

What are the obstacles preventing the use of Catalan in the justice system?



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FORMA
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LLENGUA

L'ONG del català

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Introduction

This document is the second edition of a report published in March 2017. We have updated the content, expanded some points and added new figures.

The Administration of Justice continues to be one of the areas where the use of Catalan is precarious, and, in fact, almost entirely absent. In this report, we analyse why, despite several initiatives, various programmes, many strategies and a great deal of resources devoted to overturning this situation, we still find ourselves in a position we can describe as a “language desert” for Catalan in this sector.

What are the main reasons why Catalan is in such a critical and almost invisible position today?

1. The language skills of Justice Administration staff

In this professional sector we often find that staff come from outside Catalonia and no-one has required them to understand Catalan to be able to practice.

The structure of the Spanish civil service has made it possible for many people from outside Catalan-speaking areas to go and work in the courts there. In many cases, these people intend to return to their place of origin as soon as they can, generating an attitude that everything is provisional. This mobility and provisional atmosphere in court offices affects language: in many cases the arrival of new civil servants leads to a change of direction in terms of language and offices stop operating in Catalan.

The number of people taking competitive examinations in Catalonia is also traditionally rather low and this also makes it difficult to go ahead with language normalisation in court offices.

Judges, magistrates, prosecutors and clerks of the Administration of Justice, as well as State civil servants, must know Spanish, but they are not required to know Catalan. As established by the Judicial System Act 6/1985 (LOPJ) and Regulation 2/2011 concerning judicial careers, Catalan is not even positively valued when it comes to obtaining a post in Catalonia, the Valencian region or the Balearic Islands. They are merely given extra points when it comes to choosing their posting once the regional places have already been allocated. In some cases, for example, like that of civil servants working for the Administration of Justice (article 483 of Act 6/1981), the authorities specify that not knowing Catalan cannot ever rule someone out – it is always optional.

Not even the fact that Catalonia and the Valencian region have been allowed a series of competences in Justice gives their governments the right to demand language ability from the vast majority of Justice Administration workers in Catalan and Valencian courts. For example, in Decision JUS/1045/2019, of 17 April, publishing various lists of court staff, it can be seen that only four of 117 court workers from Girona needed to show knowledge of Catalan, 4 of 84 at Cerdanyola del Vallès, 3 of 41 at Cornellà de Llobregat, 4 of 63 at Blanes and 0 of 9 at Gandesa.

The reason for this low proportion is that article 530 of the Judicial System Act 6/1985 authorises a requirement for knowledge of Catalan only for specific posts where it can be shown that this knowledge is essential. These posts have to be proposed by the Catalan and Valencian governments when they initially approve the staff requirements, but the Ministry of Justice has the final say.

Royal Decree 1451/2005 on the provision of civil service posts in the Administration of Justice, not only maintains Spanish as the sole language requirement for staff in all areas of Spain (regardless of whether they are areas with a different language of their own) but also maintains that knowledge of Catalan is not even positively valued for the allocation of a place, only for allocation to a particular post and for internal promotion in areas where Catalan is the official language.

The situation is the same for clerks working for the Administration of Justice, under Royal Decree 1608/2005 or for pathologists under Royal Decree 296/1996.

Knowledge of Catalan is also positively valued for prosecutors for specific postings only where it is an official language (Chief Prosecutor's Office Act 50/1981). In addition, article 3 of Royal Decree 634/2014 concerning substitutions in prosecution careers repeats the restrictive nature of the positive valuation, which is valid only where Catalan is officially recognised.

The various State provisions insist that Spanish is compulsory while Catalan is optional, and at most positively valued in everything concerning the general State administration, even if the person will be working in a place where Catalan is an official, native language. Article 102 of the Statute of Catalonia establishes that in order to practice in Catalonia it is as compulsory to know Catalan as it is to know as Spanish, but a Constitutional Court decision reinterpreted this to make its application subject to the amendment of the Judicial System Act.

This Act has subsequently been amended several times, but never with the intention of adapting it to the Statute. In any case, the level of knowledge of Catalan that is positively valued often does not guarantee a sufficient standard for the job being done.

The Parliament of Catalonia has presented various proposals to the Spanish government to impose equal requirements for Catalan and Spanish in Catalonia, but they have always been ignored. In October 2016, a new legislative initiative to amend article 231 of the LOPJ was presented. This would have allowed Catalan to be a requirement for practising in the territories where it is an official language, in accordance with the recommendations of the Council of Europe (January 2016). However, lack of support from the major Spanish parties (PP and PSOE) prevented this attempted amendment and, therefore, the possibility of demanding a language requirement from civil servants who come to work in Catalonia.

In practice, Spanish is the only language required in order to be a lawyer, because access to legal practice in the courts in Catalan-speaking territories is allowed for members of any official lawyers' association in Spain. Lawyers may have studied in any region and professionals who have studied at a foreign university and have their law degree approved as equivalent to a Spanish one may also practice.

1.1. Situation in comparative law

The Committee of Ministers of the Council of Europe has demanded that the Spanish government apply the European Charter for Regional or Minority Languages and strengthen the measures intended to ensure an adequate presence of the coofficial languages in the State administration.

The marginal position of Catalan in Spanish legislation, which does not require it for access to civil service places in the Administration of Justice based in territories where it is an official language, certainly contrasts with other countries.

Some of the language requirements for justice staff in other countries, according to comparative law, are as follows:

Belgium: The judges, prosecutors and clerks of the Administration of Justice have to know the language of the territory where they are working. There is no general requirement to know a single language, it varies depending on the territory.

Switzerland: The judges, prosecutors and clerks of the Administration of Justice have to know the language of the territory where they are working. They only need to know German (the most spoken language in the confederation) in the territories where it is the native language.

Canada: Justice system civil servants have to know English or French depending on the language of the territory where they work, but there is no obligation to know English everywhere of the kind that imposes Spanish in Spain.

1.2. Possible solutions for the Catalan case

Possible solutions to promote Catalan among the Justice Administration professionals:

- The fact that applications to take the entrance examinations are low (as they are in the Valencian region and the Balearic Islands) makes it difficult for fixed posts to be mostly occupied by Catalan-speaking or Catalan-competent professionals. The implementation of a programme of grants for those taking the examination depending on their capabilities in Catalan should be studied.
- Another problem is that civil servants from outside the Catalan-speaking regions do not seem to settle there for any length of time. They spend periods in these regions, which have the highest cost of living in Spain, and then they go straight back to their place of origin. It would be quite useful to improve the working conditions of civil servants based in Catalonia to encourage them to settle, and to link this improvement in working conditions to proof of knowledge of Catalan.
- However, we need to be aware that the most effective solutions would come through a change in the regulations, making it possible to require knowledge of Catalan to work in the Administration of Justice in Catalonia.

2. The language of judicial proceedings

The regulation of the language system in judicial proceedings is established in article 231 of the Judicial System Act, which treats Catalan differently, as is done in the legal system of administrations. The current wording of this article means the language of court actions is, by default, Spanish, a provision that rides roughshod over the principle of the equality of the two official languages. According to this article, the judges, magistrates, prosecutors and clerks of the administration of justice and the other court civil servants use Spanish, and the use of Catalan by civil servants is merely optional, if any party claims defencelessness.

Catalan is only permitted where it is an officially recognised native language. If it is used, documents must automatically be translated when they can take effect outside the jurisdiction of the judicial bodies of the autonomous community, and also when appeals are presented before the Supreme Court. The fact that these documents have to be translated into Spanish inhibits legal officials from using Catalan.

The perversion of meaning represented by “having effect outside the territory” should be highlighted. In most cases, this argument ends up being used to justify courts with competence over the territories where Catalan is official but which are physically located in Madrid (the National Court, the Central Electoral Board, the Supreme Court, the Constitutional Court) not allowing the parties, witnesses or their representatives to express themselves in Catalan, even though these courts are the ones covering Catalan-speaking territories.

This provision would be logical enough if, for example, a legal case in Catalonia formed part of another, larger case instigated, for territorial reasons, in a court in a Spanish-speaking territory. For example, it might apply if a prisoner escaped from Herrera prison in La Mancha (in Ciudad Real province) and, while on the run, stole a car in Tarragona. The instruction for the theft of that car, which could have been drawn up in Catalan, would probably end up in a court in Ciudad Real, a place where the native and official language is Spanish. It would then be logical for it to be translated and for the parties (including the victim of the theft in Tarragona), the professionals and the witnesses involved to express themselves in Spanish or be translated into that language.

However, the Spanish Constitutional Court has made clear its position on the matter of what having effect “outside” a territory means. It did so in Decision 31/2010, on the constitutionality of the Statute of Autonomy of Catalonia (EAC) approved in 2006, which, in its Legal Basis 21 stated (the bold is ours):

“Section 5 of art. 33 EAC, meanwhile, would be contrary to the Constitution if the Statute attempted to derive from the coofficial status of the Catalan language any claim that it could be used as a legally valid means of communication with public authorities not based in the territory of the Autonomous Community of Catalonia. Such a situation would deprive Spanish of its status (STC 82/1986, 26 June, FJ 2). The **relevant territorial criterion** for the purposes of delimiting public authorities associated with the consequences of principle inherent in the coofficial status of an autonomous community **language is the seat of authority, not the territorial scope of the relevant competence. If the latter were true, this would make all State-wide bodies subject to the effects of the coofficial status of all autonomous community languages at any point of Spanish territory. This is an association reserved in principle to the sole common language of Spain.** [...]

This means that whether or not documents in Catalan presented to the aforementioned bodies are legally effective, and to what extent this is the case, must be established by the competent State legislator, with complete freedom within the limits of the Constitution.”

Art. 3.1 Spanish Constitution

The policy of the exclusive use of Spanish is in contrast with an agreement signed between the Kingdom of Spain and the Portuguese Republic relating to criminal and civil judicial cooperation (Madrid, 19 November 1997). This states that “requests and documents relating to international criminal and civil judicial assistance between the Ministries of Foreign Affairs and Justice, may be written in the language of the State issuing the requirement. Both parties therefore waive the right to enforce the reservations existing in the multilateral treaties to which they are parties”.

The predominance of Spanish is reinforced by the power court staff have to choose the language used. The judge can always ask for the translation of a document into Spanish, even if it has been drawn up by the Administration of Justice. On the other hand, if the original is in Spanish, the judge cannot request its translation into Catalan.

This could be done until 1994 in autonomous communities with Catalan as their native and official language, but the reform of the Judicial System Act (16/1994) extended this privilege throughout the country only to Spanish, and this has become consolidated.

In 2006, the Association of Jurists in Defence of the Native Language began a campaign for lawyers to request in writing that all proceedings should be begun in Catalan. This campaign was taken to the Minister of Justice of the Government of Catalonia. Now, under an agreement of the government made in 2014, Government of Catalonia lawyers always ask for proceedings to be documented in Catalan.

Unfortunately, judges ignore these requests in 85% of cases, as Plataforma per la Llengua reflected in 2018 in its report *L'ús del català davant les actuacions judicials dutes a terme en plets en què són part els advocats de la Generalitat* (The Use of Catalan in Judicial Actions Carried Out in Cases in which Government of Catalonia Lawyers Take Part), drawn up based on publications from the Presidency Department of the Government of Catalonia from 2017. This indicated that only 15% of the court documents (decisions, proceedings and procedural documents) deriving from the actions of this department were in Catalan, although the lawyers of the Government of Catalonia always lodged an ancillary petition for the proceedings to be conducted in Catalan.

In December 2016, the Department of Justice and the Catalan Lawyers' Council agreed the payment of an additional sum for actions by duty lawyers who present documents in Catalan as a measure to promote the use of the language in proceedings. This was a pilot project rolled out in 2017 under an agreement signed by the Government of Catalonia and the Catalan Lawyers' Council to promote the use of the language. All lawyers providing free legal advice services in Catalonia could voluntarily take advantage of the system. The aim was to increase the presence of Catalan in petitions, appeals and legal notifications. However, when the Spanish government took over the administration of Catalonia in 2017 under article 155 of the Spanish Constitution, this pilot project was not renewed. Nor has it been renewed following the return of authority to the Government of Catalonia in 2018, so the effect of the measure could not be properly assessed.

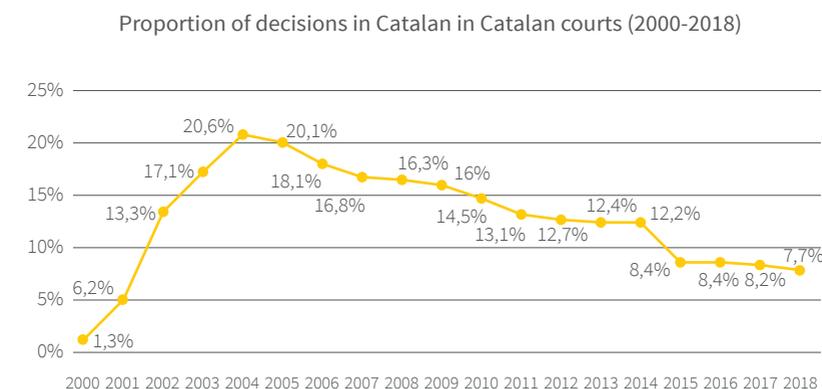
Judges or clerks from the Administration of Justice determine the language that has to be used in their offices. This means the language used in the office corresponds only to the wishes of the staff who work there, regardless of the preferences of a citizen dealing with the office. In Spain, unlike other similar multilingual countries, it is not the citizen who chooses the language from among those of the State and the judge who has to adapt to it, but rather the judge who chooses the language. In addition, the law determines that, by default, the language used is Spanish, which gives it a clear predominance.

The Administration of Justice has created an inertia which is difficult to break which means all operators are aware that in their professional capacity they have to operate in Spanish.

This situation creates a vicious circle: the imposition of Spanish means there is little demand among legal professionals to use Catalan. At the same time, judicial civil servants do not see the use of Catalan as necessary.

The number of legal decisions in Catalan is an annual thermometer indicating that the health of Catalan in the justice system is worsening. The figure for 2018 (7.7% of decisions in Catalan) was the worst for the language since 2001, when decisions drawn up in Catalan represented 6.18% of the total. In fact, the use of Catalan in these decisions has fallen every year since 2004, when it reached a peak of 20.63% of decisions in Catalan thanks to the pilot project for court offices to operate in Catalan which was being promoted at the time.

So, in a period of just 14 years without similar promotion schemes, the use of Catalan has fallen almost 13 percentage points.



Source: Government of Catalonia. Department of Justice

2.1. Situation in comparative law

Spanish legislation, in particular article 231 of the Judicial System Act, imposes Spanish as the default reference language for justice throughout the State. In comparative law, the situation is quite different:

Belgium: Belgian legislation requires knowledge of the historic language of each territory. So, the language of justice in Flanders is Flemish and in French speaking Wallonia it is French. In the region of the capital, Brussels, it is French and Flemish, and in the German-speaking territory it is bilingual, in French and German, and the aggrieved party chooses the language of the proceedings.

Switzerland: The default language of justice is German, French or Italian depending on the canton.

Canada: The provinces have the power to determine the language system of the Administration of Justice. So, in some provinces, the reference language of justice is English, in others, such as Quebec, the default language is French.

2.2. Possible solutions for the Catalan case

The following actions could be taken to increase the use of Catalan in court proceedings:

- Firstly, recover the plan to promote the use of Catalan in actions which paid duty lawyers who carried out their actions in Catalan. It would be interesting to review whether the information in fact reached all possible recipients, as there were many differences between the different professional associations.
- Establishing agreements with the official lawyers' associations to pay the membership fees of members who commit themselves to carry out actions in Catalan.
- Strengthening the presence of Catalan in decisions, proceedings and procedural documents, either by financing translation, as is done in the Basque Country, or with the revival of the plan that paid judges who issued decisions in Catalan.

We would stress once again, however, that the solution is to make effective the right to carry out proceedings in Catalan. However, in 2016 and 2017 both houses of the Spanish Parliament rejected non-binding proposals by Catalan MPs and senators from the En Comú Podem party, which suggested:

- Amending procedural regulations to ensure the right to language choice throughout legal proceedings, including the Judicial System Act or judgement.
- Stating this language option "on the front of the case file, very clearly, in a visible place".
- If this right to use a coofficial language is not exercised, in communities where there is more than one language, proceedings will be carried out in the minority language.

3. Citizens' rights when they deal with the Administration of Justice

If citizens express themselves in Spanish, they face no restrictions and they enjoy all rights and opportunities all over Spanish territory. By contrast, Catalan is clearly restricted.

Beyond the provisions deriving from the accused's right to proper defence, the Catalan language can only be used where it is an official native language. As established in article 231 of the Judicial System Act, oral or written statements **in Catalan** can only be made before judicial bodies based in the autonomous community, **but not before central bodies** representing the whole State.

Catalan also faces other restrictions. There is no guarantee that the transcription of statements by witnesses or the accused will be made in Catalan, not even where it is an official native language and despite the fact that the statements have already been made. On the other hand, these guarantees do exist for Spanish.

In addition, neither the accused nor the lawyers nor the witnesses have the right to express themselves directly before the judge without an interpreter. This situation is the result of the fact that judges have no obligation to know Catalan. This basically means that the right of language choice for Catalan-speaking citizens is breached and conditioned, because Catalan-speaking citizens and lawyers do not enjoy the right for judges or civil servants to understand them directly in their own language, while Spanish-speaking citizens do have this right guaranteed.

The basic legislation of the Criminal Proceedings Act, amended several times, makes all assumptions in favour of Spanish and accepts by default that the proceedings will be carried out in Spanish. The most recent amendments to the legislation, along the lines of the recommendations made by the Council of Ministers of the Council of Europe, have not changed this tendency to any great degree.

The State reformulated the legal framework to give preference to Spanish. In 2015, Act 13/2015 of 5 October and Act 5/2015 of 27 April were approved, amending the Criminal Proceedings Act to promote victim support. Where the right to translation when Spanish was not understood was mentioned, it now refers to the right to translation when Spanish or the official language in which the proceedings were being carried out is not understood.

But although it normalises the use of languages other than Spanish in the courts with regard to victims, this amendment **does not establish equal language rights for witnesses**, who continue to have the right to an interpreter only when they do not understand Spanish. Nor does it make the amendment most strongly demanded by the Council of Europe experts because it does not remove the legal inequality represented by the fact that **it is established that in judicial actions in which more than one language option is chosen, the actions should be carried out in Spanish.**

3.1. Situation in comparative law

The situation of citizens' language rights is an area where Spanish legislation is once again an outlier in comparative law, as other States with multilingual situations offer citizens better guarantees of their language rights.

Belgium: In the Brussels region, a choice is offered between operating in Flemish or French, depending on the choice of the aggrieved party. There is a right to a language option in any legal proceedings around the territory. The courts outside **Brussels work in the languages of each territory, but it is established that defendants may request the transfer of a case to a region that uses their language.** Language choice before the justice system is therefore protected throughout the State.

Switzerland: Any Swiss citizen has the right to use their own national language in any federal court (a higher level than the canton courts). In addition, all federal courts use all the official languages.

Canada: All citizens are guaranteed the right to express themselves in either English or French before the country's courts. In general, it is possible to choose the language of criminal proceedings depending on the federal State, which makes it possible to guarantee the language rights of the accused.

3.2. Possible solutions for the Catalan case

Unfortunately, the main obstacle to guaranteeing citizens' rights before the justice system in the Spanish state comes in the regulations. It is not so much a matter of raising Catalan-speakers' awareness of their language rights as getting them enough protection from the public authorities. Along these lines, it would be appropriate:

- To propose that the Spanish parliament amend article 231 of the Judicial System Act to ask for citizens to have the right to carry out judicial proceedings in Catalan.
- To propose that the Spanish parliament amend articles 431, 483, 521 and 530 of the same law to request that knowledge of Catalan (and Occitan in the case of the Vall d'Aran) should be a requirement for judges, magistrates, prosecutors and clerks of the Administration of Justice and staff working for the Administration of Justice, as appropriate, with an adaptation period of no more than six months.
- To propose that the Spanish government should train civil servants of the State, the Judicial System and the Government of Catalonia in knowledge of all official languages and language rights and raise their awareness in these areas. For this purpose, it is appropriate to ensure compliance with the protocols concerning respect for the right of language choice.
- To propose that the High Court of Justice of Catalonia reiterate the need to comply with and guarantee language rights and the fact that it is compulsory to do so.

4. Working material in Spanish

The vast majority of the working material for legal operators (manuals, annotated codes, legislation, etc.) is drawn up in Spanish. There is no State, European Community or international legislation published or ratified by the Spanish State from before 1998 in Catalan. After this date only a small part is in Catalan and this is not updated with changes or consolidated versions published to incorporate amendments. The laws published in the BOE are not translated into Catalan immediately.

The failure to update legislation in Catalan means legislation in Spanish is the only version which, in practice, offers legal security, so the only speakers who can access the laws in their own language are Spanish speakers. This leads to unequal treatment of language communities and it means judges, prosecutors and clerks in general put all their operations into Catalan. While Spanish has a State guarantee concerning the publication of materials and laws supported by all legislation, Catalan does not.

This material is used first in universities and then in the professional sphere. The fact that working material and training is mostly received in Spanish means students and future jurists are used to working with legal terminology in Spanish.

Catalan is a minority language in master's degrees in legal practice. Specifically, 28% of teaching hours in master's degree courses at Catalan universities were taught in Catalan in the 2019-2020 academic year. However, even in classes taught in Catalan, some of the laws and terminology used are in Spanish, which means students become more familiar with terminology and legal language in Spanish.

As a result of this unequal presence of languages, when it comes to examinations for access to the profession, many of the people taking the test prefer to do it in Spanish because they feel more certain of the language and the terminology.

Examinations for access to the profession can be taken in Spanish or Catalan in accordance with the agreement signed by the Spanish Ministry of Justice and the Catalan Department of Justice on 15 September 2016. This agreement decided that examinations would be translated into Catalan and that the costs of this would be paid by the Government of Catalonia. Despite this agreement, few people take the test in Catalan for the reasons we have set out and because the exams are, by default, handed out in Spanish.

The Catalan version is offered while the Spanish exam papers are being given out. Anyone who wants it has to expressly request it. This situation disincentivises people who would be equally capable of answering in either language from choosing Catalan. It has been possible to take the entrance examination for legal practice in Catalan, in Valencia, Barcelona and Palma only, since 2016. However, there have been numbering errors in the Catalan version in some exams. This, combined with the fact that Spanish is the only language in which laws are updated in the BOE and the massive presence of Spanish in legal training, calls into question the coofficial status of Catalan in this professional sphere.

The result is that only 87 of the 1,191 legal practice exams requested in Barcelona in 2019 (7.3%) were in Catalan. None of the 96 examination candidates in the second round of examinations in Palma asked to do it in Catalan and only 2 of 761 students (0.3%) chose to do the examination in Valencian in Valencia.

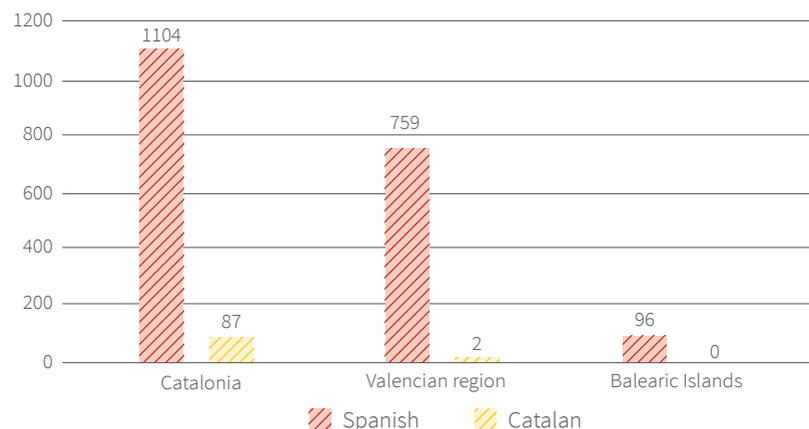


Figure 2. Language in which candidates for the entrance examination to legal practice 2019 chose to do the test. First and second examination rounds
Source: Spanish Ministry of Justice

4.1. Situation in comparative law

We will now look at the language of legal material in comparative law:

- Belgium:** Legal texts are approved in the various official languages. If there are divergences between various texts because of language, they are resolved depending on the legislator's judgement and no language has preeminence over the others in terms of interpretation.
- Switzerland:** Laws are published in German, French and Italian. The coming into force of the regulations is calculated based on the latest published version, so the various language are not ranked in terms of preeminence.
- Canada:** Canadian laws are published in English and French. This bilingual publication is a requirement for the validity of the regulations. It is done in a single document with parallel columns. In fact, Canadian case law has established that when one text refers to another legal text, this also has to appear written in the two languages.

4.2. Possible solutions for the Catalan case

Beyond the changes in regulations, there should be a commitment to creating legal material in Catalan:

- Commitment of the Spanish and autonomous community governments to ensuring the publication of updated legal manuals in Catalan.
- Creation of digital platforms allowing easy browsing of updated regulations in Catalan.
- Campaigns with the professional associations (lawyers, notaries public, etc.) so that they have legal tools (models, forms, manuals, etc.) in Catalan.

5. The language of justice in the central and higher institutions

Spanish is the only language of operation of the central bodies of the Administration of Justice because the Judicial System Act defines it as such. These bodies require translations into Spanish when documents arrive from autonomous communities that can use Catalan (Catalan is always optional). By contrast, documents in Spanish do not require translation into Catalan when they come from an Autonomous Community and go to the central institutions of the Administration of Justice. Iconic institutions of the Spanish State, such as the Supreme Court, the General Council of the Judicial System (CGPJ), the National Court and the Central Electoral Board, operate only in Spanish, even when drawing up their decisions.

In comparative law, these institutions should be neutral in terms of language, publishing decisions in different languages, by agreement, for example, with the aggrieved parties. But in the Spanish case there is no adaptation to the language of the parties, it is the parties who have to adapt to the demands of the Administration, always sending one version in Spanish, while the Administration will always issue its decisions in Spanish. This situation once again means restricting the rights of Catalan-speakers, who are prevented from defending their interests in their own language.

For example, when proceedings in Catalan have to be resolved in the Appeal Court (the Supreme Court) they have to be entirely translated into Spanish at public expense, as established by article 231 of the Judicial System Act. Supreme Court appeals in Catalan are not provided for, not even in cases when the proceedings have been held in this language.

Proceedings in Catalan end at the level of appeal (second instance) but are not allowed at higher instances. This is yet another example of the “non-essential” nature of Catalan in the courts. This can lead to some legal professionals (from lawyers to judges) avoiding the use of Catalan in proceedings where they see the slightest likelihood of one party appealing to a central body in order to prevent delays (and costs to the public purse) which would not arise if they used Spanish.

These legal institutions do not even have an official name in Catalan. As for regional courts in places where the native language is Catalan, the majority of decisions are also in Spanish. This occurs with the High Court of Justice of Catalonia, and also the higher courts of the Balearic Islands (TSJIB) and Valencian Region (TSJCV), where the use of Catalan is virtually non-existent.

5.1. Situation in comparative law

The language of the Administration of Justice in the higher instances in comparative law:

- Belgium:** Appeal courts operate in the languages of the territories over which they have competence. Even the Appeal Court of Liège, a largely French-speaking city, operates in French and German, although German is the language of less than 1% of Belgians and represents only 4% of the inhabitants of the territory where the Court has competence. In addition, the fact that Liège, the judicial capital of this area, is outside the territorial zone where German is a native language, does not prevent the court from operating in the two languages over which it has competence. This is absolutely contrary to the Spanish example, as set out in section 2 of this report.
- Switzerland:** In Switzerland there is no default language in federal courts (which would be equivalent to the higher instances of the Spanish legal system), but all the official languages of the various territories are used in the same way.
- Canada:** The Canadian federal courts operate entirely bilingually and adapt to users' demands. Linguistically, the Canadian courts are conceived as a public service and prioritise citizens being able to express themselves and uphold their rights in their own language.

5.2. Possible solutions for the Catalan case

Besides the changes to the regulations, considering that it is the legal framework which places Catalan in a position of inferiority, it would be possible to promote the following measures:

- Proposing that the Catalan Department of Justice provide a translation service for the CGPJ. This would at least guarantee the same situation as for court cases processed in Spanish in terms of documents and actions.
- Proposing that the central and higher judicial institutions also have a base or branch in Catalonia, the Valencian region and the Balearic Islands in order to guarantee the language rights of people coming into contact with the system in these territories.

6. The Spanish Constitutional Court

Although it is the main representative body for the fundamental rights of all citizens, the Spanish Constitutional Court operates exclusively in Spanish. Article 8 of the Constitutional Court Act 2/1979 refers to other judicial legislation about language that establish privilege for Spanish. In practice, despite the hundreds of decisions published, the use of Catalan is absent.

Decisions must be presented in Spanish – they are not adapted to the language of the parties. Even when there is the option to give a version in Catalan, Spanish is nearly always chosen. The press releases drawn up by the Constitutional Court are also in Spanish only. Nor does Catalan have a great deal of presence on this institution's website. It has a version in Catalan lacking very much content with no link from the Spanish version. Curiously (or perhaps not) it also has visible versions in English and French which are linked from the Spanish version.

6.1. Situation in comparative law

The situation in equivalent constitutional courts is as follows:

- Belgium:** The Belgian Constitutional Court consists of 12 judges, six of which belong to the French-speaking language group and six to the Flemish group, with a rotating presidency. The German language also has representative quotas.
- Switzerland:** The regulations require that the composition of the Swiss Federal Supreme Court must include representation of all the languages in the country. Traditionally, it consists of a Romansh-speaking judge, three Italian speakers, 12 French-speaking judges and 25 German-speakers.
- Canada:** The Canadian Supreme Court consists of judges, who both have to know the two official languages: French and English. It is possible and perfectly normal to address this instance in any of the country's official languages.

6.2. Possible solutions for the Catalan case

Possible solutions for the situation of Catalan at the Spanish Constitutional Court:

- Cooperation agreement between the Department of Justice of the Government of Catalonia and the Spanish Constitutional Court to offer a translation service for the website and for its decisions.
- Proposing that the Spanish Parliament amend the Constitutional Court Act to include equal treatment for all official languages.
- Agreement to establish a branch of the Spanish Constitutional Court in Catalonia, the Valencian region and the Balearic Islands to process cases and constitutional appeals from the citizens of these territories.

7. Training jurists: from university to the Judicial School

Legal training is mostly in Spanish at all levels. The study presented by Plataforma per la Llengua for the 2019-2020 academic year shows that for the various law degrees at Catalan universities only 39% of the teaching is in Catalan, although it must be said there are big differences depending on the university. A step up from a law degree, the situation is even worse in the master's in legal practice, with just 28% of teaching time in Catalan. Only the URV and the UOC guarantee a curriculum entirely in Catalan, at least in terms of the teaching.

Not even in Barcelona, where the Judicial School has one of its centres, providing basic training, is it possible to carry out judicial training in Catalan. Neither Madrid nor Barcelona has two lines, one in Spanish and the other in Catalan. Nor is there mixed training in different languages or territorial variation. Whatever the type of training, all the basic teaching is exclusively in Spanish. While Spanish is an obligation and is the language of the State, as established by Regulation 2/1995 of the Judicial School, Catalan is only an option outside the compulsory subjects, a restricted peculiarity of the autonomous communities. Even the official name of the institution is only in Spanish: “Escuela Judicial Española”.

7.1. Situation in comparative law

In comparative law, the situation for judicial training is as follows:

- Belgium:** The fact that language requirements for judges vary depending on the territory means legal training is encouraged to respect the various official languages. Meanwhile, in Belgium you can study law in French or Flemish depending on the university you choose.
- Switzerland:** As in Belgium, the fact that the judges and civil servants of the administration of justice have to know the language of the territory already promotes multilingual legal studies. The more normal thing is for each university to give classes in a single language. So, the universities of Basel, Bern and Lucerne, among others, give their classes in German. In Geneva, Lausanne and Neuchatel the classes are given in French and at Lugano they are in Italian. In this way, it is possible to study in the various official languages of the State.
- Canada:** As in the previous cases, university education is usually in one of the two official languages, depending on the institution chosen. There are universities that give classes in English and others that teach in French. The fact that civil servants from the Administration of Justice have to know the language of the territory also incentivises the study of law in both languages.

7.2. Possible solutions for the Catalan case

Possible solutions to guarantee the training of judges in Catalan:

- Establish “Legal Language in Catalan” as a subject. If this subject is not compulsory in the curriculum, guarantee that passing it will provide proof of a higher level of Catalan.
- Guarantee the presence of a group in Catalan for all compulsory subjects. Only in this way will the jurists graduating from Catalan universities have sufficient legal knowledge to develop professionally in Catalan.
- The groups doing classes in Catalan must have academic materials and manuals in Catalan, either through the establishment of translation services or using materials directly written in Catalan. There are few materials of this kind available today, but this measure would increase the demand and, in the medium term, the range available.

8. Legal agreements and relationships in an international context

In the international context, Spanish acts as the sole valid language representing the State in judicial relations, in the transfer of documents or information, and in other types of judicial processes. Catalan is never considered either as an option for transmitting information or as a means of international relations.

To give an example, the Mutual Recognition of Criminal Court Decisions in the European Union Act ignores Catalan and does not allow its use in any case. The model forms and certificates sent to Spain must be in Spanish. Article 17 says that when a certificate from another country does not arrive in Spanish “it will be returned immediately” to the judicial authority of the issuing State for translation, unless there is an agreement signed allowing the use of another language.

Agreements of this type include the one between Spain and Portugal of 19 November 1997, under which the international criminal and civil documents received could be accepted in Portuguese. This means that the Spanish Administration of Justice is obliged to accept a document written in Portuguese, but will reject one written in Catalan. To give another example, Royal Decree 936/2001 on legal practice in Spain with professional qualifications from a European Union State insists that all documents must be presented in Spanish. Catalan is not allowed under any circumstances.

Beyond the European Union, all agreements with other countries also establish the obligation to present documents and operate in Spain exclusively in Spanish. For example, in the agreements with China and Hong Kong, signed on 15 November 2012, for the handover of people convicted and for legal assistance in criminal cases, Spain allows actions, requests for advice or documents from China and Hong Kong only in Spanish, but not in Catalan or in any other language.

8.1. Situation in comparative law

In the area of legal agreements and relationships in an international context, the situation is more specific to each State than in the areas discussed previously. It should be remembered that, beyond general legislation, each State can have bilateral agreements with others and come to specific agreements about the acceptance of foreign documents and judicial decisions in different languages. However, a series of general rules can be indicated:

- Belgium:** Allows judicial documents in any of its official languages and even in English.
- Switzerland:** Allows judicial decisions in German, French and Italian, as well as any permitted under the terms of any bilateral treaties it has with other States.
- Canada:** The Canadian legal system allows foreign judicial decisions in either of the two official languages named in the Constitution: English and French.

8.2. Possible solutions for the Catalan case

Unfortunately, the main difficulty in the field of international relations stems from the regulations. It is very difficult to defend Catalan in the context of international relations without support from a State, precisely because States are still the main players on the international stage. The only solution would involve the Mutual Recognition of Criminal Court Decisions in the European Union Act to be adapted to the theoretically multilingual operation of the justice system.

9. Habits and inertia

The Administration of Justice operates under many conventions, formalities and routines. In this respect, the habit of doing things in a particular way – in this case in Spanish – has a negative effect on Catalan. This is clearly reflected in the offices of notaries public and registries. Although in Catalonia it is compulsory to have all official forms available at least in Catalan, as established by Decree 204/1998 on the use of the Catalan language in notarised documents, it is often necessary to specifically ask for them in Catalan because they are initially offered only in Spanish. And the same thing happens when issuing deeds. In the case of notaries public, language choice is offered in only 32% of cases. When the option to choose the language is given, the use of Catalan in deeds increases by 65.6%. From this it can be deduced that the routine generally involves more the use of Spanish than Catalan. But the official figures also show a reduction in the use of Catalan: in 2018, only 8.4% of notarised documents drawn up in Catalonia were written in Catalan.

10. The fear of speaking one's own language, even when there is the formal right to do so

All the situations described in the above points lead to a situation of fear. As Spanish is the “normal” and “customary” language, merely speaking Catalan almost equates to activism. In other words, Spanish is the “anonymous” language and Catalan is a language that “marks you out”. For this reason, even with legislation that recognises, de iure, the right to use Catalan in many judicial spheres, Catalan is absent, or at least not as present as should be expected.

Citizens perceive this unequal, discriminatory legislation, as has been seen, the context promotes Spanish. A survey commissioned by Plataforma per la Llengua and carried out by the Gabinet d'Estudis Socials i d'Opinió Pública (GESOP)¹, shows a clear difference between the behaviour of Catalan-speakers and that of the total population. The population were asked if they believed speaking Catalan at a trial where the judge was speaking Spanish would harm their case. The results (figure 3) show that almost 60% of Catalan-speakers (and 38% of all Catalans) believe either “probably yes” or “possibly yes”.

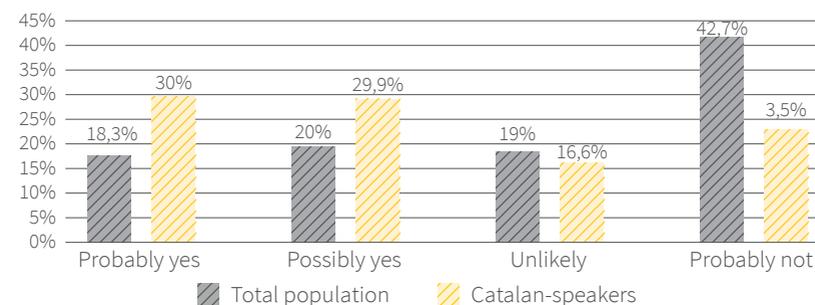
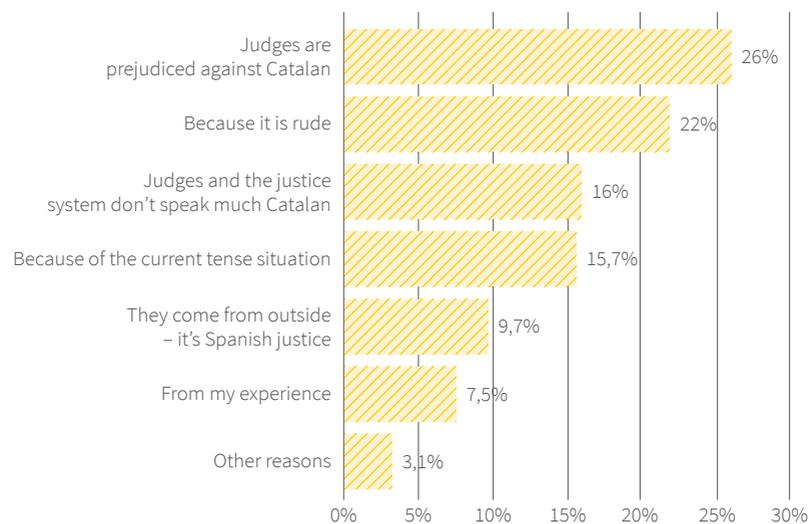


Figure 3. Results for the question: “Now imagine that you have to go and make a statement to a Court in Catalonia accused of making too much noise in your home, even though you can prove this is a mistake. The judge asks you the first question in Spanish. Do you believe that answering in Catalan could harm your case?” Source: GESOP (2018)

1 The survey has a sample of 1,602 people and has been calculated with a 95.5% confidence level if $p = q = 0.5$, with a sample error of $\pm 2.5\%$.

The same survey also asked about the reasons why the population considers that the use of Catalan would harm their case. Among this 60% of the Catalan-speaking population, the results (figure 4) show that the majority sees the Catalan language as alien to the judicial system or that the judicial system is hostile towards Catalan. They give various reasons for this belief: “judges are prejudiced against Catalan” (26%), “judges and the justice system don’t speak much Catalan” (16%), “because of the current tense situation” (15.7%), “they come from outside – it’s Spanish justice” (9.7%) or “because of my experience” (7.5%). All these reasons, grouping together 75% of the explanations given by Catalan-speakers, provide examples of the fear and lack of confidence affecting the use of Catalan with the Administration of Justice that can be created by the legislation.



Gràfic 4. Motius pels quals els catalanoparlants creuen que parlar en català davant d'un jutge els perjudicaria
Font: GESOP (2018)

Professional lawyers are not immune from these fears. In 2015, the Centre for Legal Studies and Specialist Training published a study entitled *Vies de potenciació de l'ús del català a l'Administració de justícia* (Ways of Promoting the Use of Catalan in the Administration of Justice) which warned of the extra-judicial obstacles and gave the statistic that 75% of lawyers who use Catalan state that the courts have suggested they change to Spanish.

Conclusions

In December 2019, the Council of Europe admonished Spain for not applying the European Charter for Regional and Minority Languages, which it ratified 18 years ago, and issued some recommendations. One of these recommendations is to “amend the Judicial System Act to ensure the use of the coofficial languages in judicial proceedings when requested by one party”. The Council is also asking the Spanish State to “improve the use of coofficial languages by the State Administration in the autonomous communities”.

The Spanish State will not comply with this recommendation. The Spanish Parliament has had the opportunity to amend article 231 of the LOPJ on various occasions, most recently in 2017, but the PP and PSOE parties did not allow it. As we have been seen many times, both in the diagnosis of the obstacles and the proposed solutions, the main difficulty for normalising the use of Catalan in the Administration of Justice is in the regulatory context and the reluctance of the State to amend it.

The only language policy practised by Spain is the perpetuation of Spanish as the only language used. Spain does not respect its own Constitution, which, in article 3, speaks of the full official status of “the other languages” in the autonomous communities where they are native and highlights the cultural wealth represented by those languages, which it says deserve special protection. The State also does not implement European recommendations concerned with compliance with an international treaty, the European Charter for Regional and Minority Languages, to which it has committed itself and from which it has drawn international political prestige by showing itself to be a State sensitive to linguistic diversity.

The right to use Catalan in the Administration of Justice is a strictly formal one. The low levels of actual use by all actors must be attributed to a lack of the political will to see the real problem: if you are a party in judicial proceedings, all the conditioning factors still push you to use Spanish and give up your own language.

What are the obstacles preventing the use of Catalan in the justice system?

Lawyers even fear that using Catalan could harm their own interests, or those of their client, in court. If you use Spanish, you never have a tacit or explicit problem with the Spanish justice system, either in territories where Spanish is the native language or in areas where it is not. By contrast, if you use Catalan you can end up in the middle of an obstacle course. This situation means only people who are militant and aware of their rights end up using Catalan.

Two years after initially demonstrating all this in the first edition of this report/ compilation, we can once again conclude that Catalan is facing clinical death in the judicial sphere if awareness of the problem is not raised and determined policies not adopted, not only to guarantee the right to use Catalan but also to promote its use, which continues to be subtly persecuted. Catalan will only escape this imminent demise if it has its own State, where we can create and organise our own justice system in Catalan, or if there is a far-reaching legislative reform that accepts State multilingualism and eliminates the predominance of Spanish over Catalan.

This report has also allowed us to discover the situation in other countries where there are multilingual situations. The contrast between States like Belgium, Switzerland and Canada, on one hand, and Spain on the other, is so great concerning citizens' language rights that the legal anomaly of the Spanish State is shown up even more clearly.

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With the support of:



**Generalitat
de Catalunya**

Plataforma per la Llengua
C/ Sant Honorat, 7. Principal 1a
08002 Barcelona
Tel.: 93 321 18 03
info@plataforma-llengua.cat
www.plataforma-llengua.cat