022, p. 13](#). Additionally, on 26 October 2022, the Constitutional Court resolved to give leave to proceed to the question of constitutionality raised by the interlocutory ruling of 28 July 2022 of Section 5 of the contentious-administrative chamber of the High Court of Justice of Catalonia (Tribunal Superior de Justicia de Catalunya), ordinary appeal 168/2015, separate stage of proceedings 7/22 and 19/22.

7 The Constitutional Court has repeatedly upheld, in its case-law doctrine, the full constitutional legitimacy “of an education in which the working language of communication is the native language of the autonomous community and co-official in its territory, together with Spanish (STC 137/1986, legal basis 1) given that this outcome arises from Art. 3 SC and the provisions of the respective Statute of Autonomy” (STC 337/1994, FJ 9.B). For a review of this case-law, aimed specifically at the review of Law 8/2022, of 9 June, challenged before the Constitutional Court and currently ongoing, see the Opinion of the Council for Statutory Guarantees of the Government of Catalonia 3/2022, of 7 June, regarding the draft law on the use and learning of official languages in non-university education, published in BOPC no. 328, of 7 June 2022. Similarly, for further analysis of the content and scope of the jurisprudential doctrine of Spain's Constitutional Court laid down on the matter in recent decades, see Pla Boix, Anna M. (2021). *En defensa del model lingüístic de l'escola a Catalunya. Reflexions per a un debat crític des del dret constitucional*, cit. *supra*.

8 The Committee of Ministers of the Council of Europe approved the text of the ECRML on 25 June 1992, and opened it up to signature by the Member States. Nonetheless, it would not be until 1998 that the Charter would come into force, with the fulfilment of the requirement that it be ratified by at least five States. Said ratification was carried out on 1 March 1998 by Croatia, Finland, the Netherlands, Hungary, Liechtenstein and Norway. For more information on the process of ratifying the Charter in recent decades, see this [Council of Europe web page](#).

9 With regard to this preparatory work and the debates, see, particularly, De Puig i Olivé, Lluís M. (1991). [Debat i elaboració de la Carta europea de les llengües](#). *Revista de Llengua i Dret* (16), 153-172.

Member States of the Council of Europe and protects, with a varying scope depending upon the undertakings made in the respective instruments of ratification, some eighty or so regional or minority languages.¹⁰ It has, over time, consolidated its position as a mechanism safeguarding linguistic and cultural heritage, one of the most important for promoting and developing multilingualism in the field of international law. In Catalonia, the ECRML's provisions protect the Catalan language and the Aranese dialect of the Occitan language.

It is worth pointing out that the ECRML was designed to be pragmatic, to ensure efficient and steady progress in the protection of regional or minority languages, but leaving states with a certain degree of flexibility in the assumption of undertakings.¹¹ This flexibility, set forth the Charter's Article 2, reflects the primordial goal of adapting the parties' undertakings to suit their political will, to thereby smooth the ratification process.¹²

Said Article distinguishes between two kinds of undertakings. Firstly, it compels all parties to apply the provisions of Article 7, "Objectives and principles", to all the regional or minority languages spoken within their territories and which meet the definition set forth in Article 1.¹³ Secondly, it establishes that, in respect of each language specified at the time of ratification, acceptance or approval, in accordance with Article 3, each State Party undertakes, literally, "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".¹⁴ It thus provides for two types of choice. Firstly, the parties may select the regional or minority languages to which they shall apply the undertakings of Part III of the Charter. Secondly, for each of these chosen languages, they shall establish the provisions of Part III to which they wish to subscribe and which, consequently, shall become binding upon the State Party in question. In this latter case, it is for the State Party to identify the paragraphs or sub-paragraphs of Part III that it undertakes to guarantee with regard to the regional or minority language. More specifically, it undertakes to apply a minimum of 35 paragraphs or sub-paragraphs chosen from Part III. Note that Article 8 ECRML, which governs education and which is formally positioned within said Part III and subject to a degree of discretionality on the part of the States Parties, lays down the duty of the Parties to apply at least three of its paragraphs or sub-paragraphs.

Whatever the case, the ECRML has become an efficient instrument in fostering the use and protection of regional and minority languages in particularly strategic public spheres. This is so because Part III thereto entails undertakings in education, the judiciary, the public administrations, the media, culture, economic and social life and transfrontier exchanges. As noted in the Charter's explanatory report, this is based on

10 For more details on the Charter's coverage, undertakings and protective languages, see, particularly, Ramallo, Fernando. (2022). *O cumprimento da Carta Europa para as linguas rexionais ou minoritarias*. University of Valencia (p. 1-172). By the same author, Ramallo, Fernando (2019), "El 'esfuerzo estatal' como modelo de cómputo del cumplimiento de la Carta europea de las lenguas regionales o minoritarias". *Revista de Llengua i Dret* (72), 146-167. For a conceptual approach to the regional or minority languages protected by the Charter, see, especially, Ruiz Vieyetz, Eduardo. (2012). Article 1 Definitions. Dins *Shaping language rights. Commentary on the European Charter for Regional or Minority Languages in light of the Committee of Experts' evaluation* (p. 39). Strasbourg: Council of Europe Publishing. And, for the definition of the concepts of "regional language" and "minority language" for the purposes of the Charter, see its [explanatory report](#).

11 The ECRML sets out to protect regional or minority languages as the expression *par excellence* of cultural diversity, and not linguistic minorities themselves, which is why it stresses the cultural dimension of language uses in different aspects of speakers' lives. This cultural dimension is explained in the Charter's [explanatory report](#). For the purposes of this article, it is not aiming to enshrine individual rights (that of speaking one's own language), nor is it based upon a political, social or ethnic definition characterising a language as the vehicle of communication of any particular social or ethnic group. Whilst the ECRML was not designed to create individual or collective rights for the speakers of regional or minority languages, one should bear in mind that the obligations entered into by the parties, with regard to the situation of the languages and the domestic legislation that needs to be passed to fulfil the undertakings, have a clear impact on the situation of the relevant language communities and the legal statute covering its speakers. See Paragraph 11 of the [explanatory report](#). This focus has given rise to interesting doctrinal debates. For further information, see, particularly, Woehrling, Jean-Marie. (2010). Introduction, in *Shaping language rights...* (p. 23). Strasbourg: Council of Europe Publishing.

12 For more details of the academic discussions arising from this flexibility, see particularly, Woehrling, Jean-Marie. (2010). Introduction. Cit. nota supra (p. 22). Additionally, see De Puig i Olivé, Lluís. (1991). Debat i elaboració de la Carta Europea de les Llengües. *Revista de Llengua i Dret* (16), 153. See, also Sections 22 and 23 of the [explanatory report](#).

13 Note that, for hermeneutic purposes, the delineation of the content and scope of this provision is explained in Paragraphs 39 and 40 of the [explanatory report](#).

14 See Article 2.2 ECRML, which must be interpreted in light of the provisions of Paragraphs 41 to 47 of the [explanatory report](#), to which we refer.

the conviction that only by impacting these spheres would it be possible to counteract, where necessary, the unfavourable conditions suffered by these languages in the past and, at the same time, be in a position to guarantee the conditions for their future maintenance and development.¹⁵

In the achievement this goal of guaranteeing the future vitality of the languages protected by the Charter, education plays a key strategic role.¹⁶ This is why the ECRML promotes not only the teaching of regional or minority languages, but also their use as the language of instruction in the classroom. To ensure its implementation and overcome any resistance during the ratification process, the Charter establishes various possible degrees of undertaking for the States Parties, ranging from the highest level, of guaranteeing models of language immersion *in* the languages it protects (an undertaking assumed by Spain in its instrument of ratification and designed to guarantee education *in* these languages at the different stages of non-university education) to other undertakings of a relatively more restricted scope assumed by other States Parties.

In its case-law, the Constitutional Court has had the opportunity to precisely define the position held by the ECRML within the system of the sources of law. Thus, in Constitutional Court judgement 56/2016 (STC for sentencia del Tribunal Constitucional), of 17 March, the country's highest constitutional authority states, literally, that the Charter, "as a validly concluded treaty, has been integrated from its ratification within the 'internal legal order' (Art. 96.1 of the Spanish Constitution [Constitución Española or CE]) and also has the interpretative value conferred by Art. 10.2 CE"¹⁷ (Constitutional Court Order [Auto del Tribunal Constitucional or ATC] n° [166/2005](#), of 19 April, Legal Ground [Fundamento Jurídico or JF] 4). It then states that the ECRML "provides interpretative guidelines for the legal regime for co-official languages", also adding that "the hermeneutic criteria that can be contributed by this international treaty can only have the effectiveness established by the Charter itself". This interpretation is also reproduced in other decisions by the Court, such as STC 75/2021, of 18 March. Legal Ground 2 of the aforementioned judgement also stresses that the Charter, "pursuant to our doctrine, provides interpretative guidelines for our linguistic legal system [STC [165/2013](#), FJ 14 a), with reference to ATC [166/2005](#), FJ 4; also STC [56/2016](#), FJ 5]".

In short, ever since its ratification and publication in the Official State Gazette (Boletín Oficial del Estado or BOE), the ECRML has, by virtue of Article 96 CE, formed a legally binding part of the country's internal legal order. It is also recognised as being of particularly significant hermeneutic value when it comes to interpreting the content and scope of the constitutional framework governing language-related issues,¹⁸ a constitutional framework that is intentionally open and flexible and that never imposes one specific language model upon education. Indeed, by virtue of the powers reserved for the statutes in Article 3.2 of the Spanish Constitution, it guarantees the autonomous communities broad powers in the design of their own linguistic models, under terms that have been frequently interpreted by the constitutional case-law issued over the course of recent decades. As noted in Opinion of the Council for Statutory Guarantees of Catalonia 3/2022 (Dictamen del Consell de Garanties Estatutàries 3/2022), of 7 June, neither Article 3 nor Article 27 of the Spanish Constitution of 1978 in, respectively, establishing the general regime for governing the official nature of languages and recognising the right to education "predetermine the specific linguistic regime that should be followed by non-university education, but rather accepts, within a framework, different possibilities that may give rise to different models", meaning that this constitutional regulation has permitted the development of:

Linguistic models for education in Catalonia, the Basque Country, Navarre, the Valencian Community, the Balearic Islands and Galicia, of different characteristics (in some cases, language separation and

15 With regard to the content and scope of Article 7 of the Charter, on objectives and principles, see, particularly Dumbar, Robert. (2010). Article 7. Objectives and principles. In *Shaping language rights...* (p. 185 et seq.). Strasbourg: Council of Europe Publishing.

16 This decisive importance of education in the future preservation of the languages protected by the Charter has been underlined during its monitoring cycles. One good and illustrative example is that of the evaluation report of the Committee of Experts on Germany for 2002, which states: "Education is the fundamental basis of the protection and promotion of regional or minority languages". The following link provide access to all the [reports by the Committee of Experts and Recommendation of the Committee of Ministers for the Charter's monitoring cycles](#).

17 An argument that is also reproduced in ATC 166/2005, of 19 April, FJ 5.

18 In the doctrine, and with regard to the connection between this interpretative value and Article 10.2 CE, see Agirreazkuenaga, Iñaki. (2006). La Carta de las lenguas regionales o minoritarias del Consejo de Europa como derecho interno. In José Manuel Pérez Fernández (coord.), *Estudios sobre el estatuto jurídico de las lenguas en España* (p. 105-146).

dual linguistic models and, in others, linguistic conjunction models, with different variants), and that the Constitutional Court has permitted this plurality of regimes, all of which comply, in principle, with the Constitution.¹⁹

With this in mind, it is worth performing a critical review of the content and scope of the provisions of the Charter with particular regard to the field of education. This is because, as noted by the constitutional case-law, they are legally binding and provide interpretative parameters for the constitutional framework for multilingualism. They are therefore inevitably binding upon the interpreter of the Constitution in its examinations of constitutionality.²⁰

3 The guarantee of language immersion *in* co-official autonomous community languages in education: the obligations entered into by Spain in the ECRML

3.1 A broad-spectrum ratification: a review of the undertakings entered into

Spain ratified the ECRML in 2001.²¹ Unlike other countries, it assumed a broad-spectrum ratification in strategic public spheres, and would accede to 69 of the undertakings it contains, established in Part III of the Charter and thus subject to a degree of discretionality for the States Parties pursuant to Article 2.2. In other words, in comparative terms, it opted for an ambitious assumption of undertakings, given the optional undertakings entered into and the unique formula employed in its ratification, with the specification of the languages that would be protected by the Charter.

Each State Party must, in its act of ratification, acceptance or approval, and in the declaration it formulates in adopting it, establish which languages the Charter shall cover. Spain employed a unique formula in its instrument of ratification because, unlike other States Parties, it did not explicitly provide an exact list of the languages spoken in its territory to which the Charter was applicable. Identification of these languages is provided by means of an indirect formula that refers to the decisions that may be adopted in the statutes of autonomy of its autonomous communities, in the exercise of the powers attributed to them by virtue of Article 3.2 CE. More specifically, the instrument of ratification distinguishes between two levels of undertaking. One level comprises “the languages recognised as official in the statutes of autonomy of the autonomous communities of the Basque Country, Catalonia, the Balearic Islands, Galicia, Valencia and Navarre”. These co-official languages are afforded the highest degree of legal protection and shall be subject to the undertakings acquired from Part III of the Charter, and thus contemplate those in the field of education that shall be reviewed in the following pages (Art. 8 ECRML). The second level comprises the languages “that the statutes of autonomies protect and cover in the territories in which they are traditionally spoken”. In the case of these other languages also protected by the provisions of the statutes of autonomy, although they do not enjoy recognised official status, the instrument of ratification notes that they shall be subject to “all the provisions of Part III of the Charter that may reasonably be applied in accordance with the objectives and principles established by Article 7”.

In the field of education, Spain’s instrument of ratification fully assumes this top-tier approach and applies it to the different stages of education. This provides a legal commitment to the highest level of undertaking. Indeed, the Spanish State undertakes to guarantee language immersion models in pre-school, primary, secondary,

19 BOPC no. 328, of 7 June 2022. For more information on the different linguistic models for education in Spain’s autonomous communities, see Pons i Parera, Eva, and Vernet i Llobet, Jaume (2009) *La llengua de l’ensenyament a les comunitats autònomes amb llengua pròpia*, *Revista d’Estudis Autonòmics i Federals*, 149.

20 It should be noted that the legal effect of the ECRML has often been neglected in the courts’ interpretations of legal provisions of general scope that impact upon linguistic models for education. Examples of the omission of any mention of the legally binding undertakings of the Charter in the interpretation of the body of constitutional rules regarding language-related issues include STC 31/2010, of 28 June, or STC 11/2018, of 8 February (this latter judgement contains only one mention to the ECRML in the summary of the parties’ representations in its background section).

21 Instrument of ratification published in the [BOE, Catalan language supplement no. 15, of 1 October 2001, p. 2320](#). Spain signed the Charter on 5 November 1992, the date of the opening of accession to states by the Council of Europe, and ratified it on 9 April 2001. It entered into force in Spain on 1 August 2001. Formally, the parliamentary procedure for authorising the ratification commenced on 21 July 2000, with the adoption of the resolution of the Bureau of the Congress of Deputies. For more information, see BOCG (Official Journal of the Spanish Parliament), Congress of Deputies no. 4-1, of 21 July 2000.

technical and vocational education.²² More specifically, Spain undertakes to guarantee pre-school, primary, secondary, technical and vocational education *in* the languages identified in the instrument of ratification, under the terms noted just above (it enters into the undertakings guaranteed in Article 8.1, paragraphs a.i, b.i, c.i and d.i of the ECRML).

Note that the Charter provides, for these stages of education, other lower levels of undertakings, which have been assumed by other States that have renounced language immersion models *in* regional or minority languages, such as that contemplated by those that do not wish to guarantee all education in the regional or minority language, but instead merely a “substantial part” of education in said languages, or those who only seek to guarantee, with regard to these languages, some specific language measures “at least to those pupils whose families so request and whose number is considered sufficient”.

Whatever the case, the language-related provisions guaranteed in Article 8.1 of the Charter are subject to the fulfilment of three general conditions, arising from the desire to adapt the undertakings assumed to the given socio-linguistic situation, to ensure that the use and teaching of these regional or minority languages in the classroom is guaranteed in the geographical area in which they are traditionally spoken.²³ These preconditions are as follows:

- a) Firstly, the ECRML stipulates that they shall only be applied “in the territory in which such languages are used”, a provision that, in the case of Spain, raises no problems of interpretation, as its instrument of ratification explicitly identifies the autonomous communities in which the undertakings of Article 8.1 entered into are to be applied.²⁴ They are thus applicable to said autonomous communities with co-official language systems (Catalonia, Valencia, the Balearic Islands, the Basque Country, Navarre and Galicia), where the language immersion systems contemplated in the aforementioned precept must be guaranteed.
- b) The second condition establishes that the implementation shall take into account “the situation of each of these languages”, a rather vague and intentionally ambiguously worded phrase that the reports by the Committee of Experts issues in the cycles monitoring Article 8.1 have attempted to clarify. This condition is due, mainly, to the wish to provide this framework with flexibility to adapt the protective undertakings entered into in line with the socio-linguistic reality of each particular regional or minority language. It obliges the parties to diagnose the situation of each of their protected languages when guaranteeing their use in the different levels of education governed by the Charter. When interpreting the content and scope of this precondition, the Committee of Experts adopts a case-by-case approach, as it reviews each of the undertakings entered into by the State Party in question, its sociolinguistic situation and the measures adopted to guarantee vehicular communication and language-related key in its education system. It obliges them to foster pragmatic policies to resolve shortcomings, adapted in line with the needs of the relevant language community.²⁵

22 See paragraph 81 of the [explanatory report](#). The undertakings set forth in Art. 8 ECRML encompass different levels of education: pre-school, primary, secondary, technical and vocational, university and adult education. For each of these levels, the Charter offers States Parties a degree of flexibility with regard to the undertakings they enter into, as it allows them to choose from between different levels of undertaking based on their particular socio-linguistic realities and political will. See Nogueira López, Alba. (2012). Article 8.1. Education (I). In *Shaping language rights...* (p. 247-288). Strasbourg: Council of Europe Publishing.

23 Paragraph 79 of the [explanatory report](#).

24 In the case of Spain, interpretation of these preconditions has not raised problems as its instrument of ratification explicitly identifies the autonomous communities in which the undertakings of Article 8.1 entered into are to be applied. It establishes that the undertakings of Part III of the Charter shall protect the regional or minority languages “recognised as official in the statutes of autonomy in the autonomous communities of the Basque Country, Catalonia, the Balearic Islands, Galicia, Valencia and Navarre”.

25 The examination of the results from monitoring cycles shows that there are numerous reports by the Committee of Experts and recommendations from the Committee of Ministers of the Council of Europe with proposals for practical corrective measures aimed at State authorities. They are often required to amend their internal legal order to bolster the availability of teaching in regional or minority languages. Note that these periodic evaluations take into account the characteristics of each language and the education system and curriculum design of the relevant State and, similarly, review the instruments for effectively addressing any non-compliances detected. The reports tend to avoid conceptual, theoretical and principle-based approaches to stress a pragmatic focus, with practical and specific suggestions for resolving any shortcomings found. Some reports recommend the adoption of corrective measures, such as proposals for the design of a language and education policy structured to ensure the training of a sufficient number of teachers of the regional or minority languages. There are frequent calls for the provision of more training courses for teachers, or

- c) Lastly, Article 8.1 also explicitly establishes that its provisions are formulated “without prejudice to the teaching *of* the official language(s) of the State”, a condition aimed specifically at averting any interpretations that exclude teaching of the language(s) spoken by the majority, the official language of the State in question. When a State undertakes to guarantee models of language immersion in regional or minority languages, this clause stipulates that teaching of the official language(s) be guaranteed as an obligatory part of the curriculum. Note that the Charter speaks of the teaching of the official language(s), never of any teaching *in* the official language(s) of the State.²⁶

So it is, then, that the scope of the undertakings entered into in Spain’s instrument of ratification inescapably obliges it not only to teach the languages protected by the obligations assumed by virtue of the Charter’s Article 8.1 as a subject on the curriculum, but also to guarantee that they are used as the language of instruction, as the language of communication of knowledge in the classroom, the language of teaching (Catalan and Aranese in Catalonia, Catalan in the Balearic Islands and the Autonomous Community of Valencia, Basque in the Basque Country and Navarre and Galician in Galicia). It thus enters into the legally binding undertaking to teach *in* these languages at all stages of non-university education (pre-school, primary, secondary, technical and vocational education *in* these languages identified in the instrument of ratification). In other words, there is a strategy of guaranteeing immersion in the relevant regional or minority language in these levels of education.²⁷

It should also be borne in mind that, for the co-official languages enjoying the highest level of legal protection, the undertaking entered into by virtue of Article 8.1 does not inevitably and necessarily represent an obligation to guarantee the model of language immersion *in* the regional or minority language for all students being educated in the territory in question. It does, however, represent an obligation to guarantee all students access to this. This is why language separation models, like that in force in the Basque Country, which guarantee an education entirely in Basque, also guarantee compliance with these undertakings governed in Article 8.1. In this regard, the Committee of Experts has praised both the Catalan and Basque education models, pointing out that both comply with Article 8’s provisions regarding education. In the case of the Basque Country, because of the different language models it offers, one is in Basque, thereby guaranteeing the teaching *in* the relevant regional or minority language stipulated in the Charter’s Article 8.1 and fulfilling the undertakings entered into in the instrument of ratification.²⁸

Similarly, in interpreting this undertaking, the Committee of Experts has warned that the provision of teaching *in* a regional or minority language must never be dependent upon a minimum or sufficient demand from speakers. This is because this requirement is subject to a lesser level of undertaking by the State contemplated in Article 8.1.a.iii and the options IV of Paragraphs *b*), *c*) and *d*) of Article 8 of the ECRML. Accordingly, the education authorities are obliged to provide education *in* the regional or minority language, and must guarantee it without making this conditional on a prioritisation of demands or a minimum number of requests. Doctrine has emphasised that this State undertaking is binding upon education authorities and inevitably gives rise to

ensuring institutional support and the redefinition of curriculum design. Similarly noteworthy are the demands for ensuring greater availability of up-to-date teaching materials in these languages. There are also calls to guarantee greater use of the language in question in different stages of education where its presence has been insufficiently demonstrated. A pragmatic approach is always adopted, based on an accurate diagnosis of the State in question and proposals for tangible corrective measures.

²⁶ Envisaged in the guarantee of retaining the teaching of the official language(s) as a subject on the curriculum. This is noted in Paragraph 80 of the Charter’s explanatory report, that explains that this reserve is intended to prevent the creation of linguistic ghettos, which would be contrary to the principles of interculturalism and multilingualism underlying the Charter’s provisions. It should also be stressed that, as noted in the explanatory report, with regard to the States in which the ECRML’s provisions are applied to regional or minority languages that also enjoy official language status, as is the case in Spain, this phrase must be interpreted as meaning that the provisions of Paragraph 1 are applied “without prejudice to the teaching of the other language(s)” enjoying official status in the territory in question.

²⁷ In any case, remember that, for those other regional or minority languages spoken in Spain but not enjoying official status, there is a lesser degree of undertaking and it is only established that only those provisions of Part III of the ECRML that “can reasonably be applied in accordance with the objectives and principles established in Article 7” shall be applied.

²⁸ For example, see Paragraph 484 of the [Report of the Committee of Experts on the application of the Charter in Spain, 2005](#). According to said Committee, given that the Basque Country has guaranteed schooling completely in Basque (Model D), the undertakings entered into by virtue of Art. 8 ECRML are fulfilled.

the right to receive education *in* these languages, regardless of their reality or weight in terms of number of speakers.²⁹

Examination of the Charter compliance monitoring cycles and the pragmatic approach taken in the reports by the Committee of Experts when examining the undertakings entered into by the States Parties provide a highly detailed picture of the deficits and shortcomings detected. They also provide hermeneutic criteria for assessing effective compliance.³⁰ These shall be subject to brief review in the next chapter.

With regard to university education, the undertakings entered into by Spain in its instrument of ratification are more limited in scope.³¹ It has undertaken to foster and/or authorise the putting into practice of university or other forms of higher education *in* regional or minority languages, or facilities for the study of these languages as university or higher education subjects (Art. 8.1.e.iii). It also undertakes to adopt appropriate measures to arrange for the provision of adult and continuing education courses which are taught “mainly or wholly” in the regional or minority languages (Art. 8.1.f.i).

In addition to the aforementioned undertakings, in its instrument of ratification, Spain also enters into the that to adopt provisions to ensure the teaching of the history and the culture of which the regional or minority language is an expression (Art. 8.1.g.i). Note that the Charter’s explanatory report explains that this undertaking is due to the desirability of ensuring that the teaching of regional or minority languages takes place within their cultural context.³² It also guarantees the basic and further training of the teachers required to implement those of paragraphs *a*) to *g*) accepted by the State Party (Art. 8.1.h.i). With regard to this undertaking, it should be noted that the explanatory report emphasises that the language skills of teachers need to be guaranteed, as must the availability of financial, personal and teaching resources, if there is a wish to ensure effective implementation of Article 8’s measures.³³ Lastly, Spain’s instrument of ratification is linked with a undertaking to create one or more oversight bodies responsible for monitoring the measures taken and progress achieved in establishing or developing the teaching of regional or minority languages and to draw up periodic reports of their findings, which shall be made public (Art. 8.1.i).³⁴

29 Cf. Nogueira López, Alba. (2012). Article 8.1. Education (I). In *Shaping language rights...* (p. 258). Strasbourg: Council of Europe Publishing.

30 Thus, for example, some reports complain of a lack of education centres offering these language options, and others detect insufficient availability of education in the regional or minority language to be able to encompass all educational levels or studies. And a large number of complaints about non-compliance or shortcomings in implementation are concentrated in the secondary, vocational and technical levels. A good example of this is provided by Paragraphs 486 and 489 of the [Report of the Committee of Experts on the application of the Charter in Spain, 2005](#). See also Paragraph 105 of the Report of the Committee of Experts on the application of the Charter in the United Kingdom, 2004.

31 For further information on university and adult education, which are not examined in this article, see, particularly, Woehrling, Jean-Marie. (2006). *The European Charter for Regional or Minority Languages. A critical commentary*. Strasbourg: Council of Europe Publishing. Similarly, Nogueira López, Alba. (2012). Article 8.1. Education (I). In *Shaping language rights...* Strasbourg: Council of Europe Publishing. And also ECRML, Committee of Experts. (2006). *The Committee of Experts’ interpretation and evaluation practice concerning the implementation of articles on education of the European Charter for Regional or Minority Languages*. Strasbourg: Council of Europe Publishing.

32 See the Report’s Paragraph 86, which states that this undertaking is motivated by “a concern not to isolate the teaching of regional or minority languages from their cultural context”. This is because, according to the report, these languages are often related to a separate history and specific traditions. For the purposes of the Charter, this history and culture also form an integral part of Europe’s heritage, meaning that there is a need to guarantee that the language community in question has access to them. Indeed, the very regional or minority language itself is an expression of this cultural richness. This undertaking is designed to bolster the re-establishment of their social prestige.

33 The Charter’s monitoring cycles stress that the (basic and further) training of teachers is essential. It should also be emphasised that, in monitoring fulfilment of this undertaking, the availability of the necessary means, including the relevant financial, staffing and teaching resources, is verified. The examination of the results from the monitoring cycles allows it to be said that a pragmatic approach is also adopted when examining States Parties’ fulfilment of this undertaking. Thus, some reports detect implementation shortcomings associated with the reciprocal recognition of academic qualifications accrediting mastery of the language issued in other States, a lack of universities in which these languages are spoken, with an impact on the university education of teaching staff, teachers’ working conditions in the case of minority language communities dispersed throughout the State’s territory and differing degrees of teaching staff commitment to strict compliance with curricular content. For more details, see Pla Boix, Anna M. (2021). *En defensa del model lingüístic de l’escola a Catalunya. Reflexions per a un debat crític des del dret constitucional*, cit. *supra*.

34 For more information on the monitoring cycles, see, particularly Lasagabaster, Iñaki. (2012). Articles 15 to 17. Application of the Charter. In *Shaping language rights...* (p. 517). Strasbourg: Council of Europe Publishing. Given the importance of education in safeguarding and preserving regional or minority languages, the explanatory report highlights the need to “provide for a specific

Additionally, with regard to education and to territories other than those in which regional or minority languages are traditionally used, Spain has entered into the undertaking to allow, encourage or provide teaching, if the number of speakers of the regional or minority language so justifies, *in* or *of* the regional or minority language at all the appropriate stages of education (Art. 8.2). Note that the Charter's explanatory report states that, as a general rule, the ECRML confines the protection of regional or minority languages to the geographical area in which they are traditionally spoken. Nevertheless, the aforementioned undertaking of Article 8.2 constitutes an exception to this rule, because it contemplates the use and teaching of these languages in territories other than those in which they are traditionally used.³⁵

The undertakings of Article 8 must be interpreted in the light of other ECRML provisions, most especially the objectives and principles set forth for protection purposes in Article 7 (Part II), objectives and principles that, as the Charter stipulates, must obligatorily and necessarily be guaranteed in the State Party's policies, legislation and practices. These objectives and principles include, especially, due to their impact on the object of study of this article, that contemplated in Article 7.1.f), regarding "the provision of appropriate forms and means for the teaching and study of regional or minority languages at all appropriate stages"³⁶ and, even more especially, the undertaking to guarantee that the "adoption of special measures in favour of regional or minority languages aimed at promoting equality between the users of these languages and the rest of the population or which take due account of their specific conditions" not be considered an act of discrimination against the users of more widely-used languages. It therefore legitimises positive discrimination measures to guarantee the future survival of the languages protected by the Charter. More specifically, the explanatory report states that, "precisely because disparities exist between the situation of official languages and that of regional or minority languages and because those who practise the latter are often at a disadvantage, the Charter accepts that positive measures may be necessary with the aim of preserving and promoting such languages", positive measures that must always be in line with this legitimate objective of "promoting equality between languages", meaning that "they are not to be regarded as discriminatory".³⁷ Equally, the same Article 7 sets out the undertaking of the Parties to promote, by appropriate measures, mutual understanding between all linguistic groups, such that "respect, understanding and tolerance in relation to regional or minority languages be among the objectives of education and training provided within their countries" (Art. 7.3);³⁸ and, to conclude, the Article's Paragraph 4 also stipulates the obligation of the Parties, in determining their language policies impacting regional or minority languages (which therefore includes education), to "take into consideration the needs and wishes expressed by the groups which use such languages".³⁹

body or bodies to monitor what was being done in this field". The characteristics of such a supervisory institution are not specified in Art. 8.1 ECRML, and it accordingly must be regarded as "an education authority body or an independent institution". It adds that this function could also be conferred on the body provided for in Article 7.4. In any case, the Charter requires the findings of the monitoring to be made public. Additionally, aside from these supervisory bodies contemplated in Article 8, the Charter provides for generic oversight mechanisms for all its provisions in Part IV, entitled "Application of the Charter" and encompassing Articles 15 to 17. It guarantees a system of periodic evaluation reports, which the Parties must draw up to report on the measures taken to fulfil their undertakings.

³⁵ See paragraph 89 of the explanatory report, which states that "the principle of territoriality may no longer be sufficient in practice for the effective protection of a regional or minority language". It further states that "in view of the difficulties involved in the extension of educational provision for regional or minority languages outside their traditional territorial base, Article 8, paragraph 2, is drafted flexibly in terms of the undertakings involved and in any case applies only where such measures are justified by the number of users of the language concerned". It explains that, when Article 8 advocates the adoption of measures when the number of speakers is "considered", it explicitly recognises that "the public authorities cannot be required to take the measures concerned where the situation of the linguistic group makes it difficult to attain the minimum number of pupils required to form a class". For the purposes of the Charter, given the particular circumstances of regional or minority languages, "it is suggested that the normal quota required to constitute a class may be applied flexibly and a lower number of pupils may be 'considered sufficient'".

³⁶ [Paragraphs 63 of the explanatory report](#), which interprets the content and scope of this provision guaranteed in Article 7.1.f).

³⁷ [Paragraph 73 of the explanatory report](#).

³⁸ [Paragraph 74 of the explanatory report](#).

³⁹ See particularly, with regard to the interpretation of the content and scope of these objectives and principles in the light of the reports by the Committee of Experts, Dunbar, Robert. (2012). Article 7. Objectives and principles. In Alba Nogueira, Eduardo J. Ruiz Vieitez and Iñigo Urrutia, *Shaping language rights...* (p. 185-246). Strasbourg: Council of Europe Publishing. Also see Woehrling, Jean-Marie. (2006). *The European Charter for Regional or Minority Languages. A critical commentary*. Strasbourg: Council of Europe Publishing.

3.2 Evaluating the linguistic models for education in the Spanish autonomous communities with co-official language systems: a comparative review

3.2.1 Models with shortcomings: non-fulfilment of undertakings

As part of the cycles for monitoring compliance with Charter in Spain, the Committee of Experts of the Council of Europe has been reviewing the implementation of the undertakings entered into with regard to education.⁴⁰ It has unequivocally and explicitly confirmed that the linguistic regime for education of the autonomous communities where the co-official language is only used as a language of instruction 50% of the time, or for certain subjects, do not permit due fulfilment of the undertakings entered into in the instrument of ratification. It has also detected the non-fulfilment of undertakings in autonomous communities opting for trilingual education models, which also use English as the language of instruction in the classroom.⁴¹ In the Committee's opinion, these autonomous community education linguistic models do not permit sufficient or effective compliance with the provisions of the Charter's Article 8.1.a.i, b.i, c.i, d.i, e.i and f.i, ratified by the Spain.⁴² This is explicitly and unequivocally stated in various Committee reports adopted in a number of cycles for monitoring compliance with the Charter in Spain, in terms that we shall (very briefly) be examining in the following pages.⁴³

Without exception, every monitoring cycle has detected serious shortcomings in fulfilling the undertakings entered into by virtue of Article 8 in a range of autonomous community linguistic models for education. In these evaluations, the Committee of Experts has not just identified the deficient language models, but has also, making use of the pragmatic approach that defines how it fulfils its evaluation functions, proposed corrective measures for overcoming the shortcomings and instances of non-compliance. The study of these monitoring cycles thus offers a precise snapshot of the content and scope of the undertakings entered into, as well as specific shortcomings and instances of non-compliance detected in autonomous communities' linguistic models. In short, it provides detailed insight into developments in recent years and the status of the issue. Set out below is a brief outline of the diagnoses and principal shortcomings detected, as well as the recommendations aimed at the Spanish State to help it effectively fulfil the undertakings entered into with regard to education in its instrument of ratification. This will be performed in chronological order, taking into account the different monitoring cycles completed in recent years, from 2005 to date.⁴⁴

The very first Charter monitoring cycle noted shortcomings in the implementation of undertakings in the field of education in a number of autonomous communities. The first report by the Committee of Experts, dated 21 September de 2005, stated that there was a failure to comply with the objective of providing a "systematic offer of a 'full immersion' model alongside the bilingual one" in the Balearic Islands, the Community of Valencia and Galicia. It also noted shortcomings in the implementation of undertakings affecting the teaching of Basque in the Basque Country and Navarre.⁴⁵

40 The first report in respect of Spain covered 2002, to be followed by those covering 2007, 2010, 2014, 2018 and 2021. So, to date, the Committee of Experts has evaluated Spain in a total of six reports, issued on 8 April 2005, 4 April 2008, 2 December 2011, 20 March 2015, 20 March 2019 and 23 March 2021. In line with the procedure established in the Charter, they have given rise to the associated recommendations of the Committee of Ministers of the Council of Europe, issued, respectively, on 21 September 2005, 10 December 2008, 24 October 2012, 20 January 2016, 11 December 2019 and 16 June 2021. These monitoring cycles can be consulted on the following [Council of Europe web page](#).

41 The 2016 recommendations of the Committee of Ministers require of Spain that it "continue to ensure that the offer of trilingual education does not adversely affect the protection and promotion of regional or minority languages".

42 Cortier, Claude, and Cavalli, Marisa. (2013). *Langues régionales/minoritaires dans l'éducation bi-/plurilingue: langues d'ici, langues d'ailleurs*. Strasbourg: Council of Europe Publishing. Also, Nogueira López, Alba. (2012). Article 8.1. Education (I). In *Shaping language rights...* (p. 256). Strasbourg: Council of Europe Publishing.

43 All the reports of the Committee of Experts and the recommendations of the Committee of Ministers of the Council of Europe for Spain in the cycles for monitoring compliance with the ECRML can be found on the following [Council of Europe web page](#), to which we refer for all relevant purposes.

44 For a more detailed look on the evaluation of linguistic regimes with regard to education in all the ECRML monitoring cycles, up to 2021, see Pla Boix, Anna M. (2021). *En defensa del model lingüístic de l'escola a Catalunya. Reflexions per a un debat crític des del dret constitucional*, cit. *supra*, p. 189-254.

45 With regard to Basque in Navarre, see [paragraphs 329 to 335 of the report](#). And, for Basque in the Basque Country, see [paragraphs 483 to 488 of the report of the Committee of Experts](#). See also [paragraph 133 of the report](#).

As would also be the case in other monitoring cycles, some of the shortcomings in the implementation of undertakings with regard to education would result in recommendations for Spain designed to foster internal reforms. Others would give rise to recommendations aimed at ensuring a greater presence and teaching of the languages protected by the Charter in the education systems evaluated, with the suggestion of corrective measures. Indeed, the Committee of Ministers of the Council of Europe, acting on the diagnosis of the Committee of Experts, adopted recommendation RecChL (2005) 3, that the Spanish authorities “strengthen the offer of education in Basque in the Basque Country, in particular with regard to secondary education” (Point 3) and that it appropriately apply, as established in legislation, teaching of Basque in the “mixed zone” of Navarre (Point 5). Note that some of these proposed corrective measures are also aimed at protecting languages not enjoying official status. Good examples of these are provided by the objections regarding the teaching of Bable/Asturian and Galician-Asturian in Asturias, and Aragonese and Catalan in Aragon.⁴⁶

As part of the second monitoring cycle, the report of the Committee of Experts of 11 December 2008 stepped up its critical review of the various autonomous communities’ linguistic models for education. It expressly criticises how, “in most of the autonomous communities, education in the co-official language is based on a structured bilingual model” that “does not correspond to the undertakings chosen by Spain, which imply an offer also of education given essentially in the regional or minority languages”. Given this, the report recommends the implementation of “full-immersion” models in addition, where applicable, to the language models governed in their respective territories, with a view to gradually fulfilling the legally binding undertakings entered into.⁴⁷ The report makes particularly interesting reading, as it reviews the deficits and instances of non-compliance of linguistic regimes for education in all the autonomous communities that have own languages protected by the Charter and, when applicable, proposes corrective measures.⁴⁸ Measures that, incidentally, one can also find laid out in the reviews of the same linguistic regimes for education in the subsequent cycles for monitoring compliance with the Charter.

Particularly noteworthy are the observations made as part of the fourth monitoring cycle to Spain, as they are critical of trilingual models in education, which are guaranteed in some autonomous communities. A good example of this is provided by Finding H to the report of the Committee of Experts of 20 January 2016. It states that “a number of Autonomous Communities with co-official languages have introduced, or are in the process of introducing, trilingual education”. Following on from this, it stresses that “the offer of this model should not negatively affect the provision of education *in* regional or minority languages, including their promotion and support structure”.⁴⁹ Note that this finding in the report of the Committee of Experts provides the basis for an explicit recommendation from the Committee of Ministers to the Spanish government, specifically urging it to “continue to ensure that the offer of trilingual education does not adversely affect the protection and promotion of regional or minority languages”.⁵⁰

The fifth monitoring cycle once again found instances of non-compliance and shortcomings with regard to the undertakings on education. In line with the pragmatic philosophy underlying these evaluations, it once again provided new proposals for reform, formulated on a case-by-case basis. A good example is provided by the recommendations of the Committee of Ministers of the Council of Europe of 11 December 2019, which specifically urge Spain to “remove the limitations to the teaching in Galician in Galicia and Valencian/

46 For more details, see the [report of 20 January 2016](#) of the Committee of Experts, adopted in the first Charter monitoring cycle for Spain. More specifically, with regard to Bable/Asturian in the Principality of Asturias, see paragraphs 147 to 149 of the report. With regard to Galician-Asturian, see paragraphs 112 and 151 to 153, and Finding T. Similarly, with regard to Aragonese (Fabla) and Catalan in Aragon, a critical review is provided in paragraphs 113 and 154-156. With regard to Catalan in Aragon, the Committee of Experts demands that access to the teaching of this language be guaranteed. See paragraphs 155 and 156 of the report.

47 See Finding H of the [report of the Committee of Experts of 11 December 2008](#).

48 See the Report of the Committee of Experts of 11 December 2008, available online.

49 Also note that it finds that, for many regional or minority languages, there is a “lack of reports evaluating the measures taken and progress made in regional or minority language medium education”. It also finds other shortcomings, such as a lack of cooperation in the field of education between autonomous communities sharing a language protected by the Charter. For further details, see Findings G and H of the [report by the Committee of Experts of 20 January 2016](#).

50 See Finding 5 of [recommendation RecChL\(2016\)1, on the application of the Charter by Spain, of 20 January 2016](#).

Catalan in Valencia”, because they infringe Charter provisions that are binding by virtue of the instrument of ratification.⁵¹

Similarly, the March 2021 report by the Committee of Experts, part of the most recent monitoring cycle for Spain, notes further instances of non-compliance with the Charter in the Valencian education system, warning that it continues to fail to provide an adequate guarantee of the use of Valencian/Catalan as a language of instruction at the different levels of education for which undertakings have been entered into. It recommends the adoption of reforms to guarantee education “in Valencian/Catalan at all levels of education”. It also detects shortcomings in ensuring the vehicular use of Galician in education in Galicia and warns that the language model in force in the aforementioned autonomous community does not permit fulfilment of the undertakings entered into and thus urges the removal of the limitations to teaching Galician at all appropriate levels of education.⁵² Furthermore, as in previous monitoring cycles, the Committee of Experts once again critically reviews the linguistic model for languages protected by the Charter that do not enjoy official status, such as Leonese in Castile and Leon and Portuguese in Extremadura.⁵³ And for the purposes of our review, the recommendations approved by the Committee of Ministers of the Council of Europe as part of this most recent monitoring cycle of 16 June 2021 urge the Spanish authorities to correct the non-compliance and provide an account of corrective measures in the next report submitted to evaluate implementation of the undertakings, planned for August 2023.⁵⁴

3.2.2 Praise for the linguistic conjunction model for education in Catalonia

In all the Council of Europe’s monitoring cycles, the linguistic conjunction model for Catalan schools has been backed and praised by the Committee of Experts, which has described it as a paradigmatic example of respect for linguistic diversity that is particularly respectful of the values and principals underlying the Charter. No objection or amendment has been raised, something that is not the case (as we have seen) for other autonomous communities’ linguistic regimes.

A brief review of these evaluations is provided below. Nevertheless, one should note, in advance, that this explicit backing for the linguistic model for education in Catalonia has also been reflected in other scenarios, in addition to the ECRML monitoring cycle. One example of this is provided Universal Periodic Review of Spain by the UN’s Human Rights Council in 2020. In the stakeholders’ submission procedural stage, the Council of Europe praised “the Catalan Government’s commitment to a multilingual education project”. And it did so whilst also stressing that the adoption of special measures in favour of regional or minority languages, like Catalan, aimed at promoting equality between the users of these languages and the rest of the population was not considered to be an act of discrimination against the users of more widely-used languages: quite the contrary, that was is a legitimate objective protected by Article 7 ECRML.⁵⁵

This explicit backing from the Council of Europe for the linguistic conjunction model for education can be found, in different wordings, in reports for all cycles for monitoring compliance with the Charter in Spain, without exception. Indeed, it is described as a paradigmatic example for Europe. A good example of this is

51 See Finding 3 of [recommendation CM/RecChL\(2019\)7, on the application of the Charter by Spain, of 11 December 2019](#), available online.

52 With regard to the evaluation of the use of Valencian/Catalan in the education system of the Community of Valencia, see, particularly, paragraphs 41 and 42 of report of the Committee of Experts of March 2021, as well as the recommendation for immediate action contained in [Section 2.2 c](#). And, with regard to the use of Galician as a language of instruction, see, particularly, paragraphs 49 to 52 of the same report and, more specifically, recommendation for immediate action a) of [Section 3 of the report](#), available online.

53 For more on the diagnosis of and recommendations for the fields of education, see paragraphs 69 to 72 of the report.

54 Recommendation of the Committee of Ministers of the Council of Europe adopted at the [1407th meeting of 16 June 2021](#).

55 See paragraph 14 of the Summary of stakeholders submissions on Spain, of the UN Human Rights Council Working Group on the Universal Periodic Review (35th session, 20 to 31 January 2020), which states “The Council of Europe (CoE) noted that the European Charter for Regional or Minority Languages highlighted that minority languages were recognised as an expression of cultural wealth, and the adoption of special measures in favour of regional or minority languages aimed at promoting equality between the users of these languages and the rest of the population was not considered to be an act of discrimination against the users of the more widely used languages. The COE commended the Catalan Government’s commitment to a multilingual education project. Joint Submission 14 (JS14) recommended carrying out information campaigns on language rights”. For more information, see the full text of the document on the UPR of Spain for the 2015-2020 period, available on the [relevant UN web page](#).

that of the report of the Expert Committee of 21 September 2005, which appreciates how making Catalan the cornerstone of the language system for education represents the impressive reversal of a trend. It notes that it was a language that some 30 years previously had been oppressed (referring to Franco's regime), banned from official use, but one that has now become the language of instruction in education in Catalonia. It concludes that such a development is extremely rare in Europe's history and confirms the special interest of Spain in this domain.⁵⁶ The same report also confirms effective fulfilment of other Charter Article 8 undertakings, most especially the guarantee of Article 8.1, paragraphs g) and h), on guaranteeing teaching of the language and culture of which the Catalan language is an expression, and on basic and further teacher training.⁵⁷

The Committee of Experts would use similar terms in its report of 11 September 2008, within the second monitoring cycle, which states that "Catalan as the language of instruction is uniformly available throughout the territory of the Autonomous Community and at all levels of education", leading it to conclude that the undertakings of Article 8 of the charter had been fulfilled,⁵⁸ a fulfilment that would also, explicitly and unequivocally, be confirmed in the reports adopted as part of all the subsequent monitoring cycles. This is set forth in the texts of the reports of 24 October 2012,⁵⁹ 20 January 2016,⁶⁰ 20 March 2019⁶¹ and 23 March 2021,⁶² to which we refer.⁶³

3.2.3 Education in Aranese: shortcomings in the implementation of undertakings

The reform of the Statute of Autonomy of Catalonia approved in Organic Law 6/2006, of 19 July, incorporated, amongst other provisions, a declaration of the official nature of the Aranese dialect of the Occitan language in Catalonia,⁶⁴ a decision by the legislator that would have a direct impact upon the implementation of the Charter-related undertakings in Spain as, given a literal and faithful interpretation of the instrument of ratification, Aranese would thus be included in the list of languages protected by the undertakings of Part III of the Charter, including those regarding education in Article 8 ECRML. It thus bolstered the legal standing of Aranese, as confirmed by the reports of the Committee of Experts in the most recent Charter fulfilment monitoring cycles for Spain.⁶⁵

56 It literally states the following: "the Committee of Experts observes that this system points to 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" (paragraph 208 of the report of the Committee of Experts of 21 September 2005. See also Castellà J. Surribas, Santiago (2006). *Cap a un Estat plurilingüe. Una lectura en positiu del primer informe del Comitè d'Experts de la Carta europea de les llengües regionals o minoritàries, sobre el compliment per l'Estat espanyol en relació a la llengua catalana*. Barcelona: Observatori de la Llengua Catalana (p. 16).

57 Paragraphs 215 to 218 of the report of the Committee of Experts of 21 September 2005.

58 [Paragraphs 213 to 215 of the report](#). See also its paragraph 218.

59 Paragraph 259 of the third monitoring cycle report.

60 Paragraph 193 of the report of the Committee of Experts of 20 January 2016.

61 Chapter 2.2 of the report. See, particularly, [paragraph 42 of the report](#), to which we refer.

62 Note that this latest [report of the Committee of Experts, issued in 2021](#), in the midst of the COVID-19 pandemic, contains no mention of non-fulfilment of Article 8 undertakings with regard to teaching in Catalan in Catalonia. Nevertheless, in its evaluation of Catalonia, the report notes unresolved non-fulfilments on the part of the Spain: the outstanding reform of the Organic Law on the Judiciary to permit fulfilment of its Article 9 undertakings with regard to the legal status of Catalan in judicial proceedings in Catalan (see paragraph 36), and shortcomings in the use of Catalan in the state administration in Catalonia (see paragraphs 36 and 37).

63 See also the [periodic reports on the status of the Catalan language](#) published by the *Observatori de la Llengua Catalana*, in collaboration with the Xarxa CRUSCAT network of the Institute for Catalan Studies of the Government of Catalonia. These contain critical reviews of the cycles for monitoring compliance with the ECRML with regard to the Catalan Language Statute.

64 Articles 6.5 and 36 of the Statute of Autonomy. See, particularly, Law 1/2015, of 5 February, on the special system for Aran (DOGC no. 6810A, of 13 February 2015), and Law 35/2010, of 1 October, on Occitan, Aranese in Aran (DOGC no. 5745, of 29 October 2010). For more information, see Pla Boix, Anna M. (2017). Reptes de la reforma estatutària en matèria lingüística. Una revisió crítica de la STC 31/2010, de 28 de juny. In Anna M. Pla Boix (coord.), *Reptes del dret lingüístic català. Reflexions per a un debat crític*. Barcelona: Institut d'Estudis de l'Autogovern. See also Pla Boix, Anna M. (2006). La llengua al nou Estatut d'Autonomia de Catalunya. *Revista d'Estudis Autònomic i Federals* (3), 259-293.

65 More specifically, it is backed by the reports of 24 October 2012 (see paragraph 93), 20 January 2016 (Finding P), 9 October 2019 (section 2.4, paragraph 59) and 31 March 2021 (paragraph one). Note that, prior to the declaration in the Statute of the official nature of Aranese in Catalonia, the evaluations were positive, as there was fulfilment of the less ambitious undertakings entered into

These evaluations of the most recent monitoring cycles (see the reports of the Committee of Experts of 24 October 2012,⁶⁶ 20 January 2016,⁶⁷ 20 March 2019⁶⁸ and 23 March 2021)⁶⁹ note shortcomings in the implementation of undertakings entered into, including those in the field of education, and urge Spain to undertake reforms to ensure education *in Aranese* at the different levels for which undertakings have been made, as they find that this is not sufficiently guaranteed.⁷⁰

Some of these reports of the Committee of Experts, such as that of 20 January 2016, identify “shortcomings in the implementation” of ECRML Article 8.1 commitments.⁷¹ Others, such as that of 20 March 2019, state that there is a need to take “measures to ensure education in Aranese” at all educational levels for which undertakings are made in the Charter’s instrument of ratification.⁷² The 2021 report once again recommends the carrying out of reforms to guarantee education in Aranese, which still suffers from shortcomings. And, once again following the pragmatic approach underpinning these periodical evaluations, it warns shortcomings in additional financing to extend teaching in Aranese to different levels of education. It calls on the competent authorities to remedy this situation.⁷³ It is worth noting that both the shortcomings in financing Aranese normalisation policies and the advisability of legislative reforms to bolster its legal protection and thus, for Charter monitoring cycle purposes, ensure effective implementation of the undertakings entered into, are matters that have recently been the focus of debate and initiatives in the Parliament of Catalonia.⁷⁴

4 Epilogue

Despite the political and academic debates that have, for years, swirled around the linguistic model for education in Catalonia and the impact of the continuing legislative reforms and legal challenges to which it has been subject,

in Spain’s instrument of ratification. It would be after the 2006 reform of the Statute that the evaluations would detect shortcomings and instances of non-fulfilment, associated with the inclusion of Aranese in the list of languages protected by the undertakings of Part III of the Charter. With regard to the first evaluation, prior to the establishment of its official status in the Statute, see paragraphs 157 and 158 of the first report, issued on 21 September 2005. In this report, the Committee of Experts praises the model “for making provisions for the teaching of and in Aranese to a degree which goes well beyond the basic requirements embodied in the present provision of Part II of the Charter.” This praise was thus given when Aranese did not enjoy official status in the provisions of the Statute of Autonomy of 1979 and was thus only compulsorily protected by the provisions of Part II. For more details, see [paragraph 157 of the report of the Committee of Experts](#) of 21 September 2005.

66 Paragraphs 1077 and 1078 of the report. It commends the progress made in protecting the language, but, in the field of education, warns that due fulfilment of the undertakings with regard to education has not been achieved, with particular shortcomings in secondary education.

67 [Paragraphs 747 to 756 of the report](#). It notes that the different undertakings of Article 8.1 are not fulfilled with regard to Aranese at a number of educational levels.

68 Paragraph 2.4.1 of the [report of 20 March 2019](#), once again identifying non-fulfilment of the undertakings contained in Article 8 of the Charter.

69 Paragraphs 61 and 62 of this, the most recent [report of the Committee of Experts, issued in March 2021](#).

70 With regard to these proposed corrective measures, see, for example, the following recommendations in different reports of the Committee of Experts:

Paragraph 2.4 of the report of 9 October 2019

Paragraphs 61 and 62 of the report of 31 March 2021.

71 Finding P of the [report of the Committee of Experts of 20 January 2016](#).

72 Section 2.4.2 of the [report of the Committee of Experts of 20 March 2019](#).

73 [Paragraphs 61 and 62 of the report of the Committee of Experts of March 2021](#).

74 With regard to the criticisms of shortcomings in financing, see Resolution 115/XI of the Parliament of Catalonia, on the implementation of Law 35/2010, on Occitan, Aranese in Aran (BOPC no. 130 of 13 May 2016). In said Resolution, passed in 2016, the Parliament explicitly called on the Government of Catalonia to, amongst other measures, provide the General Council of Aran with resources “to carry out actions to preserve Aranese, which must be implemented with all due guarantees”. Note that it is the responsibility of the Council on Aranese Occitan Language Policy, created by resolution of the Commission of the Government of Catalonia – General Council of Aran of 17 May 2012, to foster and monitor the actions required to guarantee “adequate and sufficient financing for the language policies associated with Aranese Occitan and ensure coordination between the Government of Catalonia and the General Council of Aran in this sphere”. And, with regard to legislative proposals aimed at bolstering legal protection for Aranese, see also, by way of example, Resolution 170/IX, on support for Occitan as an official language in Catalonia (published in BOPC no. 120 of 25 July 2011, p. 8), and Resolution 115/XI, on the implementation of Law 35/2010 on Occitan, Aranese in Aran (published in BOPC no. 130, of 13 May 2016).

its foundations, laid forty years ago in Law 7/1983, of 18 April, on linguistic normalisation in Catalonia, still enjoy extremely widespread support in the Catalan Parliament. A good example of this is provided by the figures underlying the passing of the recent Law 8/2022, of 9 June, on the use and teaching of official languages in non-university education. As we know, both this Law and Decree Law 6/2022, of 30 May, establishing the criteria for formulating, approving, validating and reviewing languages projects in education centres, have recently been challenged before the constitutional courts. One can therefore foresee upcoming controls of constitutionality of this legislation, which are being processed at the same time as celebrations of the fortieth anniversary of the law that laid the foundations for the linguistic model for education, a model for managing multilingualism in Catalan classrooms that has, let it be noted, overcome a number of reviews of its constitutionality.

As far as the Council of Europe is concerned, the linguistic conjunction model in place in Catalonia's schools has been explicitly described as a paradigmatic example of respect for linguistic diversity that is especially respectful of the values and principles inspiring the ECRML. This backing is reflected in other arenas aside from the cycles for monitoring compliance with the Charter, such as the most recent Universal Periodic Review of Spain by the UN's Human Rights Council, which reflects the Council of Europe's praise for the Catalan government's implementation of its multilingual education system and emphasises the need to interpret Article 8 in light of the objectives and principles governed, for the purpose of affording protection, in Article 7 (Part II). These principles and objectives, as the Charter stipulates, must obligatorily and necessarily be guaranteed in the policies, legislation and practices of the States Parties. More particularly, these principles and objectives include the undertaking to guarantee "that the adoption of special measures in favour of regional or minority languages aimed at promoting equality between the users of these languages and the rest of the population or which take due account of their specific conditions" not be considered an act of discrimination against users of more widely used languages, a clarification that safeguards normalisation and promotion policies, in the field of education, amongst others. It thus legitimises positive policies for ensuring the vitality and future survival of the languages covered by the Charter, which, in the case of Catalonia, protects Catalan and Aranese.

To date, the ECRML has been much neglected by the case-law, despite the fact that, as an international treaty, it forms part of Spain's internal legal order and is legally binding for all purposes (Art. 96 CE). In this regard, as the Spanish Constitutional Court has stated, it is of particular hermeneutic value when interpreting the content and scope of the constitutional framework governing Catalonia's language-related issues, a constitutional framework that is open and flexible when it comes to such issues and that does not impose any particular linguistic model for education. Quite the contrary, in fact: by virtue of the powers for autonomous community statutes provided for in Article 3.2 of the Spanish Constitution, said autonomous communities are granted wide-ranging powers to design their own linguistic models, under terms that have been subject to a fair amount of constitutional case-law issued in recent decades.

This article has analysed the different cycles for monitoring compliance with the Charter in Spain, looking at the implementation of its top-tier undertakings, entered into by virtue of its instrument of ratification and with specific regard to the field of education. The Committee of Experts has confirmed, unequivocally and explicitly, that the linguistic models for education in the autonomous communities in which the co-official language is only used as a language of instruction 50% of the time, or for certain subjects, do not permit due fulfilment of the undertakings entered into by Spain. It also detects instances of non-fulfilment in those autonomous communities choosing trilingual education models and also using English as a language of instruction in the classroom. In this opinion of the Committee of Experts, these autonomous community linguistic models, do not, as seen above, permit effective fulfilment of the provisions of Article 8.1 a.i, b.i, c.i, d.i, e.i and f.i of the Charter. It has also detected shortcomings in the implementation of undertakings with regard to the status of Aranese in education. Normally, in its evaluations, the Committee of Experts has not restricted itself simply to identifying the autonomous community linguistic models with shortcomings, but, adopting the pragmatic approach underlying fulfilment of its evaluative functions, has proposed corrective measures to make good situations of non-fulfilment. So it is that a review of the different monitoring cycles provides a highly detailed snapshot of the content and scope of the undertakings entered into and helps confirm the legitimacy of Catalonia's linguistic model for education.