

The situation of the Catalan-speaking minority in Spain, according to the UN

PLATA
FORMA
PER LA
LLENGUA

L'ONG del català

The situation of the Catalan-speaking minority in Spain, according to the UN

The [report by the UN's special rapporteur](#) on the situation of minorities in Spain, published on 9 March 2020, and the Spanish government's response.

The definition of minorities

Fernand de Varennes, United Nations special rapporteur on minority issues, visited Spain from 14 to 25 January 2019 to analyse the situation, rights and problems related to minorities and propose improvements and solutions to make it possible for Spain to meet its international obligations. Some of the areas of greatest interest to the rapporteur were the use of minority languages, the education system, public services and the justice system. He was also particularly interested in finding out the response to the discourse of hatred and intolerance towards minorities and understanding why the members of some minority groups might mistrust the State or have the perception that they were denied or refused human rights.

With the information obtained on this visit, during which he went to several cities in Spain and met political, institutional and civil society representatives, the rapporteur drew up a report with his observations and a series of recommendations for Spain to improve its treatment of minorities. It was published in March 2020. Catalan speakers were among the minorities analysed.

In 2019, the rapporteur had already presented an annual report to the UN General Assembly (A/74/160) in which he examined the concept of *minority* within the United Nations system. In it, he concluded that, within that system, an ethnic, religious or linguistic minority is “any group of persons which constitutes less than half of the

population in the entire territory of a State whose members share common characteristics of culture, religion or language, or a combination of any of these”. Varennes also indicated that a person can form part of a minority “without any requirement of citizenship, residence, official recognition or any other status”.

For these reasons, in the March 2020 report on Spain, **the rapporteur concludes explicitly that, in accordance with UN system terminology, Catalan speakers are a minority in the Spanish State.** Varennes presents Spain as a rich tapestry of languages, cultures and religions, meaning that, within an overall context, the different elements are perceived as clearly delimited.

In the rapporteur’s report, the Spanish government shows itself to be thoroughly hostile and it responds particularly fiercely to the definition of minority sustained by Varennes, derived from UN practice. In the reply document, **Pedro Sánchez’s government discredits the rapporteur’s definition as a personal opinion and refuses to accept it as valid**, arguing that there is no shared definition of *minority* at the UN, which is something the rapporteur himself stated in the 2019 report. The Spanish government says that Varennes uses a simplistic solution that ignores “history”, leading him to “absurd” conclusions.

To respond to the clear internal national and cultural plurality, the Spanish government appeals to a mainstream Spanish nationalism, presenting Spanish national unity as if it were self-evident to anyone examining the “history” of Spain in any detail. It argues that it is “absurd” to try to identify different internal national groups with their own identity because Spain is a highly “complex” accumulation of interwoven cultural elements.

So, the Spanish government portrays Spain as if it were an inseparable mixture of identities, cultures and languages (*totum revolutum*). It even goes on to claim that the members of the “supposed” minorities make up the majority – a statement that is simply false – because they “are the product of a long history of exchanges” and that the

minorities have no substance of their own because Spanish citizens have many interlocking identities (without specifying what these “many” identities are).

In addition, in one section of the response, the Spanish government even chides the rapporteur for not seeing “the value of having a common language as an instrument of participation in the political community”. It takes up **the myth of Spanish nationalism under which Castilian – the habitual and family language of part of the population – would, for some reason, be everyone’s common language**. In this way, the Spanish government attempts to maintain a supremacist Spanish structure in which Castilian-speakers have symbolic recognition guaranteed for their language as well as superior usage rights to other language groups.

Besides denying that there are national minorities in the Spanish State, Pedro Sánchez’s government even looks beyond Spain, stating that, in the world in general, as individuals have multiple identities, to speak of a majority consisting of a dominant identity would be “devastating for individual freedom”.

In the same Jacobin line as the Spanish nationalism of recent decades, **the Spanish government denies that the recognition of minorities is relevant when it comes to protecting rights**, because it says that if equal rights for all are recognised, minorities are automatically protected: “[the rapporteur] fails to clarify the added value that the concept of minority contributes to the protection of the human rights of the individuals that comprise it”. So, although Spain has ratified the Framework Convention for the Protection of National Minorities, the Spanish government denies that the concepts *religious minority* and *linguistic minority* can be in any way relevant or provide any added value in Spain, because the rights of those practising all religions are equally recognised and linguistic minorities have their rights “protected”.

As evidence of this supposed redundancy, the Spanish government offers its recognition of the rights of both religious minorities, with rights formally equal to those of the majority (but in practice, more vulnerable) and, curiously, linguistic minorities, with rights

formally inferior to those of the majority. In an equally incongruent way, the Spanish government states that the only minority recognised by Spain in the context of the Framework Convention for the Protection of National Minorities is the Roma population, although at the same time it says that these people are not, in fact, a national minority. In any case, the Spanish government forgets that the UN rapporteur is working with a definition of *minority* that does not depend on State recognition and which refers, in his judgement, to the practice of the United Nations system, which would be binding on Spain.

Language in rules against discrimination

In his report of March 2020, the rapporteur explains that the Spanish reference regulations concerning protection against discrimination, beginning with article 14 of the Spanish Constitution of 1978, do not directly mention language as a protected element, although a broad interpretation means that such protection can be considered to exist. In this sense, Varennes says that Act 62/2003, which transposes European directives 2000/43 and 2000/78, covers all kinds of discrimination, although it does not mention some of the most important reasons for it, such as language, individually.

For the rapporteur, **the omission of language from Spanish anti-discrimination regulations is contrary to Spain's obligations under a series of international treaties it has agreed to** which consider that this characteristic is fundamental, mentioning language specifically in their list of elements protected from discrimination, otherwise language minorities could have their rights violated. The rapporteur explains that the fact that the list of elements protected by the regulations, such as article 14 of the Spanish Constitution, is open leaves the protection of some unlisted essential elements, such as language, open to the arbitrary criteria of judges and civil servants.

For these reasons, **Varennes explicitly recommends that all anti-discrimination regulations are amended to include at least the elements regularly mentioned in the main international human rights treaties (including language):** “race, colour, sex,

language, religion, political or other opinion, national or social origin, property, birth or other status”. In the response to Fernand de Varennes’ report, the Spanish government accuses the rapporteur several times of making subjective evaluations and unfounded accusations without providing proof or data or without checking with the relevant authorities.

The Spanish government simply rejects the idea that language needs to be explicitly mentioned as an element protected from discrimination in the relevant legislation. **Pedro Sánchez’s government ignores the rapporteur’s arguments** and insists that article 14 of the Spanish Constitution is open, including the total prohibition of any form of discrimination, and that this is also stated in Constitutional Court case law (STC 75/1983, FJ 3). It also reminds the rapporteur that article 10.2 of the Spanish Constitution says that fundamental rights must be interpreted in light of international human rights law. The Spanish government says this means it is impossible for judges to interpret this protection in an arbitrary way contrary to international treaties, as the rapporteur claims.

For the Spanish government, the rapporteur is asking for the impossible when, according to them, he recommends that “Spain amend its legislation to include all possible grounds of discrimination.” In fact, though, the Spanish government is fighting a straw man, because **the rapporteur is not asking for a comprehensive list of characteristics protected from discrimination. He merely wants the legislation to expressly mention language and other elements that regularly appear in the international treaties prohibiting discrimination** that provide a list of elements. The rapporteur explains that not mentioning language “is potentially inconsistent with a number of international treaty obligations for which this characteristic is fundamental”.

Education

For the rapporteur, minority rights are still not fully recognised, despite Spain’s progress in human rights in recent decades. In fact, **the nature of minority rights is often not known.**

One of these rights is the language used in education. The rapporteur explains that over the last few years there has been an increase in judicial pronouncements noting the constitutional pre-eminence of Castilian and that, from the right to use Castilian included in Article 3 of the Spanish Constitution, the courts derive the right to receive education in that language. Varennes mentions the decision of the Spanish Supreme Court of 2015, imposing a 25% quota of lessons in Castilian in Catalonia and the obligation to teach one core subject in this language, recalling that the Catalan language immersion model had been backed by UNESCO.

On this issue, the rapporteur had been informed that the level of exposure to Castilian is very high for all citizens and, without an immersion model, many children from Castilian-speaking environments would not learn Catalan properly. Varennes also says that the Catalan and Balearic Island governments had expressed their concern that the erosion of immersion education models represents the destruction of a non-segregation system in which all children acquire bilingual competence.

The rapporteur explains that there is no single educational model useful in all cases. Instead the model has to be adapted to the needs of each place and must follow proportionality criteria. The only general obligations are that the option of receiving education in the language of the minority must always be available and that, although there can be separate class lines, the multiplicity of languages cannot be used to create ethnic or racial segregation. In other words, a particular category of people cannot be forced to study in a particular language.

To assess the results of the different education models, **the rapporteur recommends that Spain end the policy of not collecting data broken down by language and culture**, because not doing so makes it difficult to have precise information about the population useful for adapting the government's policies and programmes to the specific needs of each place. Varennes recommends that the Spanish government **collect data on the voluntary self-identification of citizens by ethnic group, language and religion**. Similarly, he says that **collecting objective data on knowledge of Castilian and the**

other official languages and on the results of the different education models – immersion, bilingualism and multilingualism – would help eliminate biased accounts of the impact of these models on academic performance. The rapporteur also addresses UNESCO’s positive evaluations of the Catalan education model and **recommends that the Spanish authorities amend the measures attempting to reduce the proportion of teaching in Catalan in schools in the public education system.**

The Spanish government’s response to the rapporteur’s report barely speaks of education and gives no response to the concerns formulated by the rapporteur. Nor does it mention the legal decisions threatening the immersion system, or the reflection by the Catalan and Balearic Island governments on the need for immersion in Catalan because it is the only way of ensuring knowledge of the language in a context where social exposure to Castilian is very high, or the request made by the rapporteur to collect data on the ethnic, linguistic and religious self-identification of the population.

Only at one point does the Spanish response argue that it is false that education models like the one in Galicia are insufficient to ensure proficiency in the minority language and it provides data from the Galician government corroborating its claim that the majority of the population are proficient in the language. It is relevant that the rapporteur’s original sentence spoke of the models of Galicia and Navarre, not just Galicia, but the Spanish document presents an edited quotation of Varennes’ words, excluding Navarre, and responds only regarding Galicia, a territory with a population of very homogeneous origin and very low rates of immigration.

Mistrust of the police and the hate speech

The rapporteur mentions that minorities in general mistrust the police and the judiciary and that they report cases of discrimination, ill-treatment and harassment which go unpunished. He is especially critical of the Public Safety Act 4/2015, popularly known as the “Gag Law” because it reverses the burden of proof, and he is sceptical about statements from the Spanish authorities stating that they give officers detailed

instructions to prevent abuse. The rapporteur doubts that these instructions are really complied with, largely because of the fact that they do not seem to be adapted to the “Gag Law”. The rapporteur also strongly criticises the fact that many cases of abuse are not investigated or pursued by the courts.

Along similar lines, Varennes explains that he has received many statements from different minorities about the prevalence of hate speech and intolerance, and he particularly mentions the case of Catalonia. Varennes explains that various sources point to an increase in hate speech, demonisation, physical threats and even attacks on members of the Catalan national minority in connection with the events of October 2017. These same sources indicate that there is a climate of exacerbated nationalism and growing intolerance against Catalans and other minorities; that political representatives have played a part in the creation of this hostile climate; and that the groups suffering discrimination have no trust in the police or the judiciary.

To eradicate this climate of hate, Varennes recommends that the State authorities **monitor hate speech on the internet more effectively and combat xenophobic intolerance among politicians; amend school textbooks to note the cultural diversity of the State; and promote campaigns to recognise the different languages, cultures and religions as integral parts of Spain.**

The Spanish government is particularly annoyed by the statements made by the UN rapporteur about the issue of the deep mistrust of the police and judiciary among minorities. Pedro Sánchez’s government repeats that the rapporteur does not provide data, statistics, official complaints or reports proving that these bodies ridicule, harass, attack and infringe the rights of citizens, as civil society bodies say they do. In this respect, the Spanish government merely denies any abuse, making use of a supposed lack of evidence, although it has never tried to find such evidence itself.

The Sánchez government does not explain that there are no measures to prevent discrimination, check the facts described by those reporting them, monitor the

behaviour of civil servants or assign responsibilities. In fact, Plataforma per la Llengua regularly reports language discrimination by the public authorities and publishes an annual report on it,¹ but the habitual response of the Spanish government is to deny any kind of abuse. It has never taken real measures to clarify the facts. Recently, in answer to a parliamentary question, it even denied that Civil Guard officers had discriminated against a citizen of Elche when the case had ended with the officers admitting the facts in court.

The Spanish government also states that there is no proof hate speech against Catalans is flagrant or tolerated. **Far from accepting it or explaining the measures used to pursue those who promote hatred against minorities such as Catalans, the Spanish government simply attacks the rapporteur for having included “unsubstantiated” accusations in the document.** On this point, it must be mentioned that when Plataforma per la Llengua met the rapporteur before he drew up the report, it presented him with many links to hate messages by Spanish politicians that reinforce the anti-Catalan hate speech; calls by regional presidents of the socialist party (PSOE) to eliminate immersion in Catalan in schools² when the Spanish government directly controlled the Catalan administration because, according to them, immersion in Catalan was an “indoctrination” tool; the denigration by Aragon of the Catalan language on Twitter³; the harangues by the leader of the Ciudadanos party Albert Rivera in favour of the imposition of Castilian as the vehicular language of teaching⁴; the proposal by the PP leader Pablo Casado to stop Catalan being a compulsory language for any civil servant;⁵ the declarations by the Foreign Affairs Minister Josep Borrell that Spain would have been stronger if it had eradicated all languages other than Castilian because “a strong State imposes its

¹ Plataforma per la Llengua (2019). *Informe de discriminacions lingüístiques 2018*. Available online in English at <https://www.plataforma-llengua.cat/media/upload/pdf/discriminacio-ling-eng_1568810284.pdf> (last consulted: 14/06/2020).

² Luis Ángel Sanz (2018). “Varios barones defienden que el castellano sea vehicular en Cataluña frente a la oposición del PSC”. *El Mundo* (17 February). Available online (in Spanish) at <<https://ja.cat/VW6JP>> (last consulted: 14/06/2020).

³ La Vanguardia reporters (2018). “Lambán desata la polémica con un comentario sobre su lectura ‘de un autor catalán en español’”. *La Vanguardia* (10 November). Available online in Spanish at <<https://ja.cat/mR4y0>> (last consulted: 14/06/2020).

⁴ Luis Ángel Sanz (2019). “Rivera promete: ‘Si soy presidente, el español será lengua vehicular en todas las escuelas de España’”. *El Mundo* (19 February). Available online in Spanish at <<https://ja.cat/vz7tG>> (last consulted: 14/06/2020).

⁵ Júlia Regué (2019). “Casado promete relegar el uso del catalán a lengua opcional”. *El Periódico* (28 February). Available online in Spanish at <<https://ja.cat/5y24e>> (last consulted: 14/06/2020).

language, its culture and its history”;⁶ the statement by the previous Foreign Affairs Minister Alfonso Dastis that Castilian was not taught in Catalan schools,⁷ and more.

It is significant that, in its response to the rapporteur, as well as denying any abuse **the Spanish government takes up the argument that the Spanish Constitution imposes the duty on all citizens to know Castilian and insinuates that, in some way, this exempts them from respecting the rights of linguistic minorities, or makes them less of a priority.** The government also adds that within the Administration there are initiatives to promote knowledge of the “co-official” languages among the bodies of civil servants and this knowledge is valued as having merit “in certain positions”.

The Sánchez government, therefore, justifies a Castilian supremacist model, in which one language is compulsory for everyone and the others are promoted or demanded only in particular cases while presenting it as if it were egalitarian and tolerant. It also criticises the rapporteur because he mentions information he had received from civil society about the fact that the language system created “a significant number of grievances and frustration” in the language communities with fewer rights than Castilian. The rapporteur was speaking specifically of the absence of a language requirement for judges and police officers. Far from promising to study the situation, carry out surveys or consult the communities in question, the Spanish government criticises the rapporteur because he does not offer “data, statistics, etc.”

The Judiciary Act

Fernand de Varennes explains that the civil society organisations of the different language minorities point out that, in the areas of education, the police and justice there is often a gap between the official status of their languages and real practice, which means official recognition is meaningless. For example, **the fact that judges and police officers are not**

⁶ Europa Press España (2019). “Borrell trata de rebatir en Ginebra las ‘mentiras’ del independentismo”. *Europa Press* (26 February). Available online in Spanish at <<https://ja.cat/B0vvM>> (last consulted: 14/06/2020).

⁷ Atlas España (2017). “Dastis reprobado en el Congreso por mentir sobre la enseñanza en Cataluña”. *ABC* (8 November). Available online in Spanish at <<https://ja.cat/JCXWr>> (last consulted: 14/06/2020).

required to know the official languages other than Castilian generates all kinds of grievances and frustration in access to public services, to the point that in some cases there would be explicit discrimination and refusal of service. In relation to this, the rapporteur points out that State authorities are obliged to use the languages of the minorities in their territories whenever this is practical and where there is no good reason for not doing so, because to do otherwise would be discriminatory under international law.

According to the rapporteur's report, one of the regulations that could most clearly violate the State's obligation to use the languages of minorities where viable is Article 231 of the Judiciary Act, which stipulates that these languages can be used in judicial proceedings only if no party opposes this. This fact, added to the absence of a requirement for judges to know the language, means most judicial proceedings are carried out in Castilian. The rapporteur also explains that several reliable sources indicate that it is common practice for judges to order citizens expressing themselves in the other official languages to speak in Castilian, even though they cannot legally make such demands.

The rapporteur explains that the general obstacle to the use of Catalan in judicial proceedings generated by the wording of Article 231 of the Judiciary Act could violate the prohibition on discrimination included in the Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities, and the State is recommended to amend this article so that it recognises a more directly exercisable right to use the "co-official" languages with judicial authorities. This would allow proceedings to be carried out in these languages more effectively.

In its response, **the Spanish government denies that the Judiciary Act impedes the use of Catalan, but, in the same sentence, states that it can be used only if no-one opposes it.** In fact, the Sánchez government does not answer the question posed by the rapporteur. Instead it enters into a dialogue of the deaf. In fact, it does not respond to the problem raised by the rapporteur: that proceedings can be in Catalan only if the judge knows the language, wants to speak it and the two parties accept it. The Spanish

government also says it is false that there are obstacles to using the “coofficial” languages. On the contrary, it says “this use is permitted, unless opposition is expressed by one of the parties in the proceedings and such use would give rise to unfairness contrary to the principle of effective remedy”.

Nor does Pedro Sánchez’s government really answer the rapporteur’s concern over the fact that judges are not obliged to learn the languages of minorities. It simply says that knowledge of these languages is a merit for candidates to the presidency of the high courts of justice.

It also appears to deliberately misinterpret the rapporteur’s criticism when he says that: “While in theory individuals may still use a minority co-official language even when Castilian is the language used for the proceedings, consistent reports in different parts of the country indicate that individuals are simply told to comply with the chosen use of the national language.” The Spanish government responds as if the rapporteur were referring to foreigners who do not understand Castilian or the language of the proceedings, quoting the rapporteur’s comment but cutting out the part about “a co-official minority language”. It says “**those defendants who do not speak Castilian or the official language of the proceedings**” have the assistance of interpreters and the right to written translations of the documents essential for guaranteeing the right to defence. It also once again denies that there are specific data indicating that these orders to speak in Castilian occur, despite the many complaints provided by Plataforma per la Llengua.

It is also interesting that the Spanish government uses the fifth report of the Committee of Experts of the European Council for compliance with the European Charter for Regional or Minority Languages (ECRML), published in 2019, to argue that it meets all obligations towards minority languages. In this respect, the Sánchez government says that on the few occasions when the ECRML Committee of Experts has not given Spain a positive evaluation, the government was already working to make the appropriate changes. **This statement is entirely false, because Spain’s attitude towards the Committee of Experts’ report was just as hostile and negationist as it is to Varennes’ report.**

The ECRML Committee of Experts also explicitly recommended that Spain should amend Article 231 of the Judiciary Act because the wording was discriminatory and breached the obligations Spain had undertaken by ratifying the ECRML. **In its response, Spain also denied that this article was discriminatory** and stated: “the right to use a regional language in judicial procedures is already recognised by the Judiciary Act (hereafter LOPJ), which guarantees the fundamental right to effective judicial protection proclaimed in Article 24 of the Spanish Constitution. The Spanish Ministry of Justice understands that Article 231 of the LOPJ is consistent with Article 9 of the Charter. This article allows the use of regional languages in judicial proceedings in the autonomous regions with more than one official language without the need for translation into Castilian for them to be legally valid, provided these effects are limited to the regions where the regional language is official. Article 9 establishes that it is the judicial authority that accepts the use of the regional language by one party if the right to effective judicial protection remains guaranteed and it is not an obstacle to the judicial proceedings.”

The persecution of the political and social leaders of the Catalan minority

Finally, the rapporteur focused on the judicial persecution and imprisonment of the political and social leaders who organised the self-determination referendum in Catalonia on 1 October 2017, or campaigned in favour of it. Varennes noted that the special rapporteur on the promotion and protection of the right to freedom of opinion and expression asked Spain not to accuse the Catalan political and social leaders of rebellion, in the absence of violence or calls to violence, as the charge represented an infringement of the right to freedom of expression, including the right of protest and opposition.

Varennes also recalled the conclusions of the Working Group on Arbitrary Detention, which stated that the aim of the judicial procedure in question was to intimidate the accused because of their political opinions. **The rapporteur on minority affairs accepts the reflections of his colleagues, indicates that the 12 imprisoned leaders are all**

members of the Catalan minority and adds that this kind of judicial process sends a negative signal to minorities in general, because it can intimidate and inhibit them.

Varennes noted that the judicial process originated with the expression of the political points of view of the Catalan minority and of the other inhabitants of Catalonia concerning their participation and status within the context of Spanish. This was when various complaints began to be formulated and when a substantial increase in the hate speech against Catalans began. As part of this, Spanish politicians and other people have propagated the image of Catalans as a danger and as traitors who deserve harsh punishment. Because of all this, **the rapporteur urges the Spanish State to protect the Catalan minority's freedom of expression, assembly, association and participation in public life.**

Pedro Sánchez's government offers a clearly aggressive response to the statement by the rapporteur that the sentence has been influenced by the fact that the accused form part of the Catalan national minority. Firstly, they say that he has the "temerity" to accuse the Spanish Supreme Court of having taken the accused's origins into account in the verdict – "a very serious accusation" – and that the rapporteur has given "not a shred of evidence" to justify it.

Meanwhile, it **denies that there is a "supposed Catalan minority"** and says that, until this report, the term had not been used, which it claims provides evidence that the rapporteur is twisting language in order to interfere in an affair that falls outside his remit. It also says the special rapporteur on the promotion and protection of the right to freedom of opinion and expression did not use this concept in his report, which proves that the special rapporteur on minority affairs was attempting to falsify the documentation to provide his claims with a veneer of plausibility and take a position on the trial.

The Spanish government accuses the rapporteur of ignorance and states that the trial of the Catalan pro-independence leaders had nothing to do with their political opinions, as it

claims is proved by the fact that the pro-independence parties are not illegal and can stand at elections. According to Sánchez's government, the Spanish Supreme Court proved that the accused had committed acts of sedition, misuse of public funds and disobedience towards the Spanish Commercial Court, and what they did amounted to something as serious as revoking the Spanish constitutional order by approving their own regulations and promoting citizen mobilisation. The Spanish government also considered it particularly serious that some of the accused had approved laws to hold an independence referendum after which independence would occur if there were more voters for this option than opposed it.

Main Source: "The report of the UN's special rapporteur on the situation of the minorities in Spain". Available online at <https://undocs.org/en/A/HRC/43/47/Add.1>.