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What are the obstacles to the use of Catalan in justice?



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The Administration of Justice is one of the areas in which the use of Catalan is precarious and virtually non-existent. This report will be analysing why, after so many initiatives, different programmes, many strategies and resources dedicated to turning the situation around, Catalan is still languishing in a “linguistic desert” in this sector.

What are the main reasons why Catalan is in such a critical and practically invisible situation?

01 - Civil servants or officials do not come from Catalonia. The linguistic requirements for personnel involved in the administration of justice

In this professional sector, the people employed do not come from Catalonia and have never been obliged to speak Catalan to practice their profession.

The state-wide structure of the civil service corps has facilitated the advent of many people from outside the Catalan linguistic domain into Catalan-speaking territories. In many cases, these officials intend to return to their place of origin as soon as possible, thus generating a great deal of provisionality. This mobility and provisional nature in court offices affects language; in many cases, language uses change in court offices when new employees are recruited and Catalan ceases to be used. Moreover, Catalonia does not have a long-standing tradition of opposition, which also hampers the linguistic standardisation process in court offices.

The judges, magistrates, public prosecutors and lawyers and civil servants of the State are obliged to understand and speak Spanish, but not Catalan. Catalan, as provided for by Law 6/1985 of the judicial power, and Regulation 2/2011 on the law profession, can only be a merit that will be taken into account, but not a requirement, and provided that this merit is limited to the territory where the language is the official one. In some cases, such as the civil servants employed in the Administration of Justice (article 483 of Law/6/1981), not knowing Catalan can never lead to someone being ruled out for a position, it is always optional. Royal Decree 1451/2005 on the recruitment of civil servants to the Administration of Justice also relegates knowledge of Catalan to a simple merit, even where it is an official language, whereas Spanish is a state-wide requirement.

The same occurs in the State Lawyer profession, by virtue of Royal Decree 1600/2005, or in the forensic medicine career, pursuant to Royal Decree 296/1996. For public prosecutors, Catalan can also only be a merit, and only when or where it is official (Law 50/1981, on the Organic Statute of the Public Prosecutor’s Office). Article 13 of Royal Decree 634/2014, which legislates for replacements (stand-ins) in the career of public prosecutor, also insists on the restrictive nature of the merit, which is only valid where Catalan is officially recognised. Different state provisions and dispositions insist on the compulsory nature of Spanish, whereas Catalan is optional and at best a merit in all matters pertaining to the General Administration of the State, even if the position is held in a place where Catalan is an official language. Article 102 of the Statute of Catalonia established that knowledge of Catalan was as mandatory as knowledge of Spanish to practice in Catalonia, although the finding of the Constitutional Court reinterpreted it in a way that the enforcement of the article was subject to the

amendment of the Judicial Power Law. This Law has subsequently been amended several times, albeit never with the intention of adapting it to the Statute. Moreover, knowledge of Catalan, which is regarded as a merit, often does not guarantee suitable knowledge for the job being carried out (the Catalan language proficiency certificates provided for are below the necessary level of use). The Parliament of Catalonia has submitted numerous proposals to the Spanish Government in order to balance the requirements of Catalan and Spanish in Catalonia, but they have never prospered. In October 2016, a new legislative initiative was submitted to amend article 231 of the LOPG and to be able to demand that Catalan be a requirement to practice in the territories where it is the official language, in accordance with the recommendations of the Council of Europe (January 2016). However, the lack of support from the PP and the PSOE thwarted this attempted amendment, and with it the possibility of applying the language requirement to civil servants that come to work in Catalonia.

Spanish is the only language that is a requirement for obtaining the professional qualifications of lawyer and court attorney all over Spain (this is implicit and is interpreted on the basis of Law 30/2006, Royal Decree 775/2001 and the Order PRE/1743/2016, of 27 October, which convenes the professional qualification examination to practice the law profession in 2017). On the other hand, Catalan is neither a requirement to practice nor an option in the mechanisms applied for obtaining the qualification.

02 - The language of court proceedings

In matters of court proceedings, article 231 of the Organic Law of the Judicial Power establishes the regulation of the linguistic system and treats Catalan differently, as is also the case in the legal system of the administrations. The current wording establishes that the default language of court action is Spanish, thus disregarding the principle of equality of both official languages. Pursuant to this article, the use of Catalan by civil servants is merely optional, provided that no party to the proceedings claims legal defencelessness. Judges, magistrates, prosecutors, state attorneys and other court officials must use Spanish (article 231). Catalan is not the default language, it is only permitted where it is the native and official recognised language. If it is used, translations must be provided when the documents take effect outside the jurisdiction of the legal organs of the Autonomous Community in question. The fact that this documentation has to be translated into Spanish discourages legal agents from using Catalan.

This is at odds with the pact signed between the Kingdom of Spain and the Portuguese Republic on legal cooperation in criminal and civil matters (Madrid, 19 November 1997), which establishes that “petitions and documents for International legal aid in criminal and civil matters between the Ministries of Foreign Affairs and of Justice, as well as the legal authorities, may be worded in the language of the State requiring or requesting them, for which purpose both parties waive their right to use the reservations formulated in the multilateral Treaties to which they are party”.

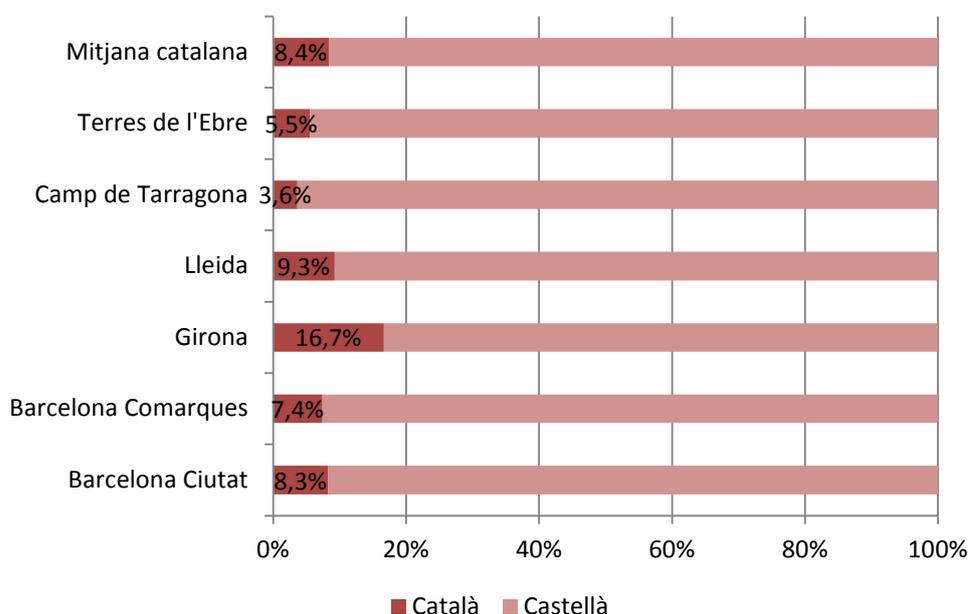
Concluding, in legal offices, it is the State judges or lawyers who decide which language will be used in their office. In this way, the language used in the office is

subject solely to the wishes of the person working there and not to the citizen going there. Generally speaking, in Spain, unlike similar multilingual countries, it is not the citizens who choose the language from among the different State languages and the judge who has to adapt, but rather it is the judge who chooses the language. Moreover, since the law provides for the use of Spanish as default language, the latter enjoys a pre-eminent status.

The supremacy of Spanish is reinforced by the fact that legal officials are allowed to choose their language. The judge can always have a document translated into Spanish, even if it has been produced by the Administration of Justice. On the other hand, if the original is Spanish, the judge cannot request a translation into Catalan. The aforementioned eventuality was a possibility until 1994 in Autonomous Communities where Catalan was an official language, but the reform of the Judicial Power (Organic Law 16/1994) consolidated this privilege solely for Spanish throughout the territory.

An inertia that is difficult to do away with has been created in the Administration of Justice, leading all the agents involved to realise that they must exercise their profession in Spanish. Moreover, this situation means that civil servants do not regard the use of Catalan in the courts as a need, in view of the scant demand for this language among legal professionals.

Proportion of rulings in Catalan courts by language, 2015



Source: Government of Catalonia. Department of Justice

03 - The citizen's rights before the law

Citizens who express themselves in Spanish have no restrictions and enjoy all the available rights and possibilities all over Spanish territory. On the other hand, Catalan is clearly restricted. Beyond the provisions derived from the accused's right to be defended, where Catalan is treated like any other language in the world, Catalan language can only be used whenever it is an official language. Oral or written pleas or statements in Catalan language can only be submitted or made to legal organs based in the Autonomous Community but not to any of the central organs that represent the whole State. However, Catalan has even more restrictions. There is no guarantee that this transcription of the statements of the witnesses or of the accused will be in Catalan, not even where it is an official language, and even although such statements have been made in the language. On the other hand, Spanish does enjoy this guarantee. Neither do accused, lawyers or witnesses have the right to express themselves in Catalan directly to the judge without an interpreter. In other words, any Catalan-speaking citizen or lawyer does not enjoy the right to be understood directly by the judges or the court officials in their own language. This is not the case of Spanish. The basic legislation of the Law of Criminal Proceedings, which has been amended several times, makes every assumption in favour of Spanish, but not of Catalan, and takes it for granted that the default language of proceedings will be Spanish.

The latest legislative changes regarding the recommendations issued by the Council of Ministers of the Council of Europe have not brought any major changes in these trends. The state has reformulated the legal framework so as not to grant preference to Spanish. In the course of 2015, the *Organic Law 13/2015, of 5 October* and the *Organic Law 5/2015, of 27 April* were enacted, amending the Law of Criminal Proceedings and the Organic Law of the Judicial Power with regard to the right to assist victims, and where reference was formerly made to the right to a translation if Spanish is not understood, it now talks of the right to a translation when Spanish or the official language in which the proceedings are held is or are not understood. Nevertheless, this amendment, which standardises the use of languages other than Spanish in the courts of law with regard to victims, does not do so with regard to witnesses – who continue to be entitled to an interpreter only if they do not understand Spanish –. Neither does the amendment most called for by the experts of the Council of Europe help, since it does not do away with the legal inequality which assumes that in legal proceedings in which more than one language option is involved the proceedings are conducted in Spanish.

04 - Work material in Spanish

The majority of the work material of legal operators (manuals, annotated codes, legislation, etc.) is written in Spanish. The state, community and international legislation published or ratified by the Spanish State prior to 1990 does not exist in Catalan. Only a small part of this documentation published after this date exists in Catalan, the changes are not updated and neither are consolidated versions published (with the amendments included) in Catalan. The laws published in the BOE [Official State Gazette] are translated into Catalan with a major delay, sometimes up to six months.

This generates a major inequality between language communities, and places shackles on the use of Catalan by judges, prosecutors and lawyers and attorneys in general. Whereas Spanish enjoys what is practically a State guarantee for the publication of materials and the law that guarantees all the legislation, Catalan does not.

This material, used in the universities and subsequently in the professional world, leads jurists and legal experts to become used to working with legal terminology in Spanish.

05 - The language of justice in the central and higher institutions

As Spanish is defined as the language of justice by the Organic Law 6/1985 of the Judicial Power, it is the only language in which the central organs of justice operate. These organs require Spanish translations in the case of documents from Autonomous Communities that may use Catalan (Catalan is always optional). On the other hand, documents in Spanish do not need to be translated into Catalan when they leave the autonomous community for use by the central institutions of justice. Emblematic institutions such as the Supreme Court, the General Council of the Judicial Power, the National Court and the Higher Court of Justice operate only in Spanish, even in matters such as rulings. In comparative politics, these institutions should be language-neutral and issue rulings or sentences in different languages, depending, for example, on the parties involved. However, in these cases the language of the parties is not accommodated, but rather the parts must adapt to the demands of the Administration and always provide them with a Spanish-language version; whereas the Administration will always issue rulings or sentences in Spanish.

These institutions do not even have an official name in Catalan. In the case of the regional courts located in Catalan-speaking areas, most of the rulings are issued in Spanish. This is the case of the Higher Court of Justice of Catalonia. In the case of the higher courts of justice of the Balearic Islands (TSJIB) and of the Valencian Community (TSJCV) the use of Catalan is purely token.

06 - Constitutional Court

Although it is the main organ of representation of the fundamental rights of all citizens, the Constitutional Court operates exclusively in Spanish. Article 8 of the Organic Law 2/1979 of the Constitutional Court refers to the other laws governing language, laws that establish a privilege for Spanish. In practice, Catalan is virtually non-existent, despite the hundreds of rulings issued, all of them in Spanish. Rulings are not adapted to the language of the issuer, among other reasons because they must be issued in Spanish. However, even if this is known or an optional version in Catalan is known to exist, Spanish is always chosen. Even the press releases issued by the Constitutional Court are only in Spanish. Catalan is not even visible on the website of this institution, which has a Catalan version extremely lacking in content and which is not linked from the Spanish version, although curiously enough (or not) it does have linked and visible French and English versions.

07 – Judicial School

Legal training is not possible in Catalan, not even in Barcelona, where there is a Judicial School centre that provides basic training. There are not two lines, one in Spanish and another in Catalan, in Madrid or in Barcelona. Neither is mixed training in different languages or territorial-based training provided. Irrespective of where the training is provided, all the basic teaching is exclusively in Spanish. Catalan is only an option outside the compulsory subjects. Moreover, as occurred in the last promotion (autumn 2014), the linguistic segregation of Catalan (never Spanish) is taken for granted, although student learnings are distinguished depending on whether they are in “Catalan” or “Valencian” (this linguistic secession approach also occurs in optional subjects). While Spanish is an obligation and a state language, Catalan is only a particularity to be promoted at autonomous community level and it is restricted, as provided for by Regulation 2/1995 of the Judicial School. The official name of the institution, *Escuela Judicial Española*, is also Spanish, period.

08 - Legal agreements and relations in the international framework

Spanish acts as the State's sole valid and representative language in legal dealings, in the transmission of documents or information or other types of legal processes in the State's international representation framework. Catalan is never taken into account, not even as an option for transmitting information or as a medium for international relations. For example, Law 23/2014, on the mutual recognition of criminal rulings in the European Union, ignores Catalan and totally prohibits its use. Forms and certificates sent to Spain must be in Spanish. Article 17 even says that when a certificate from another country is not submitted in Spanish “It will be returned forthwith” to the legal authority of the issuing State for the latter to translate it unless there is a signed agreement which provides for the acceptance of another language. This is the case of the agreement between Spain and Portugal of 19 November 1997, whereby Portuguese can be accepted in documentation received in international criminal and civil questions. This means that the Spanish Administration of Justice is obliged to accept a document in Portuguese but at the same time to reject one worded in Catalan. Another example is Royal Decree 936/2001, on the practice of the legal profession in Spain by a lawyer from a European Union member state, which requires submission of all documentation in Spanish, whereas Catalan is not accepted under any circumstances. Beyond the European Union, agreements with other countries also provide for the obligation to submit and use only documents in Spanish in Spain. This occurs in all the agreements. By way of a more recent example, in the case of the agreements with China and Hong Kong, signed on 30 November 2002, for the transfer of convicted individuals or legal assistance in criminal matters, Spain only accepts proceedings, requests for assistance or documents written in Spanish coming from China and Hong Kong, but not in Catalan or in any other language.

Conclusions

In January 2016, the Council of Europe issued some recommendations to the Spanish State and cautioned it for failing to enforce the European Charter for Regional or Minority Languages, which it ratified 15 years ago. One of these recommendations is that it “amend the legal framework to make it clear that criminal, civil and administrative judicial authorities in the Autonomous Communities can hold proceedings in the co-official languages at the request of one of the parties involved”. The Council of Europe also calls upon Spain to “make sure that a suitable proportion of legal personnel” have “a working knowledge of the relevant languages”. The Spanish state will not observe this recommendation: the Spanish Parliament recently had the chance to amend article 231 of the LOPJ, but the PP and the PSOE blocked this.

The Spanish State does not implement any linguistic policy other than the perpetuation of Spanish as the only language used. It does not observe its own Constitution (article 3) and it fails to enforce European recommendations. In view of all the foregoing, we may conclude that Catalan is on the verge of clinical demise in the legal setting and that it may only survive if it has an independent state where we can create and organise justice in Catalan.