

EDUCATION IN A REGIONAL OR MINORITY LANGUAGE: THE CASE OF CATALAN IN SPAIN

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Abstract

Catalonia has developed a model of schooling in which Catalan is the medium of instruction and both Catalan and Spanish are compulsory subjects. In 2020, the Superior Court of Justice of Catalonia ruled that at least 25 % of teaching must be delivered in Spanish in all schools in Catalonia, raising the issue of whether this obligation conforms to the undertakings chosen by that Spain under the European Charter for Regional or Minority Languages. To clarify, we first need to answer the following question: what does “education *in* a regional or minority language” mean? This paper provides an answer to this question based on the interpretation of the Committee of Experts of the Charter, and addresses two side issues: whether education in a regional or minority language can be compulsory for all pupils, and under what scenarios would it be legitimate to enforce the use of the State’s official language in schools where a regional or minority language (RML) is the medium of instruction. A conclusion is reached that may offer guidance for future discussion on the role of the State’s official language(s) in RML-medium schools.


Keywords: European Charter for Regional or Minority Languages; Catalan language; medium of instruction.

L'EDUCACIÓ EN UNA LLENGUA REGIONAL O MINORITÀRIA: EL CAS DEL CATALÀ A ESPANYA

Resum

Catalunya ha desenvolupat un model d'escola en què el català és la llengua vehicular i tant el català com el castellà són assignatures obligatòries. El 2020 el Tribunal Superior de Justícia de Catalunya va fallar que almenys el 25 % de les classes s'havien d'impartir en castellà a totes les escoles de Catalunya, cosa que va plantejar la qüestió de si aquesta obligació s'ajusta als compromisos que Espanya ha escollit d'acord amb la Carta europea de les llengües regionals o minoritàries. Per aclarir-ho, primer hem de respondre la pregunta següent: què vol dir “educació en una llengua regional o minoritària”? En aquest article es dona una resposta a aquesta pregunta basada en la interpretació del Comitè d'Experts de la Carta i s'aborden dues qüestions complementàries: si l'educació en una llengua regional o minoritària pot ser obligatòria per a tot l'alumnat i en quines situacions seria legítim imposar l'ús de la llengua oficial de l'Estat a les escoles on una llengua regional o minoritària (LRM) és la llengua vehicular. S'arriba a una conclusió que pot servir d'orientació per a debats futurs sobre el paper de les llengües oficials de l'Estat a les escoles que tenen una LRM com a llengua vehicular.

Paraules clau: Carta europea de les llengües regionals o minoritàries; llengua catalana; llengua vehicular.

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1 Introduction

Catalonia has developed a model of schooling whereby Catalan is the “normal” medium of instruction for all pupils, and both Catalan and Spanish are compulsory subjects. In 2020, the Superior Court of Justice of Catalonia ruled that at least 25% of teaching must be delivered in Spanish in all schools in Catalonia. The goal of this paper is to evaluate whether this obligation conforms with the undertakings chosen by Spain under the European Charter for Regional or Minority Languages. In this paper, we aim to clarify this by providing an answer to the question, “What does ‘education *in* a regional or minority language’ mean?”, based on the interpretation of the Committee of Experts of the Charter across its evaluation reports, as well as the view of external experts who have dealt with the issue. In answering this question, we encounter two side issues that also require clarification: whether education in an RML can be compulsory for all pupils, and under what scenarios would it be legitimate to enforce the use of the State’s official language in schools where an RML is the medium of instruction.

2 The Catalan model of schooling

Having considered a separatist model of schooling according to the language of instruction (Catalan or Spanish), the Catalan authorities set out to develop what would later be called a “linguistic conjunction model” (Milian i Massana, 1984; 1992).¹ The first Language Normalisation Act (1983) established Catalan – Catalonia’s “own” language – as the language of education, making the teaching of both Catalan and Spanish obligatory at all levels, and prohibiting the separation of pupils into different schools for reasons of language, with the expectation that all children should be able to use both Catalan and Spanish “normally and correctly” by the end of their compulsory education. As for the language of instruction, the idea at that time was that “Catalan is used progressively as pupils’ mastery of it increases” (Webber & Strubell, 1991). The Act was later challenged before the Spanish Constitutional Court, which responded with a famous 1994 decision whereby Catalan was accepted as “the linguistic centre of gravity” of the educational system, to offset the historical imbalance between Catalan and Spanish, provided that Spanish is not “excluded” as a language of instruction.²

In a series of decrees published in 1992 a further step was taken, Catalan was declared to be “normally” used as the language for teaching and learning at all levels of non-university education.³ This proviso on the language of instruction in Catalan schools was then transferred to the Act on Language Policy (1998)⁴ and, subsequently, to the Catalan Statute of Autonomy (2006)⁵ and the Catalan Education Act (2009).⁶ In all these pieces of legislation, the other principles of the Language Normalisation Act were scrupulously maintained: obligatory teaching of Catalan and Spanish at all levels; no separation of pupils along language lines; and the expectation of proficiency in both Catalan and Spanish for all children by the end of their compulsory education (Vila, 2011; Arnau & Vila, 2013).

As mentioned by Vila and Codó (2021, p. 2), “Catalonia’s educational language policies have combined periods of relative calm with numerous episodes of tension and even conflict”. After the Constitutional Court’s decision on the Catalan Statute of Autonomy (2010),⁷ a new episode of tension arose which has lasted to the present day. The principle that Catalan is the language of normal use for teaching and learning in the education system has been challenged in court in the terms that we briefly review below (Ridao, 2021).

1 A recent comparison with other models can be found for Sorbian in Westphal (2018), and for Basque in Flors-Mas and Manterola (2021). In both the Sorbian-speaking territory of Germany and the Basque Country in Spain, education in the respective RML is not compulsory for all pupils. Ferrando et al. (forthcoming) deals with Catalonia and the Basque Country (Spain), Wales (United Kingdom), Brittany (France), and Ireland. An excerpt of this study can be accessed at <https://www.npld.eu/our-publications/>.

2 STC 337/1994, 23 December, 1994.

3 Decrees 75/1992, 95/1992, and 96/1992.

4 “Catalan shall normally be used as the vehicle of teaching and learning in non-university education” (Article 22.1).

5 “Catalan [...] is [...] the language of normal use for teaching and learning in the education system” (Article 6.1); “Catalan shall normally be used as the teaching and learning language for university and non-university education” (Article 35.1).

6 “Catalan is the language normally used as the vehicular language and the language of learning within the education system” (Article 11.1).

7 STC 31/2010, 28 June, 2010. Legal Foundation 14.

3 The court perspective: Spanish as an indispensable medium of instruction

In the past few years, the proviso that Catalan should be the “normal” medium of instruction for all pupils in Catalonia has been challenged by the courts. The judicially triggered obligation for Catalan-medium schools to deliver at least 25% of teaching time in Spanish emerges from two different sources. The first of these is a demand from concerned parents in schools across Catalonia, the original legal basis for which is found in the Constitutional Court’s decision on the Catalan Statute of Autonomy (31/2010, of 28 June). The second is a political initiative initiated by the government of former conservative Prime Minister Mariano Rajoy, based on the Spanish Education Act as amended under his mandate.

In its decision on the Catalan Statute of Autonomy, the Spanish Constitutional Court gave the go-ahead to articles 6.1 and 35.1 (see footnote 5), but ruled that this proviso may not be interpreted in a way that deprives Spanish of its alleged role as a “language for teaching and learning” as well.

Subsequently, the Spanish Supreme Court issued a number of decisions on specific cases in which parents were seeking teaching in Spanish for their children in Catalan-medium schools.

In a series of decisions issued during December 2010, for instance, the Supreme Court found the appellants in the right and ordered that the necessary measures be adopted to make Spanish a medium of instruction.⁸

In 2011, new decisions from the Supreme Court insisted that Spanish also be used as a vehicular language in the educational system of the Autonomous Community of Catalonia, hence ruling that the Catalan Government “must adopt whatever measures are necessary to adapt its teaching system to the new situation created by the declaration of Decision 31/2010 of the Constitutional Court, which also considers Spanish as the language of education in Catalonia together with Catalan”.⁹ Further decisions were issued in 2013, so far limited to the specific classes of the appellants’ children.

The Catalan Government paid no attention to these requirements, and no measures were taken to make Spanish a language of education alongside Catalan. On 30 January 2014, the Superior Court of Justice of Catalonia decided to oblige a certain school to devote a minimum of 25% of its curriculum time to teaching in Spanish on the courses of the appellants’ children, with the proviso that Spanish must be used in at least one core subject other than Spanish.¹⁰ This move was upheld by the Supreme Court in 2015 (decisions of 23 and 28 April 2015).

The history of these cases continues to this day. Speaking to a parliamentary committee on 21 November 2022, the Catalan Minister for Education disclosed that 26 classes (in 26 schools) were currently obliged – by one court decision or another – to deliver 25% of their teaching time in Spanish.

The other path to the court imposition of Spanish in Catalan-medium schools started in 2015 under the government of Mariano Rajoy’s Partido Popular (People’s Party). On 24 April 2015, the Spanish Ministry of Education, Culture and Sports filed an appeal against the Catalan Government for not regulating the normal use of Spanish as a language of instruction in application of articles 3.1, 14 and 27.1 of the Constitution and, more specifically, of additional provision 38 of the amended Spanish Education Act, which foresaw the use of Spanish as a medium of instruction in “reasonable proportion”.¹¹

Following a protracted tug-of-war between the Superior Court of Justice of Catalonia and the Catalan Government, on 16 September 2020, the Court reached a decision on the appeal filed by the Spanish Government in 2015. The Court ruled that at least 25% of teaching time must be delivered in Spanish in all schools in Catalonia, meaning that, in addition to Spanish as a subject, at least one “non-language” subject must be delivered in the State’s official language.

8 STS of 9 December, 2010; STS of 13 December, 2010; and STS of 16 December, 2010.

9 STS 2652/2011 of 11 May 2011; and STS 2773/2011 of 19 May 2011.

10 Strangely enough, the Superior Court of Justice invoked the European Court of Human Rights decision of July 23, 1968, on Belgium, as a precedent (decision to the third question). In fact, this decision relates to the teaching of Dutch in French-medium schools, not to teaching *in* Dutch.

11 Organic Act 8/2013, of 9 December, for the Improvement of the quality of education.

Subsequent to the dismissal of the Catalan Government's appeal by the Supreme Court in 2021, the main Catalan political parties, both secessionist and non-secessionist, reached an agreement to circumvent the 25% obligation. They had the devolved Catalan Parliament pass an act (8/2022) in which it was explicitly recognised that Spanish *may be* used as a "curricular" language in Catalan schools, in terms that the "linguistic project" of each individual school is expected to determine (the word "curricular" was a concession to the main right-wing secessionist party, who opposed the use of the word "vehicular" for Spanish.)¹² In parallel, the Catalan Government issued a decree-law prohibiting the use of percentages to regulate the use of languages in schools (Decree-Law 6/2022).¹³

In the face of these legislative changes, the Superior Court understood that the 25% rule for all schools was no longer enforceable and, evidently convinced that it was unconstitutional, sent the new legislation to the Spanish Constitutional Court for review. Meanwhile, the Court began to issue decisions avoiding the language of percentages which nonetheless forced certain schools to use Spanish as a medium of instruction. In a decision published in December 2022, for instance, the Court accepted the right of one pupil of a school in Barcelona to receive "one or several" core non-linguistic subjects in Spanish, without reference to a set percentage of teaching time.¹⁴

4 The European Charter for Regional or Minority Languages: what does "education in a regional or minority language" mean?

The court decisions on the obligation to deliver a minimum of 25% of teaching time in Spanish raise an issue regarding the European Charter for Regional or Minority Languages (the Charter). Is this obligation in conformity with the undertakings chosen by Spain in its ratification instrument?¹⁵ According to articles 8.1.a.i, 8.1.b.i and 8.1.c.i of the Charter, the Parties undertake to make available pre-school, primary and secondary education in the relevant RML (leaving aside articles 8.1.d.i and 8.1.e.i, which state the same principle for technical, vocational and university education). "Education in" is the most demanding option of all the subparagraphs of Article 8; what comes next in articles 8.1.a.ii, 8.1.b.ii and 8.1.cii is the less intense obligation to make available "a substantial part" of pre-school, primary and secondary education in the relevant RML.

The Explanatory Report does not clarify the meaning of the term "education in", nor does it distinguish between "education in" and "a substantial part of education in". In this paper, we try to provide clarification from three different angles. Firstly, we look at an internal document, drafted by the Secretariat in 2005, based on the first few evaluation reports adopted by the Committee of Experts of the Charter. Secondly, we take

12 Act 8/2022 on the use and learning of official languages in non-university education:

Article 2. Use and learning of official languages

1. Catalan, as Catalonia's own language, is the language normally used as the medium of instruction in the educational system, and that of normal use for the reception of newly arrived pupils. Spanish is used in the terms set by the linguistic projects of each school, in accordance with the criteria established in sections 2, 3 and 4.

2. The teaching and the curricular and educational use of Catalan and Spanish must be guaranteed and have an adequate presence in curricula and in educational projects for all students to achieve oral and written proficiency of the two official languages at the end of compulsory education.

13 Decree-Law 6/2022 which establishes the criteria applicable to the preparation, approval, validation and revision of the linguistic projects of schools:

Article 2. Basic criteria and objectives

The organization of teaching and the use of languages in public schools and schools supported by public funds is based on the following basic criteria and objectives:

d) The non-application of numerical parameters, proportions or percentages in the teaching and use of languages.

14 The court rejected the argument that physical education is a suitable subject to be delivered in Spanish. This is the state of affairs as of December 2022; later developments are not taken into account in this paper. Notwithstanding, the end of this story – whatever it may be – is relatively independent from the issue we address in this paper, i.e., the true meaning of "education in a regional or minority language".

15 The full text of the Charter and its Explanatory Report can be accessed at the [Charter's website](#). The same goes for the ratification instrument deposited by Spain on 9 April 2001, and published in the *Boletín Oficial del Estado* (Spanish Official Gazette) on 15 September 2001 (in Spanish) and 1 October 2001 (in Catalan).

the opinion of outside experts into account. Thirdly, to flesh out the conclusion that emerges from these two sources, we look at evaluation reports on Spain. Spain has ratified articles 8.1.a.i, 8.1.b.i and 8.1.c.i, and in the future the Committee may have to decide on the compatibility of the 25% demand with these undertakings. In a nutshell, the issue to be clarified is whether “education in” means that the RML must be the normal medium of instruction for the undertakings to be fulfilled, or whether there is room for some compulsory teaching *in* the official language(s) of the State in RML-medium schools.

4.1 The interpretation of the Committee of Experts in its first reports

In March 2005, the Secretariat of the Charter prepared a document intended to set the interpretation of Article 8 according to the Committee of Experts’ first evaluation reports (from 2001 to 2005, not yet including any report on Spain).¹⁶ In this paper, we will examine the interpretation of “regional or minority languages as the language of instruction” (articles 8.1.a.i, 8.1.b.i and 8.1.c.i), leaving aside the remaining subparagraphs of Article 8.

Prior to reading this document, a word of caution is needed. In the summary, the Secretariat states that “judging by the ComEx’s reports, this option [education in] does not necessarily mean that the RML is the exclusive language of instruction. In general, the undertaking is fulfilled if the amount of mother tongue instruction exceeds 50%”. If we pay attention to the body of the document, however, things look quite different.

On pre-school education (8.1.a.i), the Secretariat states that “one can assume that the ComEx interprets this undertaking in a way that 100% (or close to it) of mother tongue (*sic*) instruction at pre-school level is required”. The first UK report is used as an example, which states that “pre-school education is available to all children through the medium of Welsh” (paragraphs 101–103).

On primary education (8.1.b.i), the Secretariat states that “one can assume that the ComEx takes the same approach to RML as the language of instruction at primary school level as the above one” (that is, that 100% [or close to it] of RML instruction is required).

The Secretariat spots an internal inconsistency here. In the first Finnish evaluation report (see para. 135), the Committee concluded that the undertaking under 8.1.b.i was fulfilled for North Sami, even though only “many” courses are taught in North Sami.

Closer examination of this document reveals a greater problem than the blatant inconsistency of the first report on Finland, however, and this concerns the first evaluation report on the UK (2003).

In this report, the Committee adopted the terms of the State Report and distinguished Welsh-medium provision – whereby Welsh is “the sole or main medium of instruction” – from bilingual provision, where Welsh-medium provision is used for part of the curriculum (para. 104).

The Secretariat queries the meaning of “main” (as opposed to “sole”): “It is not specified what ‘main’ means, but it is certain to be over 60% or 70%, since it is distinguished from bilingual schools where Welsh-medium provision is used for ‘part of the curriculum’” (see para. 104). In saying this, the Secretariat appears not to appreciate that “over 60% or 70%” and “100% (or close to it)” are two different parameters and, above all, that the Committee might be slipping between the two.

Regarding primary education in Welsh, the Committee reached this astonishing conclusion:

107. The Committee of Experts has not sufficient information to assess the availability of Welsh-medium and bilingual primary education in this perspective. It considers the undertaking fulfilled in most cases, but cannot rule out the possibility that there are areas where it is not fulfilled. The Committee of Experts asks the authorities to elaborate on this in their next report.

If we consider the “most cases” part of this paragraph, it seems that the Committee was content with the fact that, in the UK context, “education in Welsh” covers two different realities: schools with Welsh as the

¹⁶ All evaluation reports drafted by the Committee of Experts of the Charter can be accessed at the Charter’s website (see previous footnote).

sole medium of instruction, and schools with Welsh as the main medium of instruction. According to the Committee, then, the undertaking under 8.1.b.i might be fulfilled in schools where Welsh is *not* the “sole” but merely the “main” medium of instruction.

For secondary education (8.1.c.i), the Secretariat makes no general statement regarding percentages. Given that the wording in 8.1.c.i is the same as in 8.1.b.i, we can assume that the Committee was taking the same approach to the RML as the language of instruction at secondary school level as that expressed above (that is, that 100% [or thereabouts] of RML instruction is required).

In this connection, the Secretariat does remark upon a couple of dubious conclusions in the evaluation report on the UK and Finland, regarding Scottish Gaelic and the Sami languages respectively. The Committee considered that the undertaking was “partly fulfilled”, even though Gaelic-medium teaching was offered only in “some subjects” (para. 208); and that Sami was used in “only some courses in certain schools” (para. 136).

By way of conclusion, in view of the Committee’s first evaluation reports as processed by the Secretariat, notwithstanding the Committee’s inconsistencies, we can say that the undertakings under 8.1.a.i, 8.1.b.i and 8.1.c.i are fulfilled if the amount of instruction in the relevant RML is 100% (or thereabouts).

4.2 The interpretation of external experts

In the previous section, we reviewed the Committee of Experts’ doctrine on Article 8, arising from the first few evaluation reports, as processed by the Secretariat in a 2005 document. Around the same time, Jean-Marie Woehrling (2005) reached similar conclusions in his well-known commentary on the Charter (again, not yet using reports on Spain).

According to Woehrling (2005:146), the Charter envisages two possibilities for pre-school education:

- pre-school education organised in the regional or minority language, hence entirely in that language [8.1.a.i];
- pre-school education organised substantially in an RML, hence partly in that language and partly in the official language [8.1.a.ii].

Commenting on sub-paragraph 8.1.a.iii, according to which a State may apply 8.1.a.i or 8.1.a.ii –for pupils whose families want it, at least – Woehrling (2005:148) considered that the Charter distinguishes between two possibilities: “pre-school education for all in the regional or minority language” and “pre-school education in a regional or minority language for the children of families who want it”. He goes on to claim :

The fact that education in the regional or minority language is a general provision does not mean that no exception can be made if parents wish. It does, however, mean that unless parents make a special request, children’s education will be in the regional or minority language.

With respect to primary education, according to Woehrling (2005, p. 150), the Charter offers three possibilities:

- primary education in the regional or minority language (Article 8.1.b.i), whereby all teaching is in the regional or minority language and the teaching of other languages as part of the curriculum is not precluded;
- primary education provided substantially in the regional or minority language (Article 8.1.b.ii), although, as already indicated for pre-school education, this “substantial” aspect cannot be regarded as being met if teaching in the language does not take up a large proportion of the timetable (a “substantial” part should in principle be no less than half the total teaching time);
- primary education in which teaching of the regional or minority language is an integral part of the curriculum (Article 8.1.b.iii), and whereby the regional or minority language is only one of the subjects taught.

As he did for pre-school, Woehrling considered that the Charter provides two alternatives for primary level measures: “either applying the measures to all pupils; or applying them only to pupils whose parents want such teaching and who are judged to be sufficiently numerous”. Woehrling believed that the first alternative “is quite frequent in school systems where the language is treated as a school subject (Article 8.1.b.iii): the school system uses an official language but the ‘regional or minority language’ is one of the subjects in the curriculum”. The application of measures to all pupils “is less frequent where instruction is carried on either wholly or substantially in a regional or minority language (Article 8.1.b.i and 8.1.b.ii)” – which is not to say that it is impossible. In any case, Woehrling remarked that “acquisition of the [State’s] official language should not be endangered by this form of education”.

As for secondary and technical or vocational education, Woehrling (2005:153) pointed out that the Charter offers the same alternatives as for primary education:

- education entirely in the RML except for the teaching of other languages (articles 8.1.c.i and 8.1.d.i);
- education in which a substantial proportion of the lessons are given in the RML, that is, bilingual education shared in a balanced manner between the RML and an official language (articles 8.1.c.ii and 8.1.d.ii);
- education including lessons in the RML as an integral part of the curriculum (articles 8.1.c.iii and 8.1.d.iii).

To use Woehrling’s words, the conclusion here is clear: “education in a regional or minority language” means that “all teaching is *in* the regional or minority language except for the teaching *of* other languages”, especially the official language (Woehrling, 2005, p. 150, author’s italics).

4.3 The interpretation of the Committee’s evaluation in its reports on Spain

Neither the Secretariat of the Charter nor Woehrling were able to use any of the evaluation reports on Spain in their considerations on Article 8 of the Charter. If we examine those reports, we will quickly realise that the Committee’s assessments regarding the Catalan language match the predictable conclusion that “education in” means “all teaching in” (Nogueira Lopez, 2012, 2018; Ramallo, 2022).

In its first evaluation report on Spain (2005), the Committee considered that articles 8.1.a.i, 8.1.b.i and 8.1.c.i were fulfilled in Catalonia, but not in the Balearic Islands.

In the case of Catalonia, the Committee understood that “the default educational model in Catalonia provides for the teaching of Catalan and Castilian on an equal basis [...], the rest of the curriculum being normally taught in Catalan” (para. 206). Its only concern was whether this educational model, wherein Catalan is “essentially” the language of instruction, was uniformly available throughout the territory of the Autonomous Community and at all levels of education (para. 209).

In the case of the Balearic Islands, the Committee stated that “the current educational model [according to which, Catalan should not exceed half of the total number of teaching hours] does not attain the level required by the specific undertakings entered into by Spain, which imply the offer of instruction essentially in Catalan in the Balearic Islands and not limited to half of the curriculum”, and hence considered the undertaking not fulfilled (para. 624).

As for Valencia, the Committee identified three models:

- teaching in Valencian, whereby Valencian is the vehicular language for a number of subjects but the teaching of Castilian is compulsory and Castilian is also the language of instruction for a number of other subjects;
- full immersion, whereby Valencian is the medium of instruction and Castilian is introduced progressively from the third year of primary school (should a Castilian-speaking family wish to enrol its child in this programme, special permission from the director will be necessary), not available at secondary school;

- progressive incorporation, whereby Castilian is the vehicular language for a number of subjects but the teaching of Valencian is compulsory and Valencian is also the language of instruction for certain other subjects.

The Committee considered that, apart from the “full immersion” model in the first two years of primary school (the availability of which throughout the region was unclear), “none of the other models attains the level which is required by the specific undertakings entered into by Spain” (para. 744). According to this observation, the Committee concluded that the undertakings were “partly fulfilled”.

In its second report on Spain (2008), the same evaluations remained. In the case of Catalonia, the Committee of Experts understood that Catalan as a language of instruction was “uniformly available throughout the territory of the Autonomous Community and at all levels of education” (para. 219).

Some changes in the evaluation of the Balearic Islands emerged in the third evaluation report on Spain (2011). A change in the regional government brought about a change in legislation. Decrees 71/2008 (pre-school), 72/2008 (primary), and 73/2008 (secondary education) established that “the Catalan language, specific to the Balearic Islands, shall be used as the language for teaching, learning and communication”. The issue then was the degree of compliance with these decrees. The Committee reported that “according to the representatives of the speakers, most schools comply with Decree 71/2008” for pre-school education. For primary and secondary schools, the judgment was less clear (para. 632), which led the Committee to conclude that Article 8.1.a.i was now fulfilled and articles 8.1.b.i and 8.1.c.i partly fulfilled.

In the fourth evaluation report on Spain (2015), the evaluation remained the same for Catalan in Catalonia while, once again, things changed in the evaluation of the Balearic Islands. A new government in office brought about the implementation of a trilingual model in 2013–2014, beginning in the first year of the second cycle of pre-school education (children aged 3 years); in the first, third and fifth years of primary education; and in the first year of compulsory secondary education. Now the Committee considered 8.1.a.i also “partly fulfilled”.

In the fifth evaluation report on Spain (2019), the evaluation remained the same for Catalan in Catalonia. The Committee was concerned that the reformed Spanish Education Act might put Spain’s undertakings for Catalan at risk (Organic Act 8/2013 on the improvement of the quality of education). According to the Committee, this new law “challenges the Catalan model by reiterating the right to receive the teaching of non-linguistic subjects in Castilian only. The implementation of this law hampers the system of ‘linguistic conjunction’ and immersion” (para. 42).

In this fifth evaluation report, the evaluation unexpectedly improved for the Balearic Islands and, predictably, worsened for Valencia. In the former case, the trilingual model had been abandoned and schools had reverted to the law according to which Catalan should not exceed half the total number of teaching hours. Now the Committee concluded that 8.1.a.i, 8.1.b.i and 8.1.c.i were fulfilled on this flimsy basis (para. 41): “although, according to the law, Catalan is used only 50% in schools, in practice this can be overruled by an agreement between parents and schools which can result in the use of Catalan only”.

As for Valencia, a new law on plurilingual education had come into force. It established that a minimum of 25% of teaching must be in Valencian/Catalan, up to a maximum of 60%, with a further minimum of 25% of the teaching in Spanish and at least 15% in English. The Committee aptly considered that “the Law on plurilingual education of 2018 is not in conformity with the ratification instrument since it makes, *inter alia*, immersion programme models impossible” (para. 49), hence changing its evaluation from “partly fulfilled” to “not fulfilled”.

Thus far, the conclusion seems clear: according to the evaluation reports on Spain, entirely Catalan-medium schools must be available for the relevant undertakings for Catalan to be fulfilled. This has been the case for Catalonia in the Charter was ratified by Spain and, according to the Committee’s bizarre interpretation, the case for the Balearic Islands since the fifth evaluation report. It is *not*, however, the case for the current model in Valencia, which sets a maximum of 60% of teaching in Valencian/Catalan.¹⁷

17 Should the evaluation reports on Spain seem insufficiently clear, a look at other, more recent reports may be instructive, for instance, the third evaluation report on Poland (2021): “25. Poland has undertaken to make available pre-school, primary and secondary education in the regional or minority languages (Article 8.1.ai, bi, ci). This implies the provision of education with the

5 Loose ends

In the previous section, we concluded that education in an RML means that schools where the relevant RML is the medium of instruction must be made available; we have shown that this has been the case for Catalan in Catalonia since Spain ratified the Charter. Now it is time to attend to the loose ends that we spotted on the way. The first of these concerns the compulsory or voluntary character of education in the RML; the second concerns the possibility of having the State's official language as a medium of instruction in schools where education is provided in the RML.

5.1 The compulsory status of education in a regional or minority language

The issue to be clarified here is whether education in an RML as outlined in articles 8.1.a.i, 8.1.b.i and 8.1.c.i can be made compulsory for all pupils or should be restricted to pupils (or their parents) who want this type of education.

As we mentioned earlier, Woehrling (2005) considered that the Charter provides two alternatives for pre-school, primary, secondary, and technical and vocational education measures: "either applying the measures to all pupils; or applying them only to pupils whose parents want such teaching and who are judged to be sufficiently numerous". Commenting on primary education, he admitted that the application of measures to all pupils "is less frequent where instruction is carried on either wholly or substantially in an RML" (articles 8.1.b.i and 8.1.b.ii), but "less frequent" is obviously different from "not permitted". Now the truth is that not everyone agrees with Woehrling on this point. There has been some discussion – also within the Committee of Experts – as to whether the Charter allows or rules out that provisions such as 8.1.b.i be applied to all pupils (in other words, that education in a regional or minority language be compulsory).

The main advocate of the "rule out" position is Alberto López Basaguren, a Basque scholar who served on the Committee of Experts from 2006 to 2013 and whose personal views coloured the second and third evaluation reports on Spain.

Commenting on the first evaluation report on Spain, López Basaguren (2010:128) fully agreed with the view on "education in" that both the Committee of Experts and Woehrling subscribe to:

Spain's compliance with its obligation to provide pupils with an education system in the regional language, in the linguistic territories to which Part III of the Charter is applicable, has been satisfactory in Catalonia, the Basque Country and Navarra's Basque-speaking area. It is problematical in the Valencian Community, the Balearic Islands and Galicia. [...] The language is incorporated, even compulsorily, as a teaching language, but only partly, as the system does not guarantee the possibility of receiving all education in the regional language – only in the official language of the state. This is the area which is at variance with the commitment entered into by Spain on ratifying the Charter.

However, López Basaguren strongly disagreed with the idea that "receiving all education in the regional language" should be turned into an obligation for all pupils (2010, p. 129):

The paradox in Spain is that, in the communities in question, the commitment set out in the Instrument of Ratification is being infringed because complete education – or the majority of it – is not guaranteed in the regional or minority language; yet the authorities go much further than the requirements of the Charter in making it compulsory for all pupils, regardless of their wishes, to study in the regional language – which is used as a teaching language; this is alien to any of the provisions geared to protecting and promoting regional or minority languages.

According to López Basaguren (2011, p. 129), in the second evaluation report on Spain, the Committee specified that the availability of education in the regional language is mandatory only for those who voluntarily want it, "because the Charter does not require such education to be imposed on anyone who does not opt for it".

regional or minority language as the language of instruction." In this connection, the undertakings under articles 8.1.a.i, 8.1.b.i and 8.1.c.i were evaluated as "not fulfilled" for most languages (all of them except Lithuanian). The case of Kashub (para. 70) provides a useful illustration: "Kashub is taught at pre-school, primary and secondary school levels. The existing offer, however, does not meet the requirements of the undertakings ratified for these education levels, which are to use Kashub as the medium of instruction".

Regarding the specific case of Catalan in Catalonia, López Basaguren quoted the Committee statement that in all likelihood he helped to draft:

218. The Committee of Experts understands these undertakings [8.1.a.i, 8.1.b.i and 8.1.c.i] to mean that education in Catalan shall be made available in the territories where Catalan is used. The Charter does not demand compulsory education in Catalan for all pupils, only that it shall be made available so that all pupils will receive education in Catalan if parents so wish.

In the “Findings” section of this second evaluation report (para. H), this principle was applied to all RMLs: “a system based on education essentially in the language is supposed to be available to those who request it but not compulsory for all children”.

In the third evaluation report on Spain (2012), we can keep track of López Basaguren’s stand on this issue (para. 39):

[...] the Committee of Experts reiterates its viewpoint that the relevant undertakings do not necessarily imply that this type of education [in the regional or minority language] is compulsory for all pupils, nor that 100% of all subjects need to be in that language.

For the specific case of Catalan in Catalonia, in its third evaluation report the Committee embraced an interpretation that was not really matched by reality (para. 257):

The Committee of Experts understands this decision [Constitutional Court decision 31/2010] to mean that the education in Catalonia in Catalan is offered and available and that parents are free to decide whether they want their children to take advantage of that offer or instead to have their children educated in Castilian only: education is therefore not to be offered only in Catalan in a compulsory manner for all pupils, but Castilian can also be used as language of teaching. The Committee of Experts finds that this interpretation is not contrary to the obligations assumed by Spain under Article 8 paragraph 1.i) of the Charter.

López Basaguren is right on one score: articles 8.1.a.i, 8.1.b.i and 8.1.c.i of the Charter do not *require* that education be delivered in the relevant RML for all pupils. But, as Woehrling (2005) hinted at in his analysis of Article 8, the Charter does not really preclude it either. In the words of Nogueira López (2012, p. 192), the higher level of undertaking to education in the RMLs “need not be mandatory for all students”, where “need not be” is certainly different from “cannot be”.

When López Basaguren left office, there was an unstated shift in the Committee’s doctrine. In subsequent evaluation reports on Spain, no further mention (nor reproval) is made of the fact that education in Catalan is compulsory for all pupils.

To paraphrase Woehrling (2005, p. 147), we could say that authorities may wish to offer both education in an RML *and* bilingual schooling of some kind, but they are not forced to do so by the Charter.

5.2 The case for the State’s official language as a medium of instruction

The issue to be clarified here is whether articles 8.1.a.i, 8.1.b.i and 8.1.c.i totally exclude the use of the State’s official language as a medium of instruction in schools where the medium of instruction is an RML. In the following discussion, we leave aside the teaching of the State’s official language – as well as the teaching of foreign languages – and concentrate on the teaching time devoted to non-linguistic subjects.

In previous sections, we concluded that “education in” an RML means that all subjects are delivered in this language. According to the formula used in several evaluation reports, this could be phrased as “every subject, apart from the state’s official language, is taught through the medium of the regional or minority language”.

Yet there are a number of cracks in this argument. The first of these we have already seen in section 4: in its 2005 document, the Secretariat of the Charter claimed that education in an RML means “100% or thereabouts” of instruction in such language. We also encountered the UK reports, and in particular the first evaluation report on the UK in 2003, wherein the use of the expression “sole or main medium of instruction” poses a

serious problem for a 100%-based definition of “education in”. A variant of this UK problem is the use of the adverb “essentially” instead of “entirely” in the first three evaluation reports on Spain.

Let us look at the UK reports first. In the first evaluation report, the Committee reached no conclusion on Article 8.1.b.i (para. 107):

The Committee of Experts has not sufficient information to assess the availability of Welsh-medium and bilingual primary education in this perspective. It considers the undertaking fulfilled in most cases, but cannot rule out the possibility that there are areas where it is not fulfilled. The Committee of Experts asks the authorities to elaborate on this in their next report.

In the second evaluation report (2006), the Committee considered that 8.1.b.i (and 8.1.c.i) were now only “partly fulfilled”. The “partly” was not due to the “main” vs. “sole” issue, but because of unmet demand for Welsh-medium education (whatever this meant). Following up on this evaluation, the Committee encouraged the authorities to increase their efforts to make available primary Welsh-medium education to meet the demand.

In the third evaluation report (2009), the Committee followed the same line. After considering the number of schools in which Welsh is the “sole/main medium of instruction”, it maintained the conclusion from the second evaluation report, and on the same grounds. And in the fourth evaluation report (2013), the Committee deemed that 8.1.b.i and 8.1.c.i were “partly fulfilled”, not because of the “main” vs “sole” issue, but because of unmet demand for Welsh-medium education.

In the fifth evaluation report (2018), the latest report so far, the Committee maintained its “partly fulfilled” evaluation on the usual grounds (para. 18):

Welsh-medium education has been considered patchy or absent in some counties of Wales. Local authorities are reluctant to meet demand for teaching in Welsh at primary and secondary level.

The conclusion here appears to be that the Committee of Experts is content with the fact that in at least some Welsh-medium schools, Welsh may be the main, rather than the sole medium of instruction. In other words, the Committee seems to be content with the fact that Welsh may be used for less than 100% of teaching time (leaving aside the teaching of the State’s official language and foreign languages).

In recent times, there have been a number of changes in Welsh-medium education that have not yet been evaluated by the Committee of Experts. According to the *Guidance on school categories according to Welsh-medium provision* (2021):

[...] learners undergoing immersion learning are taught fully in Welsh up to and including the school year in which the majority of learners turn 7. After that, we introduce English as a subject, and to varying degrees as a medium of instruction although Welsh remains the predominant language of the classroom.

This “predominant” is defined in *Primary school categorisation guidance: Information for parents and carers* (2021):

All lessons will be in Welsh, until children are seven years old, and teachers will use some English to make sure children understand everything [...] Children will start English lessons when they’re aged seven, and from then onwards, at least 80% of your child’s activities (both inside and outside the classroom) will be in Welsh.¹⁸

The question to be asked here (and for the Committee to answer in its next evaluation report) is whether the application of articles 8.1.a.i, 8.1.b.i and 8.1.c.i to Welsh is compatible with the use of English “as a medium of instruction to varying degrees” as envisaged by the *Guidance* document.

18 The same might be said of Scottish Gaelic. According to the Information Document on the implementation of the Recommendations for Immediate Action, based on the fifth monitoring cycle submitted by the UK in 2021 (para. 147): “GME [Gaelic Education in Scotland] from nursery to the end of primary school is a form of immersion education. With this form of education, Gaelic is the sole language of learning, teaching and assessment in the first three years of primary school. From P4 to P7, immersion education will continue, but at this stage, GME will introduce English. From P4 onwards, following the introduction of English, Gaelic should remain the predominant language of the classroom”.

This sole/main issue from the evaluation report on the UK connects with the “essentially” (as opposed to “entirely”) that we found in the first, second and third evaluation reports on Spain, and the “wholly or essentially” in the third evaluation report regarding education in Galician.¹⁹ As quoted above, in the third evaluation report (2012), the Committee went so far as to claim that education in an RML does not mean “that 100% of all subjects need to be in that language” (para. 39).

We would argue that the use of “essentially” instead of “entirely” might be a case of inconsistency on the part of the Committee.

To begin with, witness the first evaluation report on Spain. In paragraph 206, the Committee defines the default educational model of Catalonia as one in which, aside from the teaching of Spanish, “the rest of the curriculum” is normally taught in Catalan. Three paragraphs later, the Committee calls it “the educational model wherein Catalan is essentially [not *entirely*] the language of instruction”.

One possible way out of this would be to claim that “entirely in” and “essentially in” refer to the same state of affairs seen from different perspectives: “entirely in” could refer to “the rest of the curriculum” (the total of teaching hours *minus* the teaching of the State’s official language) whereas “essentially in” could refer to the whole curriculum (the total amount of teaching hours, including the teaching of the State’s official language).

But such a move might not be necessary. Having used “essentially” in the first, second and third evaluation reports on Spain, in the third report the Committee points out that “in Palma [Balearic Islands] there are no *entirely* Catalan-medium schools. *Entirely* Catalan-medium education is more widespread in pre-school and primary schools, and in some rural areas” (para. 632, author’s italics). In the fourth and fifth reports, the word “essentially” disappears, and in the fifth report, the Committee uses the adverb “only” when dealing with Catalan-medium schools in the Balearic Islands (para. 41):

Although, according to the law, Catalan is used only 50% of the time in schools, in practice this can be overruled by an agreement between parents and schools which can result in the use of Catalan only.

Given the disappearance of the adverb “essentially” from the evaluation reports on Spain, we could close this discussion by claiming that the *current* Committee doctrine is not in contradiction with the 100%-based interpretation of “education in”, if the 100% refers to “the rest of the curriculum”, leaving aside teaching of the State’s official language (and foreign languages).

But in fact the discussion cannot be brought to a close quite so neatly. Aside from the pending assessment of the use of English “as a medium of instruction to varying degrees” in Welsh-medium schools, a further point remains: is there any scenario in which the use of Spanish as a medium of instruction in Catalan-medium schools could be made mandatory? In our view, two such scenarios are imaginable. The first of these is a serious scenario that stems from the Explanatory Report to the Charter, whereas the second is a speculation put forward in Woehrling (2005).

Let us begin by looking at the first scenario and bearing in mind that the Preamble of the Charter states that “the protection and encouragement of regional or minority languages should not be to the detriment of the [State’s] official languages and the need to learn them”.

Given this recognition that, in every State, it is necessary to know the State’s official language (or at least one of the State’s official languages), the Explanatory Report remarks that “none of the charter’s provisions should be interpreted as intending to raise obstacles to the knowledge of official languages”.

When assessing education provided entirely in a particular RML, then, the pertinent question is this: does this type of education raise obstacles to the acquisition of knowledge of the State’s official language? If so, it would be possible to conclude that education in the RML is indeed to the detriment of the State’s official language and the need to learn it, which could justify strengthening the teaching *of* the State’s official language with some teaching *in* the official language.

19 Outside experts have occasionally used adverbs like “primarily” (Nogueira Lopez, 2012, p. 192).

In the case of Catalan in Catalonia, the available evidence suggests that education in Catalan does not raise obstacles to the acquisition of knowledge of the State's official language *in general* (Vila et al., 2021). However, in our view, the reasoning behind the new Act 8/2022 on the use and learning of the official languages in non-university education is that obstacles may exist in some schools.²⁰ For the pupils of these schools to achieve full competence in both Catalan and Spanish, some teaching *in* Spanish should perhaps be not only permissible but mandatory to a certain degree.

Regarding Article 8 on education, the Explanatory Report introduces a more concrete restriction (para. 80):

The phrase “and without prejudice to the teaching of the official language(s) of the State” is intended to avert any possibility of interpreting the provisions of Article 8, paragraph 1 – and in particular the first option in each of sub-paragraphs a to f – as excluding the teaching of the language(s) spoken by the majority. Such a tendency to form linguistic ghettos would be contrary to the principles of interculturalism and multilingualism underlined in the preamble and inimical to the interests of the population groups concerned.

The Explanatory Report does not argue that the State's official language must be a medium of instruction. It merely states that the teaching of the language spoken by the majority (i.e., the State's official language) cannot be excluded. This is not an issue in Spain in general and certainly not in Catalonia, where this principle has been consistently respected in Catalan schools, from the first Language Normalisation Act (3/1983) through to the new Act on the use and learning of the State's official languages in non-university education (8/2022).²¹

The second scenario stems from Woehrling's analysis of Article 8 of the Charter. According to Woehrling (2005, p. 148):

The fact that education in the regional or minority language is a general provision does not mean that no exception can be made if parents wish. It does, however, mean that unless parents make a special request, children's education will be in the regional or minority language.

If we were to take this thought into account when assessing education provided entirely in a particular RML, the pertinent question would now be this: are parents making “special requests” to obtain exceptions to the rule that education is provided in the RML? Neither the Explanatory Report to the Charter nor the Committee's evaluation reports help us to answer this question. The text of the Charter and the Committee's ER deal with wishes, but only the wishes of people who use RMLs – not the wishes of people who use the State's official language within the territories in which RMLs are traditionally used. If parents were to make a particularly strong request for some teaching in the State's official language in otherwise Catalan-medium schools, authorities should respond to this. This second scenario is more complex than the first. How strong does a special request by parents for a Catalan-medium school to use Spanish as a medium of instruction need to be? In other words, how strong is the demand for this kind of education?

Within the pro-Catalan milieu, it tends to be taken for granted that opposition to compulsory Catalan-medium education is residual and can be ignored. The typical argument is to count cases and celebrate how few they are. To illustrate this, we may recall the appearance of the Catalan Minister for Education before a parliamentary committee on 21 November 2022. An MP asked the Minister how many schools were obliged to deliver 25% of their teaching time in Spanish. The Minister disclosed that there were 26 such classes (in 26 schools);

20 In support of this view, two observations warrant a mention. Firstly, the Act itself links the likely role of Spanish as a vehicular language to the need “for all students to achieve oral and written proficiency in the two official languages”. Secondly, the Catalan Ministry of Education explicitly made this connection in a strategy document published in 2018 (*The language model of the Catalan education system*, p. 32). For settings where Spanish is not the majority language of pupils and does not have a significant social presence, the document suggested the following: “If the number of language exposure hours were insufficient to achieve the same level of Catalan and Spanish upon completing education, the school will have to decide, in its language programme, to incorporate *curricular content blocks in Spanish* and plan activities to enhance students speaking skills” (author's italics).

21 Notwithstanding, we might still ask whether it is necessary for the State's official language to be taught at *every* level. According to Woehrling's position in section 3, this principle is valid for the education system as a whole and not for every single level. In more empirical terms, we know that, in Welsh-medium schools, the teaching of English is absent in the first years of primary school, and this does not seem to perturb the Committee of Experts when it comes to evaluating the compliance of the Welsh educational system with Article 8 of the Charter.

immediately afterwards, he reminded his audience of the fact that “we have 3,500 schools across the country”. Survey data offer another picture, however. An official source such as the *Enquesta metodològica i d’actituds sociopolítiques 2021* (Methodological survey and sociopolitical attitudes 2021), published in February 2022, shows that 1 in 4 respondents disagreed with the current model of linguistic immersion in schools. The opposition was greater among Spanish-speaking respondents: more than one third rejected the current model. Other, non-official surveys show even less support for compulsory Catalan-medium education.²²

The extent of this opposition is highly relevant for policymakers in Catalonia and Spain, but we must omit it from the present discussion. As a rule, it is not for the Committee of Experts to measure opposition to Charter measures or justify the non-compliance with the Charter on the grounds that such opposition exists.

6 Concluding remarks

In this paper, our main concern was to establish whether the obligation to use Spanish as a medium of instruction in Catalan-medium schools complied with the undertakings chosen by Spain for Catalan in its ratification of the European Charter for Regional and Minority Languages. To resolve this issue, we attempted to answer a previous, more general question, regarding articles 8.1.a.i, 8.1.b.i and 8.1.c.i of the Charter: what does “education in a regional or minority language” mean? Using the evaluation reports adopted by the Committee of Experts (particularly those on Spain), together with the view of a highly qualified external expert such as Jean-Marie Woehrling, we have established that “education in a regional or minority language” means that the whole curriculum, except teaching of the State’s official language and any foreign languages, is taught in the RML. *Prima facie*, then, the obligation to teach a percentage of the curriculum in Spanish in Catalan-medium schools runs against the undertakings chosen by Spain for Catalan under Article 8 of the Charter. A scenario in which *all* schools were obliged to deliver a percentage of their teaching time in the State’s official language would mean that “education in Catalan” as envisaged by the Charter was no longer available. As stated by the Committee in its fifth evaluation report on Spain, with regard to the Valencian Plurilingual Education Act, the obligation for all schools to use Spanish as a language of instruction “is not in conformity with the ratification instrument since it makes, *inter alia*, immersion programme models impossible”.

The Charter demands that the State’s official language be taught in schools where an RML is the medium of instruction, but it does not demand that the State’s official language be used as a medium of instruction in such schools. Only two scenarios could justify the mandatory use of the State’s official language as a medium of instruction in schools where an RML is the medium of instruction. The first scenario derives from the Charter: such use would be legitimate if pupils did not achieve equal fluency and literacy in both the RML *and* the State’s official language. The second stems from a comment in Woehrling (2005) that is not literally grounded in the Charter: the use of the State’s official language as a language of instruction in otherwise Catalan-medium schools would be a response to significant demand from parents for such education.

In the case of Catalan, the first scenario does not apply, if we rely on official sources as to the level of Spanish attained by Catalan pupils at the end of primary and compulsory secondary education, respectively. With respect to the second scenario, though generally assumed not to apply either, in fact a number of doubts can be cast on the standard assumption. Surveys – even official ones – show that not everyone agrees with the current linguistic model of Catalan schools. And the fact is that, in some Catalan-medium schools, there *are* parents that request education in Spanish for their children. Growing opposition to the current linguistic model of Catalan schools would pose a problem for the application of the Charter and its evaluation, especially if it came mainly from the users of the State’s official language. To what extent are the users of the State’s official language entitled to water down Charter measures for the sake of *their* needs and wishes as opposed to the needs and wishes of the users of RMLs?²³

22 According to Santana, Rama and Olivás (2021), respondents in one survey said they would prefer the following breakdown of teaching time: 48% Catalan, 26% Spanish, 19% English, and 7% other languages.

23 The problem would be even greater if disagreement ever spread among users of Catalan. Catalan cannot be compared to Romanes, for instance, a language whose users in the Netherlands do not want their language to be taught in schools, as stated in the seventh evaluation report on the Netherlands (para. 157).

Of course, Spanish judicial authorities could insist that the obligation to teach 25% of the curriculum in Spanish in Catalan-medium schools comes from a domestic legal basis such the Constitution of Spain, as has been recently interpreted by the Spanish Constitutional Court, according to which Spanish, as the State's sole official language, must be available as a medium of instruction throughout the country. If this were the case, however, we would have an outright contradiction between this interpretation and the undertakings ratified by Spain for Catalan. To resolve this contradiction, the authorities would seemingly have to choose between two options: either nuance the current interpretation of the standing of Spanish in education, or modify the instrument of ratification regarding Catalan to discard “education in” in favour of “a substantial part of education in”, a move that already has its defenders (Arenas, 2021). Fortunately, there is also a third option: leave the Constitution as it stands (remaining completely silent on languages of instruction) and enable Catalan-medium schools to use Spanish as a language of instruction according to need, on the road to full Catalan-Spanish bilingualism. Ultimately, a scenario in which some Catalan-medium schools deliver a percentage of their teaching time in Spanish does not contradict the Charter provided that education “entirely” in Catalan remains sufficiently available to meet the demand.

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