

GLORIA TOTORICAGÜENA  
INIGO URRUTIA, EDS.

**THE LEGAL STATUS  
OF THE BASQUE  
LANGUAGE TODAY:  
ONE LANGUAGE,  
THREE ADMINISTRATIONS,  
SEVEN DIFFERENT  
GEOGRAPHIES  
AND A DIASPORA**

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EUSKO  
IKASKUNTZA



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## Hitzaurrea

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Eusko Ikaskuntza - Sociedad de Estudios Vascos-ek (EI-SEV), 1918an jaio zenez geroztik eta bere historia luzean zehar, agerian utzi du beti euskararekiko maitasun sakona. Sozietatea sorraraziko zuen Eusko Ikaskuntzen I. Kongresuan, 1918an, nabaria izan zen sortzaileek euskara ikasteko eta babesteko beharrari emandako erabateko lehentasuna. Kongresu haren ondorioz Euskaltzaindia, Euskararen Akademia, ere sortu zen. Haren zeregin nagusia, jakina denez, hizkuntza bateratzeko prozesua aurrera eramatea izan da.

*Revista Internacional de los Estudios Vascos* (RIEV) aldizkariak, orobat, euskara izan zuen kezka nagusi. Julio de Urquijok sortu zuen aldizkaria, mundu zabaleko hizkuntzalariei euskara ikertzeko zientzia-organo egokia eskaintzeko asmoz. Hainbat egilek azpimarratu dutenez, hizkuntzalaritzaren eremuan eginkizun erabakigarria jokatu zuen aldizkariak 1907tik 1919ra arte, hau da, Euskaltzaindia jaio arte; eta Euskaltzaindia sortu ondoren ere, “Euskera” aldizkaria agertu arren, RIEVen hizkuntzalaritzari buruz jardun ohi zuten kolaboratzaile taldea paregabea izan zen. Euskararen historiarentzat funtsezkoak ziren testu tradizionalak berreskuratzeko eta argitaratzeko zeregina ere RIEVen esku utzi zuen Urquijok.

Baina Eusko Ikaskuntzako bazkideentzat ez zen aski Sozietateak euskarari buruzko ikerketa sendo eta zientifiko baten sustiraiak errotzea eta gero normalizazioaren oinarriak finkatzea. Idoia Estornesek, Eusko Ikaskuntzari buruz egindako ikerlanean adierazi zuenez, hizkuntza berreskuratzea ere izan zen Sozietatea sortzearen beste helburuetako bat: Kontua ez zen hizkuntza operazio-mahaira eraman eta aztertzea soilik; jazarpenezko eta erdeinuzko politikak kendu zizkion osasuna eta bizitza itzuli behar zitzaizkion euskarari. Lehenengo aroan zehar, irakaskuntzaren eremuan egindako lanaz gain, EI-SEVek euskarazko ikastaroak eta azterketak ere antolatu zituen, *Euzkel Bazkunen Alkartasuna - Federación de Acción Popular Euskerista* (FAPE) izenekoa babestu zuen, eta “Baraibar” sekzioa sortu zuen Araban, euskarak lurralde horretan bizirik zirauen azken bazterretan suspertzeko xedez. Sozietateak, bere hastapenetik 1936ra bitartean, euskarazko hainbat katedra sortu zituen eta 1918ko Kongresuaren deialdiari erantzunez agertutako katedra edo ikastaro guztiak babestu zituen.

Gaian sakonduta, gogoratu daiteke 1930eko Eusko Ikaskuntzen V. Kongresuak Euskararen Eguna bideratu zuela, Euzkel Bazkunen Alkartasunaren esku-

tik. Ekimen horren inguruan sei erakunde bildu ziren, guztiak ere euskararen sustapena xede zutenak eta hizkuntza Euskal Herri osoan hedatu eta berreskuratzeke lanean zihardutenak, hau da, Pirinioez bi aldeetan, Frantziako eta Espainiako estatuetan. Ekimen harez geroztik, euskarak bere Nazioarteko Eguna du 1948tik. Urte hartan Baionan (Lapurdi) egindako VII. Kongresuan, honako erabaki hau hartu zuten: *“Une journée de la Langue Basque dans le monde entier sera célébrée une fois par an, le 3 décembre, jour de la fête de Saint-François Xavier, sous les auspices d’ Eskualzaleen Biltzarra et d’ Eusko Ikaskuntzen Lagunartea”* (“Euskararen eguna ospatuko da urtean behin mundu osoan, abenduaren 3an, San Frantzisko Xabierkoaren egunean, Eskualzaleen Batzarrak eta Eusko Ikaskuntzen Lagunartean babestuta”).

Sozietateak susperraldia bizi izan zuen 1978tik aurrera, eta, ondorioz, euskararekiko konpromisoa berreskuratu zuen. Hala, hainbat lkerkuntza-jardunaldi eta argitalpen sustatu zituen, baita era guztietako ekitaldi publikoak ere. Hala ere, konpromiso hori hasierako garaikoa bezain loteslea edo lotesleagoa izanik ere, ez dugu ahaztu behar XXI. mendeko gizartea XIX.ekoa ez bezalakoa dela oso. Garai hartan identitatearen eta hizkuntzaren inguruan eratutako ideologiak eta sentimenduak eguneratu behar dira orain, garapen kolektiborako oztopo bilakatuko ez badira. Eusko Ikaskuntzak sustaturiko *Euskal nortasuna eta kultura XXI. mendearen hasieran* ikerlanak ondorioztatu duenez, kultura eta identitate anitzeko pilaketa da Euskal Herriko egungo gizartea. Demografiaren eta migrazioaren errealtateak areagotu egin du herritar berriak barneratzeko erronka, kulturaren aldetik baztertuta eta gizartearen ikuspegitik zokoratuta egon ez daitezten. Euskal Herriaren ikuspegi estatiko eta esentzialista, eta ikuspegi hori kausa ustez egiazko eta baztertzaille batean gauzatzea, hizkuntza arma politiko gisa darabilena, kalte handiaren eragilea izan da beti. Bai politikaren eremuan eta baita, hedaduraz, Euskal Herriaren barruko eta kanpoko bestelako eremuetan ere. Euskal identitatearen ikuskera ebolutiboak talka egiten du euren burua euskalduntasunaren muinaren eta, horren barruan, euskararen zaindaritzat dutenen jarrera integristarekin.

Aitzitik, jokaera eraikitzaile eta integratzailea, jarrera politiko eta jatorrizko identitate ezberdinetatik kulturari atxikitzeke askatasuna errespetatzen duenak, lagundu egiten dio hizkuntzari jarrera amoregaitz eta esentzialistatik egindako halako “presio hertzatzaile” hori kentzen. Horri esker, identitate partekatua eraikitzeke aktiboa izan daiteke hizkuntza. Oso argi ikusten dugu euskal erkidego anitzetan elkarbizitza eredu berria lortu behar dugula, integratzaileagoa, baina aldi berean, hizkuntzari atxikitzeke sustraiz eta sentimenduz hornitua. Horri buruzko datu esanguratsua nafar gurasoek beren seme-alabak euskaraz eskolatzeke gero eta interes handiagoa izatea da, nahiz eta Foru Erkidegoko administrazioek hizkuntza suspertzeke interes eskasa erakutsi, lan honetako orrialdeetan agerian geratu denez. Euskal hizkuntza eta kultura herritar guztien ondasun kolektiboa eta askatasunez eta ilusioz parte hartzeke gunea izan behar dira argi eta garbi. Ildo horretan, EI-SEVek, edozein mendekotasun politikotik kanpo, hizkuntzaren inguruan elkarrekin bizitzeke proiektu bateratuaren paradigma izan behar du.

Espiritu horrekin eta gure tradizioarekin leialak izanik, hizkuntzari buruzko ikerlan bat bultzatu nahi izan dugu beste behin ere, bereziki irakurle euskaldunei zuzenduta. Euskal hiztunak bizi diren hiru lurraldeetan diseinatu eta ezarritako hizkuntza-politika guztien balantzea egiten du ikerlanak. Euskal Autonomia Erki-degoko Legebiltzarrak ateratako Euskararen Normalizazio Legeak mende laurdena bete du indarrean, urte batzuk gutxiago ditu Nafarroako Vasceucearen Foru Legeak, eta azkenik, Frantziako Estatuak Iparralderako euskararen inguruan emandako araudia sakabanatua dugu. Arau horiek guztiak aztertu eta baloratu dituzte aditu ospetsuek orrialdeotan.

Etorkizunari begira eta euskara sustatu eta iraunarazteko betidanik izan duen bokazioari leial, El-SEVek nahi luke lan honetan bildutako ekarpenak hizkuntza-politikaren inguruan azken mende laurdenean gertatutakoari buruz gogoeta egiteko lagungarri izatea, ondo egindakoa hobetzeko eta gaizki egindakoa zuzentzeko xedez.

Xabier Retegi  
*Eusko Ikaskuntzako Lehendakaria*



## Prologue

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Since its foundation in 1918, and throughout its long history, the Society for Basque Studies-Eusko Ikaskuntza (EI-SEV) has professed and demonstrated its love for the Basque language. At the Congress for Basque Studies of 1918, from which the Society would later arise, the extraordinary importance that the founders gave to the study and protection of Euskara was already evident. It was as a result of that Congress that the Academy of the Basque Language, “Euskaltzaindia” emerged which, as we all know, was destined to drive the process of linguistic unification of the language.

Euskara was the main concern of the magazine *Revista Internacional de los Estudios Vascos* (RIEV) founded by Julio de Urquijo with the view to offer to linguists all over the world a suitable scientific means for the study of the language. Various authors have highlighted its decisive influence on the field of philology from 1907 until 1919, the year when Euskaltzaindia was first founded; even after its foundation and in spite of the appearance of the publication “Euskera”, the range of contributors to RIEV with philological topics is unsurpassable. Urquijo also reviewed in RIEV the fundamental task of recovering and editing traditional texts, which were and are essential to the history of the Basque language.

It was not enough for the members of Eusko Ikaskuntza that it should lay the basis for a solid and scientific study of the Basque language and propitiate its future normalization. Idoia Estornés, in her study of the Society for Basque Studies, pointed out that the purpose of its foundation also had a decidedly restorative character: it was not only about dissecting and analyzing the language as if on an operating table, but also about restoring it the health and life stolen by a policy of persecution and abandonment. During the early days, EI-SEV, in addition to its work in the field of education organizing Euskara courses and examinations, also welcomed and sponsored the Federation for Popular Euskera Action (FAPE) and created in Araba (Alava) the “Baraibar” Section, dedicated to reviving the Basque language of Araba in its last remaining strongholds. From its foundation until 1936, the Society created several professorships in Euskara and protected all those chairs and courses which emerged or responded to the call of the 1918 Congress.

Furthermore, the V Congress of Basque Studies of 1930 is remembered for having introduced, through the Federation for Popular Euskera Action, the Day of



Euskera, which brought together six organizations dedicated to the promotion of the Basque language, and responsible for the diffusion and restoration of Euskara in the Basque Country on both sides of the Pyrenees, that is, both in France and in Spain. Following that event, Euskara has celebrated its International Day since 1948. It was actually during the VII Congress of Eusko Ikaskuntza celebrated that year in Baiona, Lapurdi, or Bayonne, Labourd, when the following agreement was reached: “Une journée de la Langue Basque dans le monde entier sera célébrée une fois par an, le 3 décembre, jour de la fête de Saint-François Xavier, sous les auspices d'Eskualzaleen Biltzarra et d'Eusko Ikaskuntzen Lagunartea”.

Following its revitalization since 1978, the Society has recovered its commitment to Euskara, promoting study seminars and various publications, as well as public events of all types. Although the Society's commitment is as binding now as it was when it was first acquired in its beginnings, if not more, the fact that XXI century society is very different to that of the XIX century cannot be ignored. It was then when ideologies and feelings were created around the identity and the language, the latter being a key part of society. They must now be updated if they are not to become a hindrance for collective development. As shown by the research published in *Basque Identity and Culture in the Beginning of the XXI century*, sponsored by Eusko Ikaskuntza, the current society of Euskal Herria is made up of multicultural clusters and diverse identities. The new demographic and migration scenario emphasizes the challenge of amalgamating that new group of citizens, thus avoiding the creation of culturally excluded and socially marginalized populations. The static and essentialist vision of the Basque people, and its translation into an allegedly true and exclusive cause that uses the language as a political weapon, has already caused too much damage, not only in politics, but also by its extension into many other environments in and outside Euskal Herria.

On the other hand, a constructive and integrating attitude of free adhesion to the culture by the various political positions, from different identifying roots, allows the liberation of the language from that “coercive pressure” exerted by intransigent and essentialist positions, as well as its acceptance as an asset for the construction of a shared identity. We have established the real need in the various Basque communities to obtain a new open integrating model of coexistence, but with common roots and feelings of adhesion to the language. A very significant sign is the growing interest of parents in Navarre to have their children taught in Basque, in spite of the little interest shown by the different administrations of the Foral Community in the promotion of the language, as is demonstrated by the contents of this work you have in hand. The Basque language and culture must be clearly visible as a collective asset belonging to the entire population and as a space for free and enthusiastic participation. In this sense, the mere existence of the EI-SEV, free of any political influence, must be a shared paradigmatic project of coexistence around the language.

With this spirit, and loyal to our traditions, once again we have wanted to drive a study of the language aimed especially at the non-Basque and non-special-

ist audience. In this work, a balance is taken of the achievements and adversities of the different policies regarding the language that have been designed and implemented by the territories where Basque is spoken. After a quarter century since it was enforced, the Act of Normalization of Euskara issued by the Parliament of the Basque Autonomous Community, the more recent Chartered Law of Navarre relating to the Basque language, as well as the dispersed regulations issued by the French government for Iparralde, and special programs for the Basque diaspora are all analyzed and evaluated by reputable specialists in the following pages.

With the future in mind, EI-SEV, ever loyal to its foundational vocation which throbs with the desire to promote and validate the Basque language, hopes that the contributions compiled in this work will aid in the reflection on what has occurred in the last quarter of a century with regards to language policy, to improve what has been achieved and to correct any mistakes.

Javier Retegui  
*President of Eusko Ikaskuntza*

## Prólogo

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Desde su fundación, en el año 1918, y a lo largo de su dilatada historia, la Sociedad de Estudios Vascos-Eusko Ikaskuntza (EI-SEV) ha profesado un probado amor hacia la lengua vasca. En el I Congreso de Estudios Vascos de 1918, del que surge posteriormente la Sociedad, se pone ya de manifiesto la importancia extraordinaria que los fundadores otorgaron al estudio y protección del euskara. A raíz de aquel Congreso surgió la Academia de la Lengua Vasca, “Euskaltzaindia”, que, como es sabido, estaba destinada a llevar a cabo el proceso de unificación lingüística del idioma.

El euskara fue la preocupación nuclear de la *Revista Internacional de los Estudios Vascos* (RIEV) fundada por Julio de Urquijo, con la idea de ofrecer a los lingüistas de todo el mundo un órgano científico adecuado para el estudio de la lengua. Distintos autores han destacado que en el campo de la filología su peso es decisivo desde 1907 hasta 1919, año en que se funda Euskaltzaindia; e incluso después de su fundación, pese a la aparición de la revista “Euskera”, el elenco de colaboradores de la RIEV sobre temas filológicos es insustituible. Condensa también Urquijo en la RIEV la tarea fundamental de recuperación y edición de textos tradicionales, esenciales para la historia de la lengua vasca.

No bastó para los socios de Eusko Ikaskuntza con que esta sentara las bases de un estudio sólido y científico de la lengua vasca y propiciara las bases de su futura normalización. Como hace tiempo señaló Idoia Estornés en su estudio sobre la Sociedad de Estudios Vascos, el propósito fundacional fue también decididamente restauracionista: no se trataba sólo de disecar y analizar el idioma en la mesa de operaciones, sino también de devolverle la salud y la vida hurtadas por una política de persecución y abandono. A lo largo de su primera época además de su labor en el terreno de la enseñanza, EI-SEV organizó cursos y exámenes de euskara, acogió y patrocinó a la Federación de Acción Popular Euskerista (FAPE) y creó en Álava la Sección “Baraibar”, dedicada a reanimar el vascuence alavés en sus reductos últimos. Desde su fundación hasta 1936, creó la Sociedad varias cátedras de euskara y protegió todas aquellas cátedras o cursos que surgieron o respondieron al llamamiento del Congreso de 1918.

A mayor abundamiento se puede recordar que el V Congreso de Estudios Vascos, de 1930, introdujo de manos de la Federación de Acción Popular Euskerista, el Día del Euskara, que reunió a seis organizaciones dedicadas a la promo-

ción de la lengua vasca, responsables de la difusión y restauración del euskara en el País Vasco a ambos lados de los Pirineos, es decir, en los estados de Francia y España. A raíz de aquél acontecimiento, el euskara tiene su Día Internacional desde 1948. Precisamente en el VII Congreso de Eusko Ikaskuntza celebrado dicho año en Bayona, Lapurdi, se tomó el siguiente acuerdo: “Une journée de la Langue Basque dans le monde entier sera célébrée une fois par an, le 3 décembre, jour de la fête de Saint-François Xavier, sous les auspices d’Eskualzaleen Biltzarra et d’Eusko Ikaskuntzen Lagunartea”.

Tras su revitalización, a partir de 1978, la Sociedad ha recuperado su compromiso con el euskara, promoviendo jornadas de estudio y publicaciones diversas, así como actos públicos de toda índole. Pero, siendo dicho compromiso tan vinculante o más que el adquirido en su primera época, no podemos obviar el hecho de que la sociedad del siglo XXI es muy distinta a la del XIX, cuando se configuraron en torno a la identidad y a la lengua, como pieza esencial que conforma aquella, ideologías y sentimientos que hoy deben actualizarse si no quieren convertirse en rémoras para el desarrollo colectivo. Tal como se recoge en la investigación *Identidad y cultura vascas a comienzos del siglo XXI*, promovida por Eusko Ikaskuntza, la actual sociedad de Euskal Herria conforma un conglomerado pluricultural y de identidades diversas. El nuevo panorama demográfico y migratorio acentúa, si cabe, el reto de integrar a esta nueva ciudadanía evitando generar poblaciones culturalmente excluidas y socialmente marginadas. La visión estática y esencialista del Pueblo Vasco, y su traducción en una causa supuestamente verdadera y excluyente, que utiliza la lengua como arma política, ha producido no poco daño. No sólo desde la política, sino por extensión en muchos ámbitos dentro y fuera de Euskal Herria. La concepción evolutiva de la identidad vasca choca frontalmente con la posición integrista de quienes se erigen en depositarios de la esencia de lo vasco, hipóstasis de un Ser Vasco en el tiempo, incluyendo en dicha esencia al euskara.

En cambio, una actitud constructiva e integradora, de libre adhesión a la cultura, desde posiciones políticas diversas, desde raíces identitarias distintas, permite liberar a la lengua de esa “presión coercitiva” que se ejerce desde posturas intrasigentes y esencialistas, y entenderla como un activo en la construcción de una identidad compartida. Constatamos la necesidad palpable en las diversas comunidades vascas de conseguir un nuevo modelo de convivencia abierto, integrador, pero con raíces y sentimientos comunes de adhesión en torno a la lengua. Constituye un dato significativo al respecto el interés creciente por escolarizar a sus hijos en euskara de los padres navarros, a pesar de escaso interés que las diversas administraciones de la Comunidad Foral han demostrado en la promoción de lengua, tal como queda demostrado en las páginas de esta obra. La lengua y la cultura vascas deben quedar claramente visibles como un bien colectivo de toda la población y un espacio de participación libre e ilusionante. En este sentido, la propia existencia de la EI-SEV, libre de toda dependencia política, debe valer como paradigma de proyecto de convivencia compartido en torno a la lengua.

Desde este espíritu y fieles a nuestra tradición, una vez más, hemos querido impulsar un estudio sobre la lengua dirigido, fundamentalmente, al público ame-

ricano. En esta obra se hace balance de los logros y accidentes de las diversas políticas lingüísticas diseñadas e implementadas en los tres territorios de habla vasca. Tras un cuarto de siglo de vigencia, la Ley de Normalización del Euskara promulgada por el Parlamento de la Comunidad Autónoma Vasca, y con algunos años menos de vigencia, la Ley foral Navarra del Vascuence, así como la normativa dispersa promulgada por el Estado francés para Iparralde, se prestan en estas páginas al análisis y valoración de reputados especialistas.

Con la mirada puesta en el futuro, El-SEV, fiel a su vocación fundacional en la que late el impulso de promoción y vigencia de la lengua, desearía que las aportaciones recopiladas en esta obra ayuden a reflexionar sobre lo acontecido en este último cuarto de siglo en materia de política lingüística y permitan mejorar lo bien hecho así como enderezar lo errado.

Javier Retegui  
*Presidente de Eusko Ikaskuntza*

## Avant-Propos

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Depuis sa fondation, en 1918, et tout au long de son histoire, la Sociedad de Estudios Vascos-Eusko Ikaskuntza (EI-SEV), Société d'Études Basques, a fait preuve d'un amour profond envers la langue basque. Le 1<sup>er</sup> Congrès d'Études Basques de 1918, dont surgirait postérieurement la Société, met déjà en évidence l'énorme importance octroyée par les fondateurs à l'étude et la préservation de l'euskara. C'est à la suite de ce Congrès que surgit l'Académie de la Langue Basque, « Euskaltzaindia », destinée à mettre en œuvre la procédure d'unification linguistique de la langue.

L'euskara était la principale préoccupation de la *Revista Internacional de los Estudios Vascos* (RIEV), Revue Internationale des Études Basques, fondée par Julio de Urquijo avec l'idée d'offrir aux linguistes du monde entier un organe scientifique adéquat pour l'étude de la langue. Plusieurs auteurs ont souligné son poids décisif dans le domaine de la philologie entre 1907 et 1919, année de fondation d'Euskaltzaindia ; et même après sa fondation, malgré l'apparition de la revue « Euskera », la liste des collaborateurs de la RIEV sur des thèmes philologiques est innombrable. Urquijo réalise également, à travers la RIEV, une tâche fondamentale de récupération et d'édition de textes traditionnels, essentiels pour l'histoire de la langue basque.

Mais les membres d'Eusko Ikaskuntza ont estimé que la Société ne devait pas se limiter à instaurer les bases d'une étude solide et scientifique de la langue basque et de sa future normalisation. Tel que le signalait déjà Idoia Estornés dans son étude sur la Société d'Études Basques, le but de sa fondation était également restaurationniste : il ne s'agissait pas seulement de disséquer et d'analyser la langue en profondeur, mais de lui permettre de récupérer la santé et la vie, dont elle n'avait pu jouir à cause de la politique de persécution et d'abandon dont elle avait fait l'objet. Durant sa première étape, outre son travail dans le domaine de l'enseignement, l'EI-SEV a organisé des cours et des examens d'euskara, elle a accueilli et parrainé la Federación de Acción Popular Euskerista (FAPE) et elle a créé en Alava la Section « Baraibar », dédiée à la récupération de la langue basque à tous les niveaux. Depuis sa fondation et jusqu'en 1936, la Société a créé plusieurs chaires en euskara et protégé celles déjà existantes, ainsi que les cours surgis en réponse à l'appel lancé par le Congrès en 1918.

Et c'est le V<sup>ème</sup> Congrès d'Études Basques, de 1930, qui introduit, de la main de la Federaci3n de Acci3n Popular Euskerista, la Journée de l'Euskara, qui rassemble six organisations dédiées à la promotion de la langue basque, responsables de la diffusion et restauration de l'euskara au pays Basque de part et d'autre des Pyrénées, autrement dit, des États de France et d'Espagne. Un événement qui donnera lieu, à partir de 1948, à la Journée Internationale de l'Euskara, à l'initiative du VII<sup>ème</sup> Congrès d'Eusko Ikaskuntza, célébré cette même année à Bayonne, Lapurdi, au cours duquel est adoptée la décision suivante : « Une journée de la Langue Basque dans le monde entier sera célébrée une fois par an, le 3 décembre, jour de la fête de Saint-François- Xavier, sous les auspices d'Eskualzaleen Biltzarra et d'Eusko Ikaskuntzen Lagunartea ».

Suite à sa revitalisation, à partir de 1978, la Société a récupéré son engagement envers l'euskara, en encourageant l'organisation de Journées d'Études et de différentes manifestations, ainsi que diverses publications. Un engagement tout aussi contraignant, voire davantage, que celui souscrit au cours de sa première étape, mais nous ne pouvons cependant oublier que la société du XXI<sup>e</sup> siècle est bien différente de celle du XIX<sup>e</sup> siècle, période de configuration, autour de l'identité et de la langue comme élément essentiel de sa conformation, des idéologies et des sentiments qu'il convient aujourd'hui d'actualiser, pour éviter qu'ils n'entravent le développement collectif. Tel que le travail de recherche *Identité et culture basques au début du XXI<sup>e</sup> siècle*, mené sous les auspices d'Eusko Ikaskuntza, met en évidence, l'actuelle société du Pays Basque forme un ensemble pluriculturel constitué d'identités diverses. Le nouveau panorama démographique et migratoire accentue davantage l'enjeu d'intégrer cette nouvelle citoyenneté tout en évitant la création de populations culturellement exclues et socialement marginalisées. La vision statique et essentialiste du Peuple Basque et sa traduction en une cause prétendue vraie et excluante, qui utilise la langue comme arme politique, a causé un grand mal. Et pas seulement sur le plan politique, mais également dans de nombreux autres domaines, à l'intérieur et hors du pays Basque. La conception évolutive de l'identité basque se heurte de front à la position intégriste de ceux qui s'érigent en dépositaires de l'essence basque, hypostase de l'être Basque dans le temps et comprenant l'euskara.

Par contre, une attitude constructive et intégratrice, de libre adhésion à la culture, à partir de positions politiques diverses, de racines identitaires différentes, permet de libérer la langue de cette « pression coercitive » exercée par les postures intransigeantes et essentialistes et de la considérer comme un actif pour la construction d'une identité partagée. Ce travail constate, en effet, la nécessité palpable, dans les diverses communautés basques, d'un nouveau modèle de coexistence ouvert, intégrateur, mais aux racines et sentiments communs d'adhésion autour de la langue. Pour preuve : le souci croissant des Navarrais de scolariser leurs enfants en euskara, malgré le peu d'intérêt à l'égard de la promotion de la langue basque des différentes administrations de la Communauté de Navarre, que ce travail met en évidence. La langue et la culture basque doivent être clairement vues comme un bien collectif pour toute la population et comme un espace de participation libre et illusionnant. Dans ce sens, la propre

existence de l'EI-SEV, libre de toute dépendance politique, doit servir de paradigme du projet de coexistence partagée autour de la langue.

Dans cet esprit et fidèles à notre tradition, nous avons tenu, une fois de plus, à impulser une étude sur la langue fondamentalement destinée au public américain. Cet ouvrage fait le bilan des succès et des accidents des diverses politiques linguistiques conçues et mises en œuvre sur les trois territoires basco-phones. Après un quart de siècle d'existence, la Loi de Normalisation de l'Euskara, promulguée par le Parlement de la Communauté Autonome Basque et, quelques années plus tard, la *Ley foral Navarra del Vascuence* en Navarre, ainsi que la normative dispersée promulguée par l'État français en Iparralde, y sont analysées et évaluées par de prestigieux spécialistes.

Le regard tourné vers l'avenir, EI-SEV, fidèle à sa vocation constitutive reposant sur le souci de promotion et de préservation de la langue, souhaite que les contributions recueillies dans cet ouvrage aident à réfléchir sur les événements du dernier quart de siècle en matière de politique linguistique et permettent d'améliorer les réussites et de corriger les erreurs.

Javier Retegui  
*Président d'Eusko Ikaskuntza*



## Introduction

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Together, Araba, Bizkaia, Gipuzkoa and Navarre constitute *Hegoalde*, the Southern Basque Country, in the Basque language, Euskara. Araba, Bizkaia and Gipuzkoa nowadays make up what is known as the Basque Autonomous Community (BAC) within the Spanish state. The former Kingdom of Navarre is by itself an autonomous community, the Foral Community of Navarre (CFN), which is also part of the Spanish state. Baxe Nafarroa, Lapurdi and Zuberoa, which we generically call *Iparalde* or Northern Basque Country, became part of a superior administrative unit within the French state in 1789. From a political perspective, they do not currently form an administratively differentiated territory within the French Republic, which is one of the most centralized states in Europe. Along with other historical territories, they are part of a French Republic department originally known as *Basses-Pyrénées*, one of the departments into which the French state was divided after its creation in 1789. This name was later changed to *Pyrénées-Atlantiques*. Consequently Euskal Herria is not a politically independent state but a stateless nation, similar to Catalonia, Scotland, Flanders, Wales, Galicia and the Tyrol. The set of the seven territories make up a nation, or in other words, a cultural community with differentiated people, with their own history, culture and language, and the Basque language, Euskara, is one of the most characteristic elements of Basque culture.

There are many factors which have influenced the social situation of the Basque language, among them, the political persecution it has suffered as well as the legal imposition of the use of French or Spanish, which its speakers have suffered for several centuries. The Spanish monarchy and French Republic were both set up on the basis of political and juridical standardization. Linguistic diversity was seen as a threat for this standardization process, leading to a linguistic policy of repression and marginalization of peoples' 'own' languages, including Euskara.

As far as the Spanish state is concerned, after the fall of the dictatorship of Alfonso XIII of Borbón and of Primo de Rivera (1923-1931), a period when the Basque language was prohibited and its use punished, the Second Republic was proclaimed (1931-1936) giving Basque the status or rank of official language for the first time since the creation of the Spanish state. Actually, by virtue of the Autonomy Statute approved in October 1936, an autonomous Basque region was created within the Spanish Republic. In addition, for the first time, the official sta-

tus of Euskara alongside Spanish was formally declared in this statute (Article 1.3) in three of the four Basque territories in the Spanish state, Araba, Bizkaia and Gipuzkoa, given that Navarre was excluded from the autonomy statute. The fast occupation of Araba by troops loyal to Generalísimo Francisco Franco when the Spanish Civil War broke out in July, 1936, made it practically impossible to effectively implement the autonomy statute's regulations concerning linguistic issues in this territory. In any case, Basque's official status lasted a very short time. When Franco's troops took all the territories controlled by the Basque Government this led to a dictatorship which lasted thirty-nine years from 1936 to the dictator's death on the 22<sup>nd</sup> of November, 1975.

Oppression was brutal during the years of the dictatorship in the Basque Country (1939-1975). Nearly 200,000 people were exiled, including 32,000 children under age sixteen, approximately 20,000 people were shot and thousands were imprisoned. Practices regularly involved torture, arbitrary arrests, expropriation and strict censorship was imposed and human rights were suppressed. Along with the repression and lack of democracy, the economic situation in the Basque Country during Franco's period dropped below 1935 levels. It did not pick up again until 1955. Even the most basic food, such as bread, was rationed until 1951. Hunger and repression made tens of thousands of Basques emigrate to the Americas, where many families had relations or friends, so that from 1940 to 1960 there was a constant migratory flow to the Western Hemisphere. Then came the labor strikes. The strikes in 1947 and 1951 in Bizkaia and Gipuzkoa were put down harshly: firings, prison sentences, and exile for the activists and people accused of having participated were common. During the 1960s, the strikes multiplied exponentially and it is estimated that there were almost one thousand labor actions between 1967 and 1972.

The Franco dictatorship represented the appearance of a scenario aiming to unify the state through standardizing the culture. One of its characteristics, along with systematically ignoring civil and human rights and the most elementary rules of democracy, was to attempt the removal of all cultural and political vestiges that differentiated the Basque Country from the Spanish state. The Fascist state laid down a linguistic policy to repress the use of Euskara and other minority languages, prohibiting and often violently punishing their use. It was therefore prohibited to use Basque in public or in private: it was prohibited to baptize children with Basque names, celebrate religious services (curiously at first this was only after eight o'clock in the morning), and all Basque-medium schools were closed. The Basque language was erased from the administration and education systems, and even some Basque spellings in geography and individual names were banned such as the Basque "k" (replaced with "c") or the "tx" (replaced with "ch") "due to their separatist connotations... ." It went so far as to order families and owners of tombs and cemetery pantheons with deceased family members' inscriptions in Euskara to remove these gravestones and replace them with others in Spanish or to simply erase the Euskara inscriptions. This occurred in 1949, twelve years after the end of the war in the Basque Country in 1936.

It was not only the Basque language which suffered the Fascist state's constrictive measures, but all national languages other than Spanish (such as Catalan and Gallego). Obviously, this assimilating linguistic policy had some very serious effects on the Basque language and other repressed minority languages. At the time, the only linguistic policy in favor of the Basque language was that of the communities in exile and this provided the initial field of work for the Basque autonomic powers when designing the linguistic planning process.

The death of the dictator put an end to the long years of oppression and political, economic and cultural regression in the Basque Country. In December, 1976, the law was approved for the state's political reform which initiated "the Transition" process towards democracy. In the first elections, held in June 1977, the Basque Nationalist Party (Partido Nacionalista Vasco, PNV) received the most votes in *Hegoalde* with 28%. Negotiations between the Basque Nationalist Party and the central Spanish state government relating to the new constitution were tense as the constitutional text draft did not mention the Basque people's historical rights or *fueros*, the right to self-determination, nor anything about the original official character of the Basque language in terms of equality regarding the rest of the languages in the state. The majority of the Basque population abstained from the referendum held to approve the constitutional draft, specifically 55.35% of the population; 30.86% of the population voted "no" to the Spanish constitution and only 10.51% voted "yes" to the constitutional text.

In the elections held in March, 1979, the PNV obtained the majority of the votes in *Hegoalde*, peninsular Basque Country. In October of the same year the new Autonomy Statute referendum was approved for the BAC, known as the Gernika Statute (Organic Law 3/1979, dated 18<sup>th</sup> December, for the Autonomous Statute of the Basque Country), which was backed by 90% of the population. As occurred in 1936, Navarre was not a part of the Basque statute and, consequently, it formed its own Autonomous Community, the Foral Community of Navarre (CFN), by virtue of the autonomy statute known as Organic Law 13/1982, dated the 10<sup>th</sup> of August, for Reintegration and Improvement of the Foral Regime in Navarre (LORAFNA).

Thanks to a linguistic policy aimed at reintegrating the Basque language into the education system and public administration, the situation of the Basque language has improved considerably over the last three decades (1976-2008), particularly in the BAC, as a result of a decided policy to promote and develop Euskara. During the academic year 2007-2008, 93.5% of parents in the BAC chose to register their children in the Basque-instructed courses model (68.8%) or in the half and half Basque and Spanish model (24.7%). In the Foral Community of Navarre (CFN), an occasionally regressive linguistic policy has not permitted such positive figures, however, definite parental commitment to bilingual models means that 30% have chosen to enroll their children in Basque instruction models and approximately another 20% in Spanish instruction, but with Basque as a subject course.

Although the number of inhabitants of the Basque territories has increased significantly, along with the addition of a television channel, radio and printed

press entirely in Basque, the number of people speaking Basque as their mother tongue has dropped. This is to say that there are additional speakers of Euskara but they have learnt Basque language at school, so it is not their first language and they are not native speakers. On the other hand, whilst Basque in the BAC is protected by the public authorities, the situation is radically different in the CFN, where unfortunately throughout the whole south of the territory it continues to be illegal to open bilingual state schools and where the government has received harsh criticism from the European Bureau for Lesser Used Languages and from the European Council within the European Union. On the other hand, accused of supporting terrorism the only Basque language newspaper, *Egunkaria*, was closed by the judicial authorities of Madrid in the Spring of 2003, generating all types of criticism within the state and from abroad (the trial has not yet commenced). Eight months later a new newspaper, *Berria* -written entirely in Basque- came to light funded by private capital.

As far as the French state is concerned, in *Iparralde*, or northern Basque Country, the Basque language is still not official and therefore it continues to be completely excluded from the educational policy and the state administration. Due to the French state's strongly centralist policy, the Basque language has registered a serious decline in the number of speakers. Contrary to what is happening in the south, the majority of Basque speakers are older, and consequently, Basque is gradually dying out. The first private *ikastola*, or Basque-language instruction school, has recently been set up and the BAC Basque Government has reached a cooperation agreement for joint finance with the French Government to recover Euskara in *Iparralde*. Although the nationalist political movement in *Iparralde* encompasses 5% of the population, within the framework of the decentralization process declared by the government, most political parties are demanding a separate Basque Department with its own identity within the administration of France.

The Basque language, Euskara, is one of the most representative elements of the unique nature of the Basque people, of their national personality, as expressed by the Euskal Herria - Basque Country concept (Euskal + Herria, or, the country of Euskara). Euskara is an identifying factor that singularizes and characterizes a community composed of the seven Basque historical territories: Bizkaia, Gipuzkoa, Araba, Nafarroa, Lapurdi, Behe Nafarroa and Zuberoa (the first four under Spanish sovereignty and the last three under French sovereignty). In the same way, the Basque language is an element of social integration for the citizens and territories which use it as their own language, above any political and administrative divisions.

With this work, our aim has been to provide the reader with the necessary instruments to enable them to gain an insight into the many different realities linked to the Basque language from a legal perspective. A national language which, due to this fact, has been affected by negative political and historical factors which have placed it in a position of minority or restricted scope within its own territory. The political persecution of the Basque language has been particularly intense in relatively recent times, leading to a serious process of minoriza-

tion. The characteristic language of Euskal Herria has a relatively small number of speakers in an increasingly more global context, and we cannot yet speak of the full social or functional normalization of the language. The objective of this work is to analyze recognition at legal and political levels of one of the characterizing elements of the unique nature of the Basque people: their language, by taking a more in-depth look into its legal status in the different territories in which it is used.

The main theme of this work has been the analysis of the recognition of Basque in the French and Spanish legal systems, as well as in international and European Union legislation. The Basque society is becoming increasingly more diverse and plural and much more global and interrelated, which implies new future challenges for the Basque language and for linguistic policy, which this work aims to clarify. At present, the recognition and guarantee of linguistic rights must also be understood from the perspective of the guarantee of the principles of human rights, as one of the mainstays of democracy, which requires the language to be given a suitable legal status.

Euskara coexists with two of the most powerful languages with the greatest circulation worldwide, Spanish to the south of the Pyrenees and French to the north. Linguistic regulation becomes essential in areas where there is contact with other languages; however, the focus can be very different, ranging from a framework of prohibition, through the simple lack of knowledge on the linguistic realities, to their support and promotion. A current analysis of the legal situation of the Basque language presents an outlook characterized by the heterogeneity and multiplicity of legal systems on the same language. In the case of the Basque language, there are several, very different legal frameworks in which the linguistic rights of Basque speakers develop, as analyzed in the different chapters of this work, ranging from its recognition as an official language alongside Spanish, to the fact that it is ignored at legal levels.

In the first chapter, Dr. Michel Bastarache (retired Justice of the Supreme Court of Canada) explains an experience of language coexistence of unquestionable interest as a reference point for linguistic policy and the management of linguistic pluralism in compound states (at the federal level). His work shows us the many different boundaries and outlines, both legal and political, presented by language coexistence and the recognition of linguistic rights. Obviously, it is difficult to find situations of contact of exact languages in different places with very different legal traditions. However, we must also underline the importance of finding references of language coexistence and linguistic policy that are exemplary from the democratic perspective, as is the case of Canada.

In the second chapter, Dr. Gloria Totoricagüena (Director, Basque Global Initiatives) carries out an analysis of the situation of Euskara in the Basque diaspora, the so-called eighth historical territory. The Basque diaspora communities are spread throughout approximately twenty-two countries and there are nearly two hundred different Basque associations. Totoricagüena demonstrates how Euskara has been a factor in maintaining identity throughout the centuries of

Basque migration, though without the benefit of any official policy. Recently, homeland institutions have fomented especially effective programs aimed at maintaining Euskara around the world and are now funding community and academic endeavours related to teaching, publishing, and using the Basque language. However, the continuation of the Basque language outside of the homeland depends on people using it in their communities and with their children.

The perspective of the recognition of linguistic rights in international legislation has been developed by Dr. Eva Pons (University of Barcelona). The traditional focus of International Law regarding languages of stateless communities has been produced via the recognition of the existence of linguistic minorities within states and the recognition of individual rights to their members, particularly via the principle of non-discrimination. The groups' legal protection channels via the recognition of individual rights to their members and of the principle of non-discrimination show shortcomings that have not been satisfactorily resolved, insofar as the actual basis of the protection of minorities as a group subjected to protection is very weak. Recently, in the European context, we have witnessed more intense legal developments at the request of the Council of Europe, which have received the regional or minority languages as an object of protection, by identifying certain minimum standards of protection at the European level which could be particularly interesting as regards the situation of Euskara in Iparralde and in Navarre.

For a society such as the Basque society, with clear European projection and commitment, the analysis of the European Union's linguistic legislation and of the effects of the Union's policy on the position of non-state languages acquires special importance. This has been analyzed in this work by Dr. Antoni Milian i Massana (Autonomous University of Barcelona). The European Union's construction process is characterized by the transfer of power by the Member States (and the Regions with legislative powers) in favor of the European Union institutions, which have been granted legislative, administrative and judicial powers. The European Union's impact on the situation of the languages is two-fold: On the one hand, the operability of integral plurilingualism applied in the European Union's Institutions has been conceived with an excluding nature as regards non-state languages (although it is advisable for these to be graded according to the recognition of linguistic rights), and on the other hand, the exercising of the community freedoms of circulation and movement also implies handicaps regarding non-state languages, such as the Basque language.

In the fifth chapter Dr. Iñaki Lasagabaster (University of the Basque Country) has covered the constitutional framework of languages. The recognition of linguistic pluralism in the *Magna Carta* and its development legislation presents a special level of complexity and, similarly, a political and legal importance of the first order, whereby the adoptable models are very diverse, depending, in turn, on diverse factors. The different focus of linguistic pluralism in the Constitution of the French Fifth Republic and the Spanish Constitution of 1978 is an example of that heterogeneity. In Spain, the Constitution authorizes the Statutes of Autonomy to regulate the regime of the joint double official status of the Spanish lan-

guage and the Autonomous Community's own language, although some asymmetries are established between the official linguistic statuses of Spanish and the other languages. Geographical asymmetries, insofar as the official status of Euskara is characterized by its territorial limitation, without affecting the central institutions of the Spanish state, whilst Spanish has full official status; and functional asymmetries are also set out, insofar as the official formal status of Euskara has not found sufficient development in areas dependent on the central powers of the state, such as the judicial power. In France, republican political uniformity also affects linguistic aspects, by shielding and preventing the exercising of basic linguistic rights of languages such as Basque, although, recently, there has been timid recognition of linguistic plurality in the French Republican Constitution, the effects of which are little more than merely symbolic.

In the sixth chapter, Dr. Juan Cobarrubias (Seton Hall University), who has extensive knowledge on the coordination of Basque linguistic policy, details the subject of normalization in its multiple aspects: linguistic, legal, political, etc. and its interrelations and connections in the Basque context. His expertise is the result of decades of combining academic and scholarly research with active design and creation of language planning policies for minority cultures, including consulting for the Basque Government and with the United Nations. His contribution reviews the long history of the trajectory of efforts to maintain the Basque language and the uphill political battles fought. He distinguishes and details linguistic normalization and political normalization for Euskara.

The legal regime of Euskara in the Basque Autonomous Community (BAC) is covered in the seventh chapter by Dr. Iñigo Urrutia (University of the Basque Country) and by Dr. Xabier Irujo (University of Nevada, Reno). In the territory of the Basque Autonomous Community, a system of two official languages is in force, which is applied to a situation of contact between languages characterized by the unequal position between them. Euskara has been recognized as an official language for twenty-five years now, and this is a good time to carry out an assessment from which to highlight important advances as well as underlying matters on which we can reflect, from the perspective of a Basque society of the future which is making progress towards greater social, political and linguistic integration.

The situation of Euskara in the Foral Community of Navarre has been studied by Dr. Xabier Irujo and Dr. Iñigo Urrutia in the eighth chapter. The legal framework of Euskara in Navarre is characterized by the application of a principle of linguistic zoning, which distinguishes three zones within the territory of the Foral Community of Navarre, in which the linguistic rights display very different profiles by reason of the place where they are to be exercised, and they are particularly restrictive in the so-called "non-Basque-speaking zone". The work is based on abundant documental information and highlights the regressive linguistic policy regarding the Euskara of recent times, which has even been reproached from European instances. In Navarre, there are demands for a change in direction of the linguistic policy, a change of course, with the aim of guaranteeing full recognition and the guarantee of linguistic rights to use and learn the "Lingua Navarrorum", Navarre's own language.

Euskara in Iparralde is experiencing a situation of total legal instability, due to the fact that the French Republic's political principals are insufficiently adapted to the guarantee and respect for linguistic diversity within its own territory. France is a politically unitary country and the linguistic rights of its citizens respond to this outline. The oneness of the French Republic has repercussions on the languages' legal regimes. In the ninth chapter, Dr. Francis Jauréguiberry (University of Pau) gives us an historical and current analysis of the situation of Euskara in Iparralde, by highlighting the advances made through social action and recent organizational initiatives. The reflection regarding the future of regional languages in France, their status and their relative position as regards the state language is still open. The search for certain common points is required, within which a place must be allocated for the right to learn regional languages and the rights to use these languages as basic rights. This matter has undeniable importance in the French political context, but it needs to be redirected in terms of democratization of culture, in order to channel the European dimension of protection of linguistic diversity.

Finally, as a closing work, Xabier Irujo and Iñigo Urrutia carry out an overall comparative analysis on the status of Euskara across all territories of Euskal Herria through a critical viewpoint, by sectorial fields, on the different regimes studied. There are many reflections that lead to this analysis, however, among these we can highlight the idea of the advisability of a global linguistic policy, which reaches all territories of Euskara and guarantees the recognition of the basic linguistic rights of all citizens of Euskal Herria. Starting from the respect and significance of the linguistic diversity of the Basque territories, it would be appropriate to outline the main guidelines of a general linguistic policy module that accepts the objective of advancing towards a plural society that is also more linguistically integrated, in which all individuals are also guaranteed the right to learn Euskal Herria's own language and the possibility of using it in all social, public and private environments, whereby it acts as a channel for the appropriate social integration and the integration of the coexistence model.

To end this introduction, we would like to show our gratitude to the collaborators in this work, all of whom are experts in their fields (Michel Bastarache, Eva Pons, Antoni Milian, Iñaki Lasagabaster, Juan Cobarrubias, Francis Jauréguiberry and Xabier Irujo), as well as for the trust and backing given to us by the different foundations and associations which enabled this research, the conference at Stanford University and the publication of this book. With special thanks for the support given by Eusko Ikaskuntza-The Society of Basque Studies (represented by Xabier Reteği, its President, and Josemari Velez de Mendizabal, General Manager, and expert publication production by Eva Nieto) in Donostia-San Sebastián, Gipuzkoa; the Cenarrusa Foundation for Basque Culture (Pete T. and Freda Coates Cenarrusa founders), Boise, Idaho; and Stanford University Department of Iberian and Latin American Cultures (Chair Dr. Joan Ramon Resina) and the Special Language Program at the Stanford Language Center (Coordinator Dr. Eva Prionas). In the spring semester of 2007, for the first time in its history Stanford University offered its first course in Basque Studies, taught by Dr. Totoricagüena. The efforts to bring Euskara and additional Basque studies courses to this campus will continue.



This book aims to shed light on the contemporary social and legal situation of the Basque language and on future challenges which will have to be faced in order to survive cultural globalization and political centralization. One people, the Basque people, whose language has survived glaciations which ravaged Europe tens of thousands of years ago and which put down its roots in prehistoric Europe, faces the future with hope, guided by the echo of their ancestors' songs: Because of them, we are. Because of us they will be.

*Iñigo Urrutia*, University of the Basque Country  
*Gloria Totoricagüena*, Director, Basque Global Initiatives

International Day of Euskara  
December 3, 2008  
Stanford University  
Palo Alto, California

# The Experience of Canada in Dealing with the Adoption of Legislation and the Administration of Justice in Two Official Languages at the Federal Level

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*Hizkuntza-eskubideek sekulako eztabaida politikoa sortu zuten Konfederazioaren aurretik eta ondoren. Ingelesarentzako eta frantsesarentzako berme mugatuak ageri dira 1867ko Konstituzioan. Halere, horrek ez zituen denak ase. Ordutik izan diren auzi-mauzi konstituzional nagusi guztiak hizkuntza-eskubideen inguruak izan dira. Hizkuntza ofizialen lege federala onartu zen 1968an, eta, laster, probintziek ere legeak onartu zituzten hizkuntzez. Kanadako Auzitegi Gorena bilakatu zen aktore nagusia auzian, eta probintzietan sortu zen erresistentziak Auzitegi horren interbentzionismoa handitu zuen.*

*Giltza-Hitzak: Kanada. Gutxiengoaren hizkuntza-eskubideak. 1867ko Konstituzioa. 1982ko Eskubideen Karta. Auzitegiaren rola.*

*Los derechos lingüísticos provocaron un gran debate político antes y después de la Confederación. La Constitución de 1867 recogía garantías limitadas para inglés y francés pero el régimen resultó un fracaso. Desde entonces, todos los debates constitucionales han girado en torno a los derechos lingüísticos. A la ley federal de lenguas oficiales de 1968 siguieron legislaciones provinciales en materia lingüística. El Tribunal Supremo de Canadá se convirtió en el agente principal del debate y la resistencia por parte de las provincias acarreó un papel intervencionista mayor para el Tribunal.*

*Palabras Clave: Canadá. Derechos Lingüísticos de las Minorías. Constitución de 1867. Carta de los Derechos de 1982. Papel judicial.*

*Les droits linguistiques sont à l'origine d'une controverse politique de grande ampleur, ayant surgi avant et après la formation de la Confédération. Bien que des garanties protégeant les langues anglaise et française aient été incluses à la Constitution de 1967, le régime s'est avéré insatisfaisant. Les principales controverses constitutionnelles apparues depuis lors étaient en effet axées sur les droits linguistiques. La Charte Fédérale des Langues Officielles de 1968 a été suivie par l'implantation de législations provinciales concernant les langues. La Cour Suprême du Canada est ainsi devenue l'acteur principal au sein du débat, et la résistance venant des provinces a débouché sur un rôle accru d'intervention de la Cour Suprême.*

*Mots-Clé : Canada. Droits linguistiques des minorités. Loi Constitutionnelle de 1867. Charte des Droits de 1982. Rôle juridique.*

Before I describe the federal regime regarding language rights in the areas of legislation and administration of justice in Canada, it may be useful to recall that jurisdiction over languages was not included in the sections of the Canadian constitution dealing with the distribution of powers between the federal government and the provinces. The power to adopt language legislation is ancillary to the power to adopt laws in other legislative fields. There are now language laws in many provinces, but a comprehensive language regime can be found only in Québec, New Brunswick and to a lesser extent Ontario. New Brunswick is the only officially bilingual province. It adopted the first *Official Languages Act* in Canada, in the year 1969. The federal government adopted its first *Official Languages Act* in the same year. The federal government later imposed language acts in the federal territories. The jurisdiction over languages is therefore restricted to matters over which the province or federal government respectively have jurisdiction. It is also restricted by the necessity to give precedence to constitutional guarantees. The right to adopt language laws was contested in the *Jones* case; the Supreme Court held that the Constitution provided minimum protections that could be improved by legislation. Section 16 of the *Canadian Charter of Rights and Freedoms* consolidated that ruling by providing specifically for the expansion of language rights, avoiding a clash with the right to non discrimination.

The particular context of language rights in Canada is defined principally by history and political compromise. A few basic language rights were constitutionalized in 1867; additions were made when Manitoba became a province in 1870 and again when the constitution was patriated in 1982. Although language rights are different from the legal rights that are recognized in the *Canadian Charter of Rights and Freedoms*, and in various international instruments, the Supreme Court of Canada has recognized in the *Secession Reference* in particular that they nevertheless constitute fundamental rights. They are evidence of the intention of the framers of the constitution to protect official minority language groups and assure their full participation in society without sacrificing their cultural and linguistic identity. This, the Supreme Court has held, is a foundational principle of the constitution that has normative effect. I mention this because, as I will explain later, it has an important impact on the interpretation of language legislation, whether it be constitutional or not.

Another preliminary issue I want to mention is that Canada has not adopted a language regime entirely based on personality or on territoriality. In Canada, territoriality is reflected in the basic constitutional provisions dealing with languages, s. 133 of the *Constitution Act* of 1867 and ss. 16 to 19 of the *Canadian Charter of Rights and Freedoms*, which is part of the *Constitution Act* of 1982. These provisions establish rights applicable at the federal level, in Québec and New Brunswick. But these rights are available to any person whatever his or her origin, or mother tongue. For instance, s 19(2) guarantees the right to a trial in French to an Anglophone as well as a Francophone in New Brunswick, s. 20 to receive federal services in either language as a simple matter of choice. At the federal level, services are available according to specific criteria based, to a point, on evidence of sufficient demand. The system is therefore both personal and territorial.

## THE ENACTMENT OF LEGISLATION

The *Act of Union* of 1840 had made English the language of legislation, debates and proceedings in the Province of Canada. This proved to be unworkable. During the constitutional debates leading to the adoption of the constitution of 1867, a compromise on languages was negotiated. It took the form of s 133 which provides that English and French shall be the official languages of Parliament and the federal courts, as well as those of the Legislature of Québec and courts of that province. Language rights did not extend to the executive or the administration. Identical obligations were imposed on Manitoba when it was created in 1870. Twenty years later, the Legislature of Manitoba unilaterally abolished these rights; this measure was deemed unconstitutional in the lower courts early in the century, but these decisions were ignored. The Supreme Court ruled on the issue in *Forest v. Manitoba*, in 1979. Six years later, in the important *Reference on Language Rights in Manitoba*, the Supreme Court held that all statutes adopted in English only were unconstitutional; to preserve the rule of law and constitutional order, the Court suspended the declaration of invalidity for the period necessary for Manitoba to reenact its laws in both languages. That same year, in *Blaikie v. Québec*, the Supreme Court declared part of the *Charter of the French Language*, adopted by the Québec legislature, unconstitutional. The *Charter* had made French the language of legislation in Québec, although it provided for the later translation and publication of laws in English. The Supreme Court held that the constitution required that the legislation be adopted, printed and published simultaneously in both official languages. It further held that the obligation extended to secondary or delegated legislation. In another language case dealing with language rights in the courts in that same year, *MacDonald v. Montreal*, Beetz J said in *obiter* that the requirement of bilingualism in the adoption of laws did not mean that simultaneous translation was required in Parliament or in the Legislature of Québec. Parliament instituted simultaneous translation in 1959 and there has been no decision regarding its constitutional status. Translation is now a requirement under Part I of the *Official Languages Act* 1988, but there is no simultaneous translation in the Québec Assembly. It is provided in New Brunswick.

There has been much controversy regarding the nature of the documents that must be adopted or adopted and published in both official languages. In *Québec v. Collier*, in 1985, the Québec Court of Appeal held that, to be effective, the right to participate in the debates of the Québec Assembly required that sessional papers be available in both official languages. The Supreme Court confirmed that decision in 1990. But there was still disagreement over the scope of the words “records and journals” used in s. 133 of the constitution. “Journals” refers to the order paper, notices and minutes. “Records” are the analytical record of the daily votes and proceedings of the House. The entries are prepared using the clerk’s minutes. “Journals” also includes the official and permanent record of proceedings, petitions, readings of bills, references to committees, resolutions, votes, debates adjourned. Proceedings of the Senate are reported in similar fashion. Hansard is the official report of the debates, the verbatim transcription of what was said. At the federal level and in New Brunswick, Hansard is translated. In

Québec it is not. There is still some uncertainty regarding obligations regarding Hansard because it is not a required archival document on one hand, but it has an official character and must be referred to in the House if a member wants to have it corrected. The debate is somewhat related to the philosophy reflected in the constitution: does it provide for minimum guarantees reflecting a simple political compromise (pre-confederation practice would then be relevant), or does it constitute one of the elements of the guarantee of equal participation in the parliamentary process? This of course has serious implications regarding the work of Parliamentary committees. Is there an obligation to provide bilingual minutes of their deliberations?

As earlier mentioned, the obligation to adopt laws in both languages was extended by the Supreme Court to printing and publication; the requirement of simultaneity was added, as was the rule that both versions were of equal value. The obligations were considered implicit by the Supreme Court in *Blaikie* (1970). It would seem obvious that all bills must be presented in both official languages at first reading; in the *Manitoba Language Reference*, the Supreme Court said that simultaneity is required “throughout the process of enacting bills into law” (p. 775). Nonetheless, the Standing orders of the House of Commons provides for bilingualism only on second reading. This was not challenged because in fact bills are presented in bilingual form at first reading. In Québec however, the Standing orders provide for minimum constitutional requirements to be met, which is interpreted to mean bilingualism at the final stage. The government of Québec considers that even if its procedure were found to be invalid, there is no judicial review of the legislative process so that its laws could not be declared unconstitutional for that reason alone.

What of the obligations regarding delegated legislation? There are two major inquiries here: First, what is the scope of the guarantee? Second, what are the requirements regarding enactment?

This is a complex issue which was dealt with in three cases: *Blaikie II*, the *Manitoba Language Reference* rehearing, and *Sinclair*. One problem of course is terminology. It is very inconsistent. There are however some statutory definitions that provide a little guidance. “Regulation” means, under the *Statutory Instruments Act*, for instance, a statutory enactment being a rule, order or regulation governing the practice or procedure in any proceeding before a judicial or quasi-judicial body established under any act; “statutory instrument” includes any order, rule, regulation, ordinance, direction, form, tariff of costs or fees, letters patent, commission, warrant, proclamation, by-law, resolution or other instrument issued, made or established under certain kinds of authority. Other laws define “regulation” differently; the *Act respecting the consolidation of the statutes and regulations of Québec* simply defines regulation as an order, decree or rule.

In *Blaikie II*, the Supreme Court identified four types of delegated legislation. First, regulations enacted by the government, a minister or a group of ministers. All of these are formally issued by the Governor or Lieutenant Governor in Coun-

cil. They therefore pose no problem. Directives and guidelines are excluded. The difference is in substance, not form. Directives provide no legal sanction for non performance, though they may give rise to administrative sanctions. But rules of practice of courts and quasi-judicial tribunals are included; this results not from their legislative but from their judicial character. One problem we have today is that the quasi-judicial characterization has disappeared from our law. Some authors suggest that the duty applies to all tribunals required to provide procedural fairness; but I think all tribunals would then be covered unless we established categories according to the importance of that duty. The bilingualism requirement does not apply to school boards or municipal governments in Québec according to *Blaikie II*. The reason for this is historical; these boards pre-existed confederation and were not compelled to provide bilingual services. The Supreme Court held that s 133 was a political compromise and that its scope should not be artificially enlarged. The same is true of Indian band councils. The New Brunswick Court of Appeal has however held in *Charlebois v. Moncton*, in 2005, that municipal by-laws must be translated in New Brunswick because the rationale for excluding the same in *Blaikie* is inapplicable in the context of the *Charter* extension of language guarantees to New Brunswick in 1982. Another important category comprises rules of professional associations; here the obligation depends on the relationship between the association and government. If the regulation is approved by government in any way, the obligation arises. Approval by a board is not sufficient, nor is publication in the Official Gazette. Sub-delegation is therefore not covered.

The Rehearing in the *Manitoba language Reference* was meant to elucidate further regarding orders in council and documents incorporated by reference to primary and secondary legislation. The answer was not very satisfactory. The Supreme Court ruled that orders in council were included if they were of a legislative nature either because of their form, content (does it initiate norms or determine how rights can be exercised) or effect (does it create a legally binding rule applicable to an undetermined number of persons). In fact its decision in the main reference did not find form sufficient, undermining the test. This deficiency appeared in the *Sinclair* decision a month after the *Manitoba Reference* where the Court decided that the Québec Assembly could not adopt a shell law and incorporate by reference unilingual documents to achieve its purpose. A legislative act could not be disingenuously divided into discreet parts. Here, bilingualism applied to all instruments though many would not have been found to satisfy the test in the Reference on their own. But incorporation by reference is not so simple to resolve; *Sinclair* referred to procedural acts having to do with the adoption process, but some incorporated documents will have the effect of imposing norms. The test adopted with regard to them requires that one first determine if the incorporated instrument is itself of a legislative nature; if not, it is excluded. The second question is whether the incorporated instrument is an integral part of the primary instrument. The Ontario Court of Appeal was divided on the issue of the incorporation of traffic laws in *Massia*! It held that if the body creating the incorporated document was not one to which s 133 applied, the document need not be translated. The Supreme Court disagreed in giving its answer to the third question, i.e. whether there is a *bona fide* reason for incorporation without trans-

lation. It cited as reasons government cooperation, practicability, the technical nature of documents. This open ended test is much criticized as a clear departure from the focus in *Blaikie* on equal access.

As mentioned earlier, ss 17 and 18 of the Charter have been said to have the same effect as s 133 of the Constitution Act of 1867. They are however a little more precise. For instance, s 17 confirms the right to use the two official languages in any debates “or other proceedings” of Parliament. Committees are therefore specifically included. S 18 does not use the word “acts” but refers to “statutes”; it would therefore be necessary to conclude that statutes includes regulations. The above conclusion would seem to be inapplicable to ss 17(2) and 18(2) which extended the constitutional rights to New Brunswick. As earlier mentioned, the NB Court of Appeal set aside the purposes of s. 133 in its interpretation of the 1982 provisions and preferred to draw on the legislative and political evolution of the Province. Another stange distinction to be made is that rights under s. 133 are absolute while *Charter* rights like those found in ss 17 and 18 are subject to s. 1 limitations of the Charter.

The *Official Languages Act* has reaffirmed the constitutional rights and expanded them. For instance, s 7 captures instruments not caught by the interpretation of s 133: anything published in the Gazette for instance must be bilingual.

## **BILINGUALISM IN THE JUDICIAL SYSTEM**

The constitutional provisions entrenching minority language rights in the judicial system include s. 133 of the *Constitution Act 1867*, s. 19 of the *Canadian Charter of Rights and Freedoms*, and s 23 of the *Manitoba Act 1870*. These rights represent a minimum that has been completed by a number of legislative provisions. At the federal level, those provisions are found principally in the *Official Languages Act* and the *Criminal Code*.

A few preliminary remarks are necessary at this point. First, I will observe that contrary to other constitutionally protected language rights, those pertaining to the legal system received a narrow interpretation in the Supreme Court of Canada, creating the need for progressive legislation, this until the Supreme Court reversed itself in the *Beaulac* decision of 1999. Second, it is important to underscore the important difference between language rights and legal rights in the constitution. Language rights are about the protection of culture; legal rights are about due process and fair trials. This means that the right to an interpreter under s 14 of the *Charter* is not a language right. It has a distinct origin and role. Language rights are substantive, not procedural. This will have implications: the right to language of choice is not constrained by maternal language or the fact that the accused or witness is knowledgeable of the language of the majority. Third, a word about the division of powers in this area. The legislative authority to regulate languages depends on the nature of the court and the matter before it. At the federal level, language use in the administration of justice is provided for

in three respects. The *Official Languages Act* is ancillary to the power to make laws for peace order and good government. The power to determine the use of languages in federal courts is authorized under s. 101 of the *Constitution Act of 1867*. The power to determine the use of languages in criminal proceedings is ancillary to the power to legislate in respect of criminal procedure under s. 91(27) of the *Constitution Act of 1867* even though criminal law is applied in provincial courts. Provincial legislatures can regulate the use of languages under the power to administer justice coming under s. 92(14) of the *Constitution Act of 1867*. It is clear then that the language of prosecution of provincial offences and civil proceedings is determined by the provinces. Because federal courts rarely have exclusive jurisdiction, many cases can proceed either in those courts or in provincial courts; language rights will not be the same in many cases. If there is conflicting legislation, the federal act will apply. If the federal government delegates the prosecution of federal offences, it cannot thereby eliminate language protections.

The general constitutional right is to use one's language in the protected courts. Unfortunately, in the 1986 decision of *Société des Acadiens v. Association of Parents for Fairness in Education*, the Supreme Court of Canada decided that this right does not impose a corresponding obligation on the state or any other individual to use the language so chosen, or to be required to understand that language. This meant that judges, lawyers, court staff all had the right to use their language of choice and were not required to provide access to justice in the language of the accused or party having the right to make a choice. Beetz J. advocated restraint in the application of language rights because they were based on political compromise and not on fundamental principles like legal rights. This analysis was inconsistent with the evolution of Canada and based blindly on continuity of the pre-confederation regime, forgetting that under that regime all judges and court officials were bilingual and that there was no need to provide for translation and special rules. In 1999, in the case of *R v. Beaulac*, that decision was reversed. The Court decided that all language rights had to be interpreted in accord with their object which was to guarantee equal access to the courts to members of the two official language communities and that equality of service meant substantive equality; regarding the Criminal code provisions, this meant that the state had the obligation to provide an institutional framework to accommodate the choice of language.

One initial problem was to define the word "court". Did this apply to administrative tribunals? The Court decided it applied to all courts created by the federal government or the Province of Québec and to quasi-judicial tribunals. These tribunals were defined as adjudicative bodies applying legal principles to the assertion of claims under their constituent legislation. As earlier mentioned, this categorization has been abandoned; nevertheless, no problem has surfaced since the *Official Languages Act* has imposed bilingualism on all adjudicative bodies. The right is awarded to "any person"; this has been interpreted to include corporations as well as individuals, including not only litigants but also judges and judicial officers. There is no constitutional right to be understood without translation, and the right to a translation would not be a language right but the



right to be heard, a legal right. The right is exercised in “pleadings” and “process”. Pleadings are the oral and written arguments, not the evidence. There is no right to a translation of evidence in the form of affidavit or otherwise. Process refers to procedural documents emanating from the court. In *MacDonald*, the Supreme Court said a summons was a process and therefore subject to s. 133, which meant that it could be issued in the language of choice of the person issuing it. The choice is not that of the litigant, but that of the issuer. This would seem inconsistent with the decision to impose bilingualism regarding rules of procedure on the basis that the rules are necessary to a meaningful access to the judicial system. Nevertheless, that is the state of the law when constitutional norms are considered in isolation. The approach of the Supreme Court in the 1986 decisions was much criticised. The *Beaulac* decision addressed these criticisms and overturned the 1986 decisions with regard to the rules of constitutional interpretation. The new interpretative framework could however only be applied to the criminal code provisions in the context of that case. The problem now is that there is some conflation of language rights and fair trial rights: for example, can a court find that a breathalyser certificate must be in the language of the accused without considering the language competency of the accused?

It is necessary to say something of s 20 of the *Charter* because it outlines the right to receive services from the administrative component of the judicial system as part of the government. Several litigants have tried to enlarge language guarantees by arguing that issuing a ticket or laying an information is a government service. This was caused by the restrictive position taken in the 1986 trilogy. The arguments did not succeed. An information is judicial in nature and s 20 does not apply. To the extent the courts as institutions communicate with the public to offer services (notices of practice, hearing dates, etc.), s 20 applies. In fact federal institutions must make an active offer of service in both languages.

The federal regime has been completed by the *Official Languages Act* and amendments to the *Criminal Code*. The first *Official Languages Act* was adopted in 1969; the new act was adopted in 1988. It expands the rights conferred on parties in proceedings before federal judicial or adjudicative bodies. It has been interpreted purposefully. The most important expansion is in the affirmation of the right of a party to speak and be understood without the assistance of an interpreter by the court in the official language of choice. The right applies to all judges and officers hearing a case except for the judges of the Supreme Court of Canada. The duty to provide court officers that speak the language of the litigant applies in the case of bilingual proceedings as well as unilingual proceedings. Witnesses can give evidence in the language of their choice, but they can be examined through an interpreter. Evidence taken can be obtained in the language of choice upon request at no cost to the requesting party. Federal courts all have rules respecting notice requirements regarding the choice of language. The second most important expansion is in the obligation for the Crown, where it is a party to a civil proceeding, to use in its oral and written pleadings the language chosen by the other party. Evidence is given by the witness in the language of his choice; no translation can be obtained unless there is a ruling that it is necessary in a specific case in order to provide the right to a fair trial. Regarding

process, the law provides that the pre-printed portion of any form shall be in both official languages; details are in the language of choice but their translation can be obtained on request. Every final decision, order and judgment must be in both official languages where the issue is of general interest and also in cases where proceedings were conducted in both official languages in whole or in part. Simultaneity is not required, although it is in fact observed at the Supreme Court of Canada.

Even though criminal proceedings occur in provincial courts, the federal government has the authority to legislate with respect to criminal procedure, and therefore, the use of official languages in criminal procedure. Part XVII of the Code applies to criminal offences; it also applies to many non-criminal offences because its terms were incorporated in provincial legislation dealing with provincial offences. The main rights are found in ss 530 and 530.1. As earlier mentioned, s 530 was interpreted in *Beaulac* to require positive measures by the Crown to accommodate the choice of language of the accused. There is a substantive right to be tried in one's language without translation by judge or judge and jury. One's language is that language with which the accused has a sufficient connection; the accused can decide this subjectively but must demonstrate that he or she has sufficient command of the language to instruct counsel. Knowledge of the other official language is irrelevant. The accused has the right to proceedings in the language of choice, or to bilingual proceedings in some circumstances. The accused has the right to be informed of the right to choose the language of proceedings. Under s. 530.1, the judge, prosecutor and other court staff are viewed as an institution and required to function in the language of the accused. The obligations of the Crown extend to preliminary inquiries. If the accused cannot understand a witness, he can obtain the services of an interpreter. If pre-printed forms are used, the printed portions must be bilingual.

## **CONCLUSION**

In Canada, the development and interpretation of language rights have been difficult issues to deal with; the political ramifications of the long debate have been profound. I believe we have now reached a national consensus on constitutional and legislative protections. Implementation in concrete situations will occasionally raise problems, but courts are now usually diligent in their task and no surprises are expected after the decision in *Beaulac*.

# The Basque Language Abroad: Homeland and Diaspora Initiatives for Euskara

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*Diasporako komunitateetan, aberriko hizkuntzaren biziraupena egiazkotasun etnikoari eta legitimotasunari buruzko espektatibei lotuta egon daiteke. Beste komunitate inmigrante batzuek eta geroko belaunaldiek euskaraz hitz egitea goraiatzaren badute ere, euskal diasporaren identitatea arbasoei, aurrekoei, dago lotuta beste ezeri baino gehiago. Landa-lanek erakutsi dutenez, euskalduna izatea ez da euskaraz hitz egiteko gai izatea. Eusko Jaurlaritzak ezarritako programek eta finantzaketak leku askotan oraindik euskara gordetzeko aukera eman dute biziki.*

*Giltza-Hitzak: Euskal. Diaspora. Hizkuntzaren biziraupena. Etnia. Euskal etxeak. Eleaniztasuna.*

*En las comunidades de la diáspora la conservación de la lengua de la patria de origen puede ir ligada a expectativas de autenticidad étnica y legitimidad. Aunque otras comunidades inmigrantes y generaciones futuras alaben el hecho de hablar euskera, la identidad de las diáspora vasca está más vinculada a la ascendencia que a cualquier otro factor. Trabajos de campo han demostrado que “Ser Vasco” no depende de ser capaz de hablar euskera. Los programas y la financiación implantados por el Gobierno Vasco han contribuido enormemente a que aún exista, en numerosos lugares, la posibilidad de conservar la lengua vasca.*

*Palabras Clave: Vasco. Diáspora. Conservación de la lengua. Etnia. Euskal etxeak. Plurilingüismo.*

*Dans les communautés de la diaspora, la conservation de la langue de la patrie d'origine est parfois liée aux attentes d'authenticité ethnique et de légitimité. Quoique d'autres communautés immigrantes et les générations futures considèrent louable le fait de parler euskara, l'identité de la diaspora basque et davantage liée à l'ascendance, par-dessus tout autre facteur. Certains travaux de terrain ont démontré que le fait d' «être Basque» ne dépend pas de la capacité de parler euskara. Les programmes et le financement mis en œuvre par le Gouvernement Basque ont contribué énormément à la possibilité existante encore aujourd'hui, dans de nombreux endroits, de conserver la langue basque.*

*Mots-Clé : Basque. Diaspora. Conservation de la langue. Ethnie. Euskal etxeak. Plurilinguisme.*

Spoken and signed languages are one of the many means of human communication, and importantly also serve to relay and maintain ethnic, social and cultural identity. Language policies are designed to preserve, maintain and in some cases to resuscitate endangered and threatened languages. In diaspora communities, maintaining the language of a homeland is often a goal set with expectations of being considered “more authentically” Armenian, Korean, Jewish, or Basque as the case may be to their homeland brethren. Though speaking Basque for Australian or Belgian or Chilean Basques, for example, is lauded by their fellow immigrants and some latter generation Basques, identity is more tied to ancestry than any other factor. “Being Basque” does not depend on being able to speak Basque, and this attitude toward the significance or non-significance of one’s homeland language affects whether or not it will be used in the new country home, maintained with other language community speakers, or learned by non speakers.

UNESCO declared 2008 as the International Year of Languages, and it is fitting to celebrate this publication and our conference at Stanford University with an analysis and investigation of Euskara’s vitality in its various geographies around the planet. It is estimated that 80% of the world’s 6,000 or so living languages will die in the next century (Crystal 1997:17 as quoted in Derhemi 2002:151), and it will be the lifelong work of many to stop this march.

Basque migration is not new, but rather is a continuum of centuries of movement in and around the Pyrenees mountains to Iberia, and then later to the Americas with the Crown of Castile’s and then Spain’s colonization of the Americas. A heavy flow of Basque mariners, clerics, land developers and commercial agents participated in Spanish “discoveries” of the Atlantic and Pacific lands during the 1500s to late 1800s. The Spanish Carlist Wars of the 1800s and dictatorships of the 1900s and the French nation-building and mandatory military service heavily influenced migration out of the seven territories. However, according to Basque anthropologist José Miguel de Barandiaran, the number one factor pushing Basques out of their homeland was the primogeniture inheritance system practiced in the Basque territories. Only one sibling of a family would inherit an intact farm and the farm could not be subdivided. Unmarried siblings of he or she who inherited could stay on in the family farmstead if it was prosperous enough to support them, however, often it could not. Children who knew they would not inherit were sent to or joined the Catholic Church, others found work on the seas, others joined the military, and others migrated away to new lands being colonized. Additionally, there were favorable pull factors inviting immigrants to the Americas, the Philippines, Australia, and today recent migration has (re)turned to European countries.

Depending on one’s point of origin and family life, there were thousands of emigrants who departed the Basque territories without knowing Euskara well, others understood Euskara but had not learned to speak it properly, and others were completely illiterate. Exiles of the Spanish Civil War (1936-1939) and subsequent dictatorship of Generalissimo Francisco Franco (1939-1975) have vivid

memories of how they were punished for speaking Euskara on the school playground and were made to hold heavy books with their arms outstretched until they dropped from exhaustion. Hundreds of interviewees I have worked with have mentioned how teachers swatted their knuckles or fingernails with a wooden paddleboard for innocently uttering Basque words in the classroom. Euskara was banned from public places, including religious ceremonies, schools, publications, radio and from the streets. After migrating to South America, Spanish was used for communications as it was the host country language and there were existing Basques who were descendants of the Basques who had colonized Argentina, Uruguay, Chile, Venezuela, Mexico, Cuba and so on who had by now long lost their Basque language skills. However, those Basques who migrated to English speaking countries such as the United States, Canada and Australia did often maintain their Basque with their children, or, parents maintained their Basque language with each other and then taught their children Spanish (or French as the case may be) and therefore there were three languages spoken in the home.

Due to the language attitudes of the French and Spanish regimes -additionally covered herein by authors Xabier Irujo and Iñigo Urrutia, and by Francis Jauréguiberry- Basques migrated during times when Basque language had a low social status - accepted as the language of the under-educated rural populations-, and migrants carried those attitudes with them to the new host countries. Earlier migrants did not witness or live the change in attitudes experienced in the homeland after the 1960s. They did not live the development of the improved social status Euskara now enjoys in the homeland, also discussed herein by author Juan Cobarrubias.

The social status of a language -similar to social status as a factor of ethnic identity- is often tied to motivation. What is the motivation for maintaining a Basque identity when living abroad, and for latter generations? What is the motivation for learning and using Basque? In diaspora spaces, the motivation to use Euskara is generally tied to identity and deeply held emotional ties to ancestors. The motivation could also be connected to being “more Basque,” and for some filling a void of feeling not quite as Basque as homeland Basques or as other Basques in their own hostland communities and trying to add authenticity and legitimacy to their own Basqueness.

There are intrinsic rewards for learning and using Euskara, though not instrumental rewards of getting a job, or a raise in salary, or mandatory test passing, etc. There is no economic incentive or legal help for language maintenance, but the reasons for maintaining Euskara among diaspora Basques have to do with their same psychological and emotional reasons for maintaining their ethnic identity. In diaspora communities, maintaining a chain of language transmission is often a part of identity marking and of high status within the community itself. In the Basque case, to speak Euskara is to be Basque, as the word for a Basque person is literally, one who has the Basque language, “*euskalduna*” and to some, it raises one on the hierarchy of the “Basqueness” pyramid. One might be considered *more* Basque, and *more* authentic especial-

ly by those living in diaspora and by those who are constantly trying to prove their ethnic identity.<sup>1</sup>

For the Basques living outside the European homeland, language is one of the most difficult elements of identity to maintain. Because Spanish and French are world languages, if migrating to English-speaking countries, many non English-speaking parents have transmitted to their children either Spanish or French instead of Basque. Migrants who moved to Spanish speaking America simply used their Spanish in the new setting. However, in numerous cases, for migrants who departed to English speaking communities such as North Queensland, Australia, and in San Francisco, Chino, Bakersfield, New York, Elko and Boise in the United States there were sufficient numbers of Basque speakers, endogamy, and constant circular migration back and forth with Basque-speaking areas of the Basque Country that parents did use Basque with their children born in the host settings. Latter generation (second and third generation) Basques have also committed to learning and using Euskara with their children at home, even when their spouse is not a Basque speaker.<sup>2</sup> In other cases, Basque-speaking immigrant parents may have maintained their Euskara as their language of the marital relationship, but then switched to English, Spanish or French when speaking to their children.

In diaspora communities where there are no “governing bodies” for language use, and legitimacy of elected authorities comes from their status of being trusted, elected, and volunteer leaders but not usually specialists and especially not linguists or sociolinguists, there generally are not any Basque Center language policies for learning Basque, using Basque or preserving Basque. There are generally no Basque Center policies dealing with language use in the day to day activities, projects or functions of the Basque Center itself except in regards to hosting language courses. This is very different from a language policy of mandating or actively promoting the use of Euskara at the Basque Center and creating diglossic or bilingual areas or activities. By ignoring Euskara use at the club-houses and in the community activities, the host country’s language (English, Spanish, French, Italian, etc. depending on the host country) is privileged.

There are no “affirmative action” policies inside the Basque Center communities to assist diaspora Basques who use Basque, for example giving hiring preference to the bar tenders or waitresses that speak Euskara. In the case of Australia, there were Australian government policies in the 1990s and 2000s which aided original language maintenance for immigrants who wanted after school programs for their children, and federal government funds supported those who

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1. See also David Lasagabaster, 2004, and his various interviews, especially that with Mansisor on page 332. PJ Mansisor states that he is not an “exceptional” Basque, -comparing qualities needed for being an exceptional Basque to being an exceptional athlete- because he does not speak Euskara.

2. See Totoricagüena 2004, *Boise Basques: Dreamers and Doers*; Totoricagüena 2005, *The Basques of New York: A Cosmopolitan Experience*; and Totoricagüena 2008, *Australia: Vasconia and the Lucky Country*.

organized courses and teachers. However, none of the three Australian Basque communities took advantage of this program. Sydney Basques organized their own language courses at their Basque clubhouse but paid for it with Basque Government grants. There is little or no language planning at all in most of the *euskal etxeak*, or Basque houses or Basque centers, themselves except for in Argentina,<sup>3</sup> and use of Euskara basically remains a result of random chance and personal interest.

Regardless of time period and geography of the formation of Basque associations, since the 1600s nearly all of the Basque organizations were originally established to help the Basque immigrants create social networks, to assist with finding employment, housing, language of host country issues, and to protect and promote Basque culture. However, in many associations the focus was on helping the immigrants adapt to host country customs. Today, the Basque Centers are introducing latter generation descendants to the land of their own ancestors. The focus is aimed back at the seven territories and to teaching today's Basques abroad about their homeland, language, and customs and so on. However, those who have traveled to *Euskal Herria*, the Basque Country, will witness that they do not generally hear Basque spoken on the streets of the larger cities, and that in some cases it is easier to find English speakers rather than Basque speakers.

In Europe, the Commission of the European Communities, High Level Group on Multilingualism Final Report of 2007 states that English is the number one foreign language learned in schools (2007:7) and that 90% of all secondary education pupils in the European Union are studying English (Eurydice 2005 as quoted in Commission of the European Communities, High Level Group on Multilingualism Final Report of 2007:7).<sup>4</sup> It also specifically points to the educational system successes in the Basque territories. Referring to bilingual communities and regional<sup>5</sup> and minority languages, it specifies that the Basque Country could be used as a model for other European countries. The Commission of the European Communities High Level Group on Multilingualism states,

Members of the Group shared the view that the revitalization, maintenance, further development, and long-term survival of Europe's regional and minority languages should continue to be a matter of European concern, and they welcomed the fact that Community support would continue to be available for networks and platforms dedicated to this aim (Commission of the European Communities 2007:18).

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3. The *Argentinan Euskaraz* program has more than fifteen years of Basque language planning, programming, and implementation of teacher training, courses, weekend retreats, and established diglossic areas of Basque Centers.

4. The Eurydice is an information network on the Internet that makes available the details of studies on education in European Union countries. This report is available in several different languages at: <http://www.eurydice.org/portal/page/portal/Eurydice/showPresentation?pubid=049EN>.

5. Can a language be referred to anymore as a "regional" language when it is spoken by communities around the world?

Diaspora Basques might ask whether the concern is for the language itself or for the people using it? Would this European support extend to the diaspora communities promoting and protecting Basque though they do not live in a European Union country? Would “rights” for language use extend to any person because the objective is that the European language is to be saved, or, is it a right for the individual person using the language because they are European? Is the right directed at the language, or, at the person? What is the geography of language rights?

Multilingualism can be defined as the ability to communicate in more than one language. While in Europe it might be considered a life skill to speak more than one language, bilingualism and attention to language in the Americas is much less significant -except for Basques in Quebec- and this affects the attitudes toward languages in general in the Basque diaspora communities in these countries.

Though European Union education and institutional programs promote and expect multilingualism, in the Basque diaspora communities of the English-speaking and Spanish-speaking Americas, there is no similar expectation. Attitudes toward indigenous, mother-tongue, and/or second language learning and/or use are often negative and other-language use is even considered impolite, improper and unpatriotic by some in the English-speaking countries such as Australia, Canada and the United States. Basque immigrants to the United States, Australia, and non-French-speaking Canada detail in fieldwork interviews how they purposefully did not speak Basque to their children “so that they would fit in.” “Fit in” in this sense meant speaking only one language – the host country main language.

In France, second language acquisition and use is also frowned up by some in the media and in politics such as in May, 2008, when the French Parliament debated the status of the Basque language in France, followed with a declaration by the Minister of Culture, Christine Albanel, that France would not ratify the European charter on regional languages although it had been signed in 1999. There were members of the French Academy of Languages that upon learning that there were discussions of constitutional reform to include regional and minority languages believed it to be “an attack against the national identity.”<sup>6</sup> However, one article to be put forward for constitutional reform consideration includes an addition to Article One of the French Constitution stating that the regional languages pertain to the patrimony of France. It is assumed that once designated as state patrimony, the regional languages will have the same protection as all other entities, programs and projects that are considered patrimony of France.

In Spanish colonized America, indigenous languages were nearly all eliminated, the same is true for the English colonization of the United States and Australia, and less so but still the case for Canada. Basques in those communities

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6. For additional information in Spanish see reports of May 7, 2008 of the Basque Radio and Television, EITB, at [www.eitb24.com/es/B24\\_97446/](http://www.eitb24.com/es/B24_97446/) and of the newspaper *El País* of June 16, 2008.



do not have the same experience with language issues as do Europeans, who are surrounded by multilingual media and expectations for second and third language acquisition and use, and this negatively affects diaspora Basques' motivation to learn and use Euskara. Though the Americas and Australia are receiving countries for immigration and residents are accustomed to multiple identities, they have tended to expect one unifying language for those multiple identities. In Europe, the idea of having multiple identities is contested and multiple language use is expected.

Diaspora communities are indeed speech communities, and the factors influencing their choices of language use are equally complex to homeland circumstances for minority language users. Basque communities are spread throughout Central and South America with the largest population in Argentina. In North America, Basques are throughout Mexico, the west coast of the United States, New York, Louisiana and Florida, and in Canada mostly in Montreal and Vancouver. Three Basque communities are also on the east coast of Australia in North Queensland, Sydney and Melbourne areas. In the Philippines there are many people of Basque heritage but no Basque center or ethnic cultural organization, nor are there sufficient numbers of Basque language speakers to expect any sort of language maintenance. Basques are also living throughout Europe, with significant immigrant communities outside the seven Basque territories in Madrid, Barcelona, Valladolid, Paris, Milan, Brussels, and London. Nearly three quarters of Basque emigration in the last twenty years is to European destinations.

Euskara has been maintained and taught in the diaspora since the 1500s when Balthasar de Echave, in Mexico, first wrote about protecting the language of the motherland.

In 1607, Balthasar de Echave published a work in Mexico City regarding loyalty to the Basque language as mother tongue, reminding Basques that their first and foremost loyalty should not be to the 'Castilian Foreigner' or its language, but to their 'true and legitimate mother,' that of Basque identity (Echave 1971:84 as quoted in Toticagüena 2004:58).

For diaspora parishes with substantial Basque populations, the Vatican sent Basque priests to administer to the faithful, and there were Basque communities who enjoyed Catholic masses in the Basque language with regularity. There are still Basque priests in San Francisco and Buenos Aires assigned to the diaspora populations. Other Basque priests have coincidentally been sent to areas that have large Basque populations (which are not difficult to find in South America) but have not been sent specifically as Basque-speaking priests for a Basque-speaking population. Many of those priests coincidentally assigned between the 1960s and 1990s did not speak Basque at all as a consequence of the Franco dictatorial policies prohibiting, or later limiting, the use of Basque in Spain. Boise, Idaho had its own Basque Church of the Good Shepherd, built with funds raised by the Basque community there, with a Basque-speaking priest sent to administer to the Basque-speaking population. In 1910, the Bishop of Idaho, Alphonse Glorieux, requested a Basque-speaking priest for the Basque population of Idaho and Oregon and the Bishop of the Basque territory of Araba responded by send-

ing Father Bernardo Arregui to Boise in 1911. The Church of the Good Shepherd Basque parish was constructed and was dedicated in 1919. However, Idaho Bishop Edward Kelly closed the Basque parish in 1928, putting an end to the separate ethnic parish.<sup>7</sup>

Euskara has been taught at universities outside the Basque Country beginning in the 1940s in Uruguay and Japan, and then later in the United States until today with the Basque Government Department of Culture *Lektorego*, or lecture-ship, program supporting Euskara in eleven countries at twenty-four universities.

Diaspora Basques learning Euskara are most likely to be studying the unified *Euskara Batua*, one or unified Basque language, established by the Basque Language Academy Euskaltzaindia, which is not exactly what their parents or grandparents spoke, and they often begin with a reticent attitude toward the artificial or “fake Basque” as some refer to it. Some become frustrated because they do not recognize the vocabulary, or, when they repeat what they have learned in class to native Basque speakers, there are often unrecognized words or phrases. When the native speakers respond, “Oh, that’s not Basque,” or, “We never say it that way,” this frustrates the learner. However, they are able to read the press on the Internet (nearly always published in *Batua* unless a local town newspaper which uses the local vernacular).

Is it counterproductive and/or unrealistic to promote a *Batua* Basque (unified Basque language) in communities of nearly all Bizkaian speakers or of all Xiberotar speakers<sup>8</sup>? Because of chain migration from one area in the Basque Country to one area abroad, Basque immigrants often maintained the pronunciation and vocabulary of their hometowns, as have their descendants. *Euskara Batua* is sometimes seen as “artificial” especially in the diaspora where Basques were not a part of the daily discussion and media reports when *Batua* was being constructed and decided upon by Euskaltzaindia. They have not lived in the Basque territories during the slow but eventual changes in usage by the next generations and in the media and popular culture. Many diaspora Basques tend to accept *Batua* Basque itself as foreign.

However, younger Basques and those learning without any prior Euskara knowledge whatsoever have the least cognitive dissonance and eagerly seek out the numerous websites to practice their Euskara. One such platform is EuskoSare, Basque Network, which is a web platform established by Eusko Ikaskuntza, Society of Basque Studies, for diaspora groups to use to communi-

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7. See Totoricagüena, 2004. *Boise Basques: Dreamers and Doers* Chapter Four, pp. 79-87.

8. The Bizkaian (of the territory of Bizkaia) and Xiberotar (of the territory of Xiberoa) pronunciations differ, as do some of their local vocabulary. Bizkaians in Argentina might say they cannot understand the Euskara of Xiberoa and vice versa, however, after probing they do tend to admit that if they would actually listen closely and pay attention they could indeed understand each other in nearly any conversation. In California, those Basques of the territory of Lapurdi regularly tease those from Bizkaia, commenting that no one in the world can understand the Euskara of the small fishing towns of Bizkaia, even if they are a linguist.

cate with each other.<sup>9</sup> The goals are to have diaspora Basques communicating with each other via French, Spanish, Basque and/or English, and hopefully practicing their Euskara. By far, the Spanish-language sections record the heaviest use and are used by people with servers in the Spanish-speaking American countries.

The government of the Basque Autonomous Community has been quite exhaustive in trying to assist the promotion of Euskara in the diaspora communities with grant funding and scholarships for students to attend Basque Country public universities. Future teachers of Euskara are given scholarships to travel, live, and study in the Basque Country while perfecting their language and teaching skills, funded by the Basque Government Department of Culture. In the Basque communities abroad, until recently and still in most cases, the teachers of the Euskara classes have been volunteers and are not necessarily qualified and pedagogically trained instructors. Though the individuals may be motivated to teach and pass on their Basque language, they may not actually be effective teachers. Frustrated students have mentioned that sometimes the classes evolve into social hours with other students discussing how their grandparents used Euskara, or what vocabulary they used in comparison to the Euskara Batua being learned now, with the language of the discussion being English or Spanish. These are important and interesting discussions and analyses, however, they also can turn off otherwise motivated pupils who come to learn to speak, read and write in Euskara. They are often busy professional adults not interested in the history or migration stories of others.

## **DIASPORA BASQUES AND LANGUAGE ATTITUDES, KNOWLEDGE AND USAGE**

The Basque diaspora communities and institutions could be considered good practice laboratories for potential bilingual and diglossic communities, and they are certainly virgin territory for future linguistics research. In my own research with Basques abroad I have attempted to include investigations into the people's knowledge and use of Euskara and how they intertwine it, or not, with their own Basque identity. Can Basques be Basques without Euskara? Is the loss of the language a part of the loss of identity? By studying the attitudes and opinions of Basques themselves can we further diagnose the likely future for the Basque language outside of the homeland territories?<sup>10</sup>

The following tables are constructed with the data collected from fieldwork in six countries and with 832 representative respondents of four generations completing an anonymous questionnaire.<sup>11</sup> Using statistics from this research I car-

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9. See the website at [www.euskosare.org](http://www.euskosare.org) in English, Basque, Spanish and French.

10. See David Lasagabaster Herrarte, 2004, for an excellent fieldwork study including quantitative and qualitative data and interview notes with Basques of the United States west regarding their attitudes toward Basque language and identity.

11. This research was conducted as a part of my PhD fieldwork at the London School of Economics and Political Science. The dissertation is available at the British Library in London. The 2004 publication, *Identity, Culture, and Politics in the Basque Diaspora*, Reno: University of Nevada Press, is based upon this research.

ried out in Basque communities in Argentina, Australia, Belgium, Peru, the United States and Uruguay during 1996-2000, 832 total respondents were asked - among other issues- to rate their knowledge of Euskara. The table below represents their responses by country, where we see that countries with more recent immigration, such as Belgium, Australia and the United States, have higher Euskara self-defined proficiency. While older immigrant communities -in Spanish speaking host countries- have significantly lower rates of Euskara knowledge. This is to be expected from latter generations no longer using their ancestors' homeland language.

**Table 1. How well do you speak Basque?**

	Fluently	With some difficulty	Basic conversation	A few words	None at all
Argentina	8.2%	7.8%	15.3%	43.3%	25.4%
Australia	46.1%	9.8%	6.9%	28.4%	8.8%
Belgium	25%	16.7%	20.8%	25%	12.5%
Peru	15.4%	7.7%	23.1%	38.5%	15.4%
USA	31.3%	14.5%	13.2%	36.1%	4.8%
Uruguay	.9%	.9%	4.4%	27.4%	66.4%

Although in personal interviews, some individuals mentioned that the women were more likely to have maintained their Euskara at home, to be interested in language promotion programs, and were more likely to sign up as students, when controlling for gender and summing the responses of all six sample countries there were no significant differences in language knowledge reporting between males and females, as seen below.

**Table 2. How well do you speak Basque?**

	Fluently	With some difficulty	Basic conversation	A few words	None at all
Female	18.8%	12.3%	13.0%	35.3%	20.8%
Male	24.1%	7.5%	10.9%	37%	20.4%

For the continuation of Euskara, Basque diaspora communities need speakers of all ages. Across the six countries and using the age variable we do see differences that can be accounted for as Basque immigration to these countries has drastically slowed or stopped, except to Belgium.<sup>12</sup>

12. Belgium accepted thousands of Basque refugee children during the Spanish Civil War, and hundreds ended up staying with their Belgian families when they were orphaned, or when they returned to the Basque Country after ten or fifteen years away and too much had changed for them. In the 1980s and 1990s, Basques migrated to Belgium as a part of the intellectual movement of people working in European Union programs.

**Table 3. How well do you speak Basque?**

	Fluently	With some difficulty	Basic conversation	A few words	None at all
18-30 years old	17.3%	7.3%	10.0%	44.7%	20.7%
31-45 years old	16.5%	9.8%	13.9%	39.7%	20.1%
46-60 years old	17.9%	9.2%	13.3%	39.0%	20.6%
61-75 years old	30.5%	7.0%	12.3%	27.8%	22.5%
76-90 years old	37.0%	24.1%	7.4%	14.8%	16.7%

The immigrant generation of the respondents in the host country is also interesting to cross-tabulate with their language knowledge. When combining the data of being able to speak Basque “fluently,” and “with some difficulty,” of all six countries, 67.2% of those born in the Basque Country reported being “fluent” or being able to speak Basque regularly but “with some difficulty” and 41.2% of the first generation born in the host country, 8.1% of second generation born in host country, 4.4% of the third generation born in the host country, and only 2.3% of the fourth generation born in the host country answered the same. Not a part of this study, but interesting for future work is the effect on homeland language maintenance of the impact of the percentages of Basque speakers being the emigrants (usually from rural areas), and Spanish-speaking urbanites having lower migration tendencies. Also likely affecting language maintenance would have been the new immigration into the Basque Country of other Spanish speakers from western and southern Spain. Euskara speakers were more likely to switch and use Spanish than were Spanish speakers likely to learn and use Euskara.

In addition to rates of knowing and understanding Euskara, we also want to compare how often the respondents actually use their Basque language, which gives an indication of transmission for future generations.

**Table 4. How often do you speak Basque at home?**

	Everyday	I switch back and forth <sup>13</sup>	Only for certain topics	Only for special greetings, such as Happy Birthday	Never
18-30 years	8.0%	6.0%	8.7%	39.3%	38.0%
31-45 years	1.6%	5.2%	16.2%	37.7%	39.3%
46-60 years	4.2%	4.2%	15.3%	33.3%	43.1%
61-75 years	5.9%	5.4%	16.2%	22.2%	50.3%
76-90 years	7.4%	7.4%	22.2%	16.7%	46.3%

13. The complete response included “I switch back and forth between Basque and English” for those in English speaking countries, and “I switch back and forth between Basque and Spanish” for those in Spanish speaking countries.

It is expected that those who do not know Basque would not use it. Tragically, those who *do* know Basque are not using it either. When we compare the age groups of those who do know Basque (the 76-90 and the 61-75 age categories), 61.1% of those 71-90 years old do know Basque, however only 14.8% are using it. Of those 61-75 years old, though 32.5% respond affirmatively to knowing Basque only 11.3% are using it. In every age group, though people reported knowing Euskara, the percentages of their responses demonstrate that they also reported that they are not using it.

A similar study conducted with Basques in Barcelona demonstrated that among Basques of the *euskal etxea* there, 43% speak Basque, another 35% say they can understand Basque (total 78%) but only 25% use Basque as the normal language of home life in their families, 64% use Spanish and 11% speak in Catalan (Medina 2003: 172).

Literacy in Basque is much more difficult to expect for these communities because even the immigrants themselves who departed at the time of the Spanish Civil War (1936-1939) and subsequent General Francisco Franco dictatorship (1939-1975) were most often illiterate in Euskara due to the Spanish state policies of Basque not being allowed in education. The same was true for the French insistence on French language instruction. However, a surprising majority of those born in the seven territories report being able to read and write in Basque.

**Table 5. Can you read and write in Basque?**

	Fluently	With some difficulty	Basic conversation	A few words	None at all
Born in Euskal Herria	28.7%	30.5%	12.2%	14.0%	14.6%
1 <sup>st</sup> generation in host country	6.9%	14.4%	17.5%	28.9%	32.3%
2 <sup>nd</sup> generation in host country	.5%	7.2%	7.7%	32.5%	52.2%
3 <sup>rd</sup> generation in host country	1.1%	2.2%	9.9%	25.3%	61.5%
4 <sup>th</sup> generation in host country	0%	4.7%	7.0%	25.6%	62.8%

The continuation of diaspora Basque culture having ties to learning and using the Basque language seem to be rather weak according to questionnaire data. Only the youngest age category, 18-30 year olds, had a slight majority agree that learning and using Euskara was of “great” or “very great importance.” Interestingly, the elder Basques –those who had the highest rates of knowing the language– also had the highest rates (19.6% and 17.8%) of thinking it of “no importance” to Basque culture.

**Table 6. What is the importance of learning and using Euskara to Basque culture?**

	18-30 years	31-45 years	46-60 years	61-75 years	76-90 years
No opinion	.7%	.5%	3.1%	2.5%	2.2%
No Importance	12.2%	11.0%	15.3%	19.6%	17.8%
Some Importance	36.7%	45.1%	41.8%	40.5%	48.9%
Great importance	27.2%	24.2%	24.0%	22.8%	20.0%
Very Great Importance	23.1%	19.2%	15.8%	14.6%	11.1%
TOTAL	100%	100%	100%	100%	100%

Although in Euskara, the word for a Basque person is *euskalduna*, translated as “one who has the Basque language,” when the 832 respondents were asked to react to the statement, “Basque culture can be maintained without the Basque language,” we see that in every country except Uruguay, a majority disagreed. They believed that the culture itself does need the language, in contradiction to their responses in Table 6.

**Table 7. Basque culture can be maintained without the Basque language**

	Strongly Agree	Agree	No opinion	Disagree	Strongly Disagree
Argentina	11.2%	25.3%	6.4%	30.5%	26.5%
Australia	5.2%	30.9%	5.2%	35.1%	23.7%
Belgium	25.0%	8.3%	0%	20.8%	45.8%
Peru	16.7%	16.7%	0%	33.3%	33.3%
USA	7.1%	27.4%	8.1%	37.5%	19.9%
Uruguay	27.4%	29.2%	7.5%	18.9%	17.0%
TOTALS of all six countries	11.6%	26.7%	6.8%	31.9%	23.1%

As mentioned above, in Euskara the word for a Basque person is “one who has the Basque language,” *euskalduna*. This definition is pointed to regularly in literature and diaspora Basques are reminded by language protectors that they should learn and use Basque. However, the data show that the respondents do not adhere to this viewpoint, or to a linguistic definition or categorization of what makes a person Basque. Obviously, diaspora Basques who themselves do not speak Euskara, would hardly use this definition and thereby eliminate themselves from being Basque. Latter generation Basques who do not speak Euskara might also argue that they have been able to maintain their culture and identity just fine without speaking Euskara.

**Table 8. “To be considered a Basque, one must speak the Basque language”**

	Strongly Agree	Agree	No opinion	Disagree	Strongly Disagree
18-30 years old	6.1%	12.9%	7.5%	41.5%	31.3%
31-45 years old	6.8%	13.5%	5.7%	48.4%	25.5%
46-60 years old	9.4%	10.8%	7.4%	50.7%	21.7%
61-75 years old	5.5%	12.8%	11.6%	54.9%	15.2%
76-90 years old	2.0%	14.3%	14.3%	57.1%	12.2%

The teaching and preservation of ethnic identities are generational endeavors and must be repeated, similarly to any identity -homeland or diasporic. The Basque cultural centers, *euskal etxeak*, have served their members over the decades by providing activities and in many cases a physical space where those of Basque heritage can meet and practice their identity. These organizations have proved essential to maintaining Basque identity through music, dance, cuisine, educational seminars, courses, publications, language, sport, song, community work, and camaraderie.

## **EUSKARA AND THE EUSKAL ETXEAK**

During the years of the Franco dictatorship the Basque Government-in-exile maintained political and economic representation, “Delegations”, in London, Paris, New York City, Mexico City, Caracas, Bogotá, Panama City, Santo Domingo, Havana, Buenos Aires, and Montevideo. Czechoslovakia, Bulgaria and Yugoslavia also had Basque delegation representatives. Relations with the Basque immigrant communities were strong and mainly focused on political identity issues and to returning democracy to Spain. Franco’s death in 1975, together with the beginning of the Transition to democracy, the establishment of the two autonomous governments - in Navarre (the Foral Community of Navarre) and in Euskadi (Basque Autonomous Community)-, and the development of cultural policies for the diaspora in the departments of Culture and of Education and in the Office of the Presidency in Euskadi all combined to make a significant impact on the Basque communities abroad. During the 1990s, there was a qualitative shift in relations between the Basque centers and the government of the Basque Autonomous Community with an increase in intensity, funding, engagement, and communications with Basques living around the world. A grants program began to support short-term projects and programs such as building renovations, dance troupe uniforms, academic fieldwork research, cultural activities, and Euskara classes. The language preservation had consistently been a theme for these immigrant communities throughout their histories.

Basques in California published two different Basque language newspapers in the late 1800s, *Eskualdun Gazeta* 1885-1886 from Los Angeles, and *California-ko Eskual Herria* 1893-1898 also from Los Angeles. In 1901, the *Laurak Bat*



Basque center of Buenos Aires news bulletin had articles written in Spanish and in Basque and scattered conferences were given in Euskara (Ezkerro 2003:194). By 1903, the name spelling of the Basques' Buenos Aires newspaper, *La Vasconia*, was changed to the Basque spelling *La Baskonia* and now Euskara was being used more often by its editor, José R. Urriarte (ibid). In 1905, Father Francisco Laphitz in Buenos Aires was giving sermons from the pulpit in which he encouraged his Basque parishioners to create Basque language schools for their Argentina-born children (Ezkerro 2003:194). The children's *Colegio Euskal Echea* of Llavallol (in the province of Buenos Aires) began teaching Basque language to their students in the early 1900s. In 1906, *Laurak Bat* was teaching Basque classes, however, with little interest and they were not continued the next year. Other early attempts to keep Basque language in the media prevailed with Euskara used partially for certain articles or sections. During 1907-1909 the *Euzkotarra* was published from New Orleans, Louisiana. *Aberrri* was published in New York from 1925-1928 and from Boise, Idaho the city newspaper, *The Boise Capital News*, regularly published one of its pages in Basque during 1938-1939 for its large immigrant community there.

After the Spanish Civil war and the exile of thousands of Basques to Mexico, Cuba, Chile, Venezuela, Uruguay and Argentina, we see the effect in an upsurge in the interest for maintaining the language. *Euskaltzaleak* was formed in Buenos Aires to protect and promote Basque language. The publishing house of *Ekin* was founded by Dr. Isaac López Mendizábal and Dr. Andrés María de Irujo y Olló in 1941 and supported by the printing and graphics business of Sebastián de Amorortu and sons. *Editorial Vasca Ekin* published the series Basque Culture Collection. This initiative eventually produced more than 100 books on Basque topics, some of them written in, or translated to, Euskara. Ekin publications from Argentina helped keep Euskara alive for another generation from its base in exile.

In Uruguay, a group of Basque immigrants formed the Basque Book Club and from the 1940s created a collection and library of materials written in Basque at the Basque center Euskal Erria in Montevideo. In 1944, the University of the Republic in Montevideo created the first chair for Basque language in all of the Americas in their School of Humanities (Irujo and Irigoyen 2007:255). Bingen Ametzaga taught for eleven years followed by José Mendiola. Due to the success of the Basque language classes a Department of Basque Studies was initiated the very next year.

*Eusko Ikaskuntza*, Basque Studies Society initiated the International Day of Euskara in 1948, from the VII Eusko Ikaskuntza Congress held that year in Baiona, Lapurdi (Bayonne, Labourd in Franch) with the various leaders agreeing that global action was necessary to promote Euskara. Manuel de Ynchausti then wrote to leaders throughout the Basque communities of the world encouraging them to organize for the next year, and to send any funds raised through Day of Euskara activities and other events throughout the year at their Basque Centers to *Iparralde*, the northern part of the Basque Country located in France, to help support the financial costs of publishing in Basque, and for organizing Basque language schools due to the fact that this was prohibited in Spain. *Euskararen*

*Eguna* caught on and was first celebrated in 1949 in various Basque communities in South America and has been consistently ever since then.

In Japan, Kansai Gaidai University in Hirakata city (Osaka prefecture) was teaching Basque as a part of its language school offerings by the second half of the 1940s, and continues to this day. Jon Bilbao taught Basque language at Boise State University in the 1940s and Jon Oñatibia began teaching Euskara in New York in the 1950s.<sup>14</sup> The journal *Eusko Gogoia* was written by Father Jokin Zaitegi from Guatemala and began publication in 1950 with distribution to Basque communities in the Americas, Europe, and even made its way to the Basques in North Queensland, Australia (Archivo del Nacionalismo Vasco, Fundación Sabino Arana. Correspondencia / 1947-1958/ FONDOS-002-02 as referenced in Toticagüena *Vasconia* 2008:250). The first Basque translations of classics, such as works of Shakespeare, came from Uruguay in the late 1940s and into the 1950s (Irujo and Irigoyen 2007: 252-253) as did their own publications of works in Euskara by the language study group *Euskaltzaleak*.

In 1955, Basque President-in-exile José Antonio Aguirre, met with Bingen Ametzaga in Caracas to discuss the possibilities of creating a Basque Cultural Center that would be dedicated to promoting Euskara and writing, publishing and distributing Basque language materials internationally (Irujo and Irigoyen 2007:254). There were not sufficient funds and in the end this was not implemented, but the idea is important that during the Franco dictatorship, Basques abroad took leadership and accepted responsibility to maintain, preserve and promote the Basque language.

Basques in Buffalo, Wyoming established the *Euskaldun Ordua*, or “Basque Hour” radio program, which first aired on Sundays in 1956 with volunteer announcers and the financial sponsorship of the Buffalo area Basques. The program continued every Sunday at noon with local and homeland news and music in Euskara for forty years. Basque language radio in Idaho began in the early 1950s with Julian Lachiondo and Cecil Jayo. Espectación “Espe” Alegria led “The Basque Program” from Boise, Idaho from 1956 to 1982. Caracas and Montevideo also retransmitted Basque radio programs from the 1940s, and in 1947 *Euzkadi Irratia Montevideo*, Basque radio from Europe, was retransmitted to Uruguayans on the airwaves (Irujo and Irigoyen 2007:226). Joseph V. Eiguren from Oregon, wrote a manual in 1965 in English for how to learn Basque and in 1974 he wrote one of the first ever English-Basque dictionaries. The University of Nevada, Reno Basque Studies Program was founded in 1967 and the Idaho Basque Studies Center established their Basque language classes in Boise in 1971.

The Basques of Caracas founded the *Ikastola Euzkadi* in 1962, a full immersion Basque-medium primary school. In Boise, Idaho the first ikastola was an

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14. See Toticagüena. 2003. *The Basques of New York: A Cosmopolitan Experience*. Urazandi Collection Volume 12. Vitoria-Gasteiz: Basque Government Central Publications Office.

after-school full immersion program for primary school aged children established in 1973, and today's *Boise'ko Ikastola*, founded in 1998, is the actual full immersion Basque language school for children four to six years old. Children attend Monday through Friday for full day instruction and play in Euskara. The San Francisco Basque Cultural Center sponsors a Saturday morning Basque language immersion play time and lessons for children two to ten years old, *Koxkorak Goiz Eskola* (morning school for the little ones).

Today there are 161 Basque organizations that are officially registered and "recognized" by the Basque Government by means of Decree 318/1994, of July 28th, 1994<sup>15</sup> and communications between the diaspora and this office are stable, consistent and very positive. The trajectory of relations between the Autonomous Basque Community's government and the *euskal etxeak* has consistently included Basque language issues and today, the Basque Government Office for Relations with the Basque Collectivities reports 68% of the *euskal etxeak* claim to organize Basque language classes according to a 2007 questionnaire they conducted (Bilbao 2007:9).<sup>16</sup> The year after the establishment of the Basque Autonomous Community government, the First Congress of Basques was held in 1982 in Donostia-San Sebastián and included 203 Delegates from nine countries. From the delegates there was a request for grants for pedagogical training for teachers of Basque language, and for materials and teaching aides for Euskara in the diaspora. Soon after, there was an appointment of a Basque Government Advisor for Relations with Basque Communities and Centers in 1985, and contact and communications resumed almost to the level of the 1940s and 1950s with the Basque Government-in-exile. In 1986, the Basque Government Department of Culture assumed responsibility for relations with the *euskal etxeak*, and in 1988 the homeland began providing grants to them for cultural activities.

The First World Congress of Basque Centers was held in Argentina in 1989, with delegates traveling from eleven countries, and one again the discussion turned to the necessary training for teachers of Basque language to be sent to the communities abroad. In 1991, the Basque Government Office of the Presidency created the General Secretariat of Foreign Action and one of its dependents was created as the Directorate of Relations with Basque Collectivities. The move into the Office of the Presidency denoted an increase in the importance given to the diaspora Basques. This was a qualitative change as well as quantitative when comparing appropriations for their activities. The results have been marked with a significant strengthening of international relations among Basques in

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15. For a current list of the Basque diaspora organization registered with the Basque Autonomous Government please see [http://www.lehendakaritza.ejgv.euskadi.net/r48-3872/en/contenidos/informacion/03\\_listado\\_centros/en\\_lista/centros.html](http://www.lehendakaritza.ejgv.euskadi.net/r48-3872/en/contenidos/informacion/03_listado_centros/en_lista/centros.html)

16. In 2006 and 2007 a survey was sent to all diaspora Basque organizations registered with the Basque Government. Of the 161 registered, only 111 *euskal etxeak* answered and returned the surveys to the Basque Government. I believe this percentage to be high should all Basque Centers have answered this questionnaire.

these communities and an increase in the number of new *euskal etxeak* and in the quantity and quality of activities carried out for diaspora Basques.

The 1995 First World Congress of Basque Collectivities<sup>17</sup>, held in Vitoria-Gasteiz had Basques from fourteen countries, in 1999 the Second Congress had representation from eighteen countries, in 2003, 150 delegates from nineteen countries attended, and in 2007 the same countries sent representation. Since 1999, forty-one new *euskal etxeak* have been founded, more than half in Argentina. This is not due to new immigration. Basque Immigration Observatory data for the Basque Autonomous Community and Navarre demonstrate that from 2002 to 2005, 70% of the emigration out of the Basque Autonomous Community and 62% from Navarre have gone to European destinations. During the same time period, fewer have gone to the Americas; 24% for the Basque Autonomous Community and 42% for Navarre (Bilbao 2007:3). The growth is from renewed interest in their ethnic heritage. In fact, Argentina alone has seventy-six registered Basque Centers, nearly half of the total number of *euskal etxeak* registered with the Basque Autonomous Government, and Argentina has also led the way with Basque language instruction.

The relations between the Basque Autonomous Government and the Basque Communities Abroad are regulated by Public Law 8/1994, passed May 27, 1994.<sup>18</sup> Article 8, clause 7 states that Basques abroad have, “The right to a supply of published and audiovisual material designed to facilitate the transmission of knowledge of Basque history, culture, language and social reality, for display and distribution among members of Basque communities;” Article 8, clause 10 states, “The organization of courses to learn the Basque language;” and Article 9, clause 1 (b) states, “To study and to know the Basque language. To this effect, resources will be provided to Basque centers for the organization of courses in

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17. The 1995 congress began the Basque Government’s “world congresses” which are held once every four years in the Basque Country itself. See Totoricagüena 2004, *Identity, Culture, and Politics in the Basque Diaspora*, and Ugalde Zubiri 2007, *Memoria de la Dirección de Relaciones con las Colectividades Vascas en el Exterior del Gobierno Vasco (1980-2005)*.

18. See [http://www.lehendakaritza.ejgv.euskadi.net/r48-3872/en/contenidos/informacion/disposiciones\\_normat/en\\_706/18\\_i.html](http://www.lehendakaritza.ejgv.euskadi.net/r48-3872/en/contenidos/informacion/disposiciones_normat/en_706/18_i.html) for the details of decrees regarding Basque communities abroad: DECREE 318/1994, of July 28th, by which the Recognition and Registry of the Basque Centers located outside of the Autonomous Community of the Basque Country are regulated. DECREE 234/1995, of April 11th, in which the organizations of Relations with Basque Communities are regulated. DECREE 106/1996, of the 14th of May, which modifies the Decree regulating the Recognition and Registration of Basque Centers located outside the Basque Autonomous Community. DECREE 98/2000, dated 6th of June, which regulates the “Andrés de Irujo” Award for creative or investigative works relating to overseas Basque communities. DECREE 124/2003, dated June 10, to regulate the subsidy scheme for Basque Centers/Euskal Etxeak. DECREE 186/2003, dated 29 July, which regulates the program of subsidies for cultural tours to countries in which Basque Centers are located. DECREE 221/2003, dated 30 September, which regulates grants for specialists in the area of foreign relations and Basque Centers and Communities overseas. DECREE 222/2003, dated 30 September, which regulates the system of granting financial aid to Basque Centers to attend to the general welfare needs and cases of extreme poverty facing members of Basque Communities overseas. DECREE 316/2003, dated 23 December, regulating the Gaztemundu program. DECREE 238/2006, dated 28 November, which regulates the e-proceedings (applying for grants via Internet, using Spanish and Basque only).

the Basque language, within budgetary means. Regulations will be established in respect of systems and procedures, in accordance with which members of Basque communities may obtain certificates of knowledge of the Basque language awarded by the competent body of the public administration of the Autonomous Community of the Basque Country.”

Language learning is tied to one's attitude toward that language. Many immigrants and latter generation Basques in the diaspora now have a very positive attitude toward ethnic identification, and do promote the general idea that Euskara is a significant characteristic for “being Basque” and that it must be protected and preserved. However, protection (as in a museum) does not necessarily extend out to learning and using it themselves. Because they are able to express their Basqueness by many other means which are less time consuming and much easier to learn such as Basque cuisine, folk dancing, history, choral songs, playing pelota (handball) etc.

For those Basques living abroad, learning Basque could be considered for some a hobby, for others the fulfillment of a responsibility to their ancestors and to their own sense of identity. In fieldwork in six countries with 832 respondents, no one ever mentioned an economic instrumental reason for learning Basque such as seeking employment in their *euskal etxea* or elsewhere in the host country or the homeland, earning a promotion, being named to a special post in the Basque Center or with the Basque community. As a matter of fact, there have been situations where the person in charge of organizing Basque language classes, or writing grants for funding Basque language events, or in charge of the total Basque language programs for a Basque Center did not themselves know Euskara.

The Fourth World Congress of Basque Collectivities of 2007 requested that their next meeting in 2011 be conducted in Euskara. They asked for additional funding from the Basque Government to finance activities for children, for adolescents a program that could organize summer home stays in the Basque territories with Basque-speaking families, and the training of teachers from their own communities to then return and teach Basque in their centers. The leadership and usual delegates to the world congresses will themselves have to begin studying Euskara if they wish to participate in the 2011 Congress as most of the attendees of 2007 were not Euskara speakers.

## **HABE AND PROGRAMS FOR EUSKARA IN THE EUSKAL ETXEA**

After Franco's death in 1975, the development of a network of Basque language schools for adults sprung up in the Basque homeland, known as AEK, a coordinator for the teaching of Basque language and literacy, and others soon followed. By 1981, the Basque Government created an institute for the teaching of Basque language and literacy for adults known as HABE, *Helduen Alfabetatze eta Berreuskalduntzeako Erakunde Sortaraztekoa eta Euskaltegiak Araupetzekoa*, Institute for Adult Literacy and Basque Language and Regulation of the Basque

Language Schools, with the 1983 public law Ley 23/1983.<sup>19</sup> HABE promotes Basque language learning and literacy, especially for adults, through programs for the training of Basque language teachers, after-work language courses, creation of pedagogical materials for both children and adults, the establishment of various publications and radio programs. They are also charged with the promotion and coordination of Basque language programs organized outside of the three Basque territories that make up Euskadi (Araba, Bizkaia and Gipuzkoa) through and with funding of the Basque Autonomous Community's Department of Culture.

HABE's original engagement with the diaspora resulted from Argentine Basque initiatives wishing to promote Euskara. *Argentinan Euskaraz*, Euskara in Argentina, began in 1990 after the Federation of Argentine Basque Entities requested Basque Government aid for training language teachers and adapting and preparing Basque language materials for its diaspora Basque communities. After a decade of success in teaching Basque in Argentina, the Department of Culture through HABE expanded the program by offering it to other Basque Centers around the world.

In 2003, HABE began training forty teachers from Uruguay and Argentina; in 2008, twenty-three of them finished the four year preparation necessary to pass the exams and earn the teacher's certification. During 2004-2007, the twenty-three Argentine Basques studied and trained to become Basque language teachers for Basque communities in Argentina. Finishing exams and immersion practicum in June 2008, eight of them will even teach at the university level in Argentina. During the period 2008-2011, five additional countries have been added to what was started with Argentine Basques and will include ten future teachers from Argentina, ten from Uruguay, two from Brazil, four from Chile, one from Colombia and one from Peru. These future instructors are taught in their home countries via Internet and then participate in biannual total immersion programs in the Basque Country. After years of supplying excellent quality materials to the Basque Centers -that often remained in boxes in closets- the Basque Government now is also providing professional pedagogical training for the formation of teachers, and consequently the sent materials now are being used. The software for computerized self-taught Basque language, BOGA (a multimedia system for learning Euskara through the Internet), is installed onto the computers of any member of a Basque Center free of charge. Virtual via Internet and personal tutorials from the diaspora community teachers are given to students and students able to meet physically do so, generally once or twice a month. For the 2007-2008 academic year, 210,000 Euros were dedicated from HABE for the BOGA classes and seventy-five Basque communities around the world offered the courses. Though there are various levels of courses, in 2008-2009, there were 218,400 Euros appropriated and approximately 1,182 students enrolled in the *euskal etxeak* classes of HABE.

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19. To see the Basque and Spanish language versions of the Basque parliamentary decree from the Official Bulletin of the Basque Autonomous Community go to [http://www.habe.euskadi.net/s23-4728/es/contenidos/informacion/aurrekariak/es\\_9361/adjuntos/HABESEA.pdf](http://www.habe.euskadi.net/s23-4728/es/contenidos/informacion/aurrekariak/es_9361/adjuntos/HABESEA.pdf)

Separately, there are children's Basque language play groups established in different centers which receive various amounts of aid depending on the institution's application for a Basque Government grant. *Euskara Munduan*, Basque language in the world, is the name of this initiative of HABA which is aimed taking Euskara to the international arena. HABA administers this program directly with the individual Basque Centers and also works with the federations of Basque Centers in Argentina (*Federación de Entidades Vascas Argentinas*, FEVA), Uruguay (*Federación de Instituciones Vascas Uruguayas*, FIVU) and the United State (North American Basque Organizations, NABO).

The total 2008 budget for HABA was set at 42,900,000 €. Below we see how most of the funding was spent and that the programs for Euskara in the Basque diaspora receive the lowest amount, yet they are quite efficient and productive. An approximate 10,000,000 Euros are spent on administration, offices, salaries and operations.

Public programs for adults Basque language immersion	10,438,500 €
Private programs for adults Basque language immersion	20,777,100 €
<b>Diaspora Basque Centers</b>	<b>218,400 €</b>
General students	1,300,000 €
Total	32,723,600 €

## **EITB, BASQUE RADIO AND TELEVISION, AND NEW GLOBAL TECHNOLOGIES**

Participants of the 2003 Third World Congress of Basque Collectivities asked the Basque Government for projects related to the dissemination of Basque language television programming for adults and children, via Internet and/or cable television contracts. Communities in South and Central America and the east coast of North America had access to cable television programming via satellite only if their local cable companies subscribed to the offerings of Euskadi Irrati Telebista, EITB, Basque Radio and Television, or if they owned a satellite dish that received the transmissions. However, Basques in Europe, the North American west, Australia and the Philippines did not have access to Basque language television or radio. Subsequently in 2004, [www.eitb24.com](http://www.eitb24.com) was created, a twenty-four hour broadcast in Spanish and Basque on its own Internet website. EITB had the following goals for their Internet endeavor: to use new mediums for the production of Basque language programming, to make Basque issues information more accessible to Basques abroad, and to produce their own news site with Basque current affairs and project it to the world in general as well.

According to Miren Azkarate, Department of Culture Counsellor, EITB was able to transmit specific programming for America with its satellite channel *Canal Vasco*, and also able to provide for European audiences through *ETBSat*. A collaboration agreement with the Latin American Association of Regional and Local Television was signed in order to exchange programming with open access television in Mexico, Costa Rica, Panama and Colombia, Venezuela and Ecuador. EITB also signed an agreement with the Latin American Educational Television Association

to broadcast Basque television programming via *European Hispasat* and *American Hispasat*, increasing coverage to fifteen countries in the Americas and Europe (Azkarate 2007).

Basque Radio and Television also worked to produce a daily television program of information specifically for Basques living abroad, but mostly for Americans. Begun in 2003, a half hour information program, *Canal Vasco News*, gives details about events in the Basque Country to a general audience. It is broadcast to most of Central and South America and to eastern North America.<sup>20</sup> Though the language used is Spanish and not Basque, listeners become informed about Basque Country issues.

In 2002, five radio stations were linked for Internet accessibility, and in 2003, commencement of the satellite broadcast of *Euskadi Irratia*, or Basque Country Radio, which is broadcast in Euskara, and *Radio Euskadi*, or Basque Country Radio, which is broadcast in Spanish, began in both America and Europe.

The *Euskadi-Vascos en el Mundo*, or Basque Country and Basques in the World, space on the eitb.com webpage (published in Basque, Spanish and English) has increased its offerings in Euskara with new sections and correspondents, now in France, England, United States, Belgium, Argentina and Mexico, and consequently given additional “attention and coverage of political, cultural and social events that affect Basque communities abroad” (Azkarate 2007). The Basque Government’s funding of EITB has doubled the availability of Basque language programming that is accessible around the world thanks to satellites and the Internet. According to Azkarate’s presentation there is “a) Twice the coverage on international television via satellite (ETBsat and Canal Vasco), b) Twice the availability of radio via satellite (*Euskadi Irratia* and *Radio Euskadi*), c) International Internet broadcast, the Group’s five radio stations can be received anywhere in the world, as well as ETBsat on www.eitb.com, and *Canal Vasco*, thanks to an agreement signed with JumpTV” which puts television broadcasting on the Internet.<sup>21</sup>

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20. According to Azkarate’s presentation at the 2007 Fourth World Congress of Basque Collectivities, *Canal Vasco News* is broadcast through *Canal Vasco* and other platforms that guarantee access to millions of homes: Plus Satelital (Argentina, Uruguay), five million homes; HITN, Dish Network (accessible all over the USA and Puerto Rico); TV Familia, Caracas (accessible throughout the entire Republic); Agora TV, San Salvador (accessible in the entire country); Chile has coverage through different open access channels; FeTV, Panama (accessible all over the country); UV Televisión of Ecuador; Star Cable in Peru; and VideoCable of Santa Rita, Costa Rica. Another program known as “*Basque Country-Basque in the World*” has six broadcast areas: South Cone, Andean America, the Caribbean, North America, Europe and the rest of the world.

21. From the JumpTV website [www.jumptv.com/en/about](http://www.jumptv.com/en/about) : “JumpTV International has over 300 channels originating from more than 80 countries, JumpTV offers the greatest range of “International” or non-English-language television available on any one network in the world. The composition of our global channel lineup is both broad geographically and deep in variety — including top national broadcasters in nearly every country represented as well as leading regional and specialized channels for sports, music, news, culture and movies. The majority of JumpTV’s content is streamed live as we believe people want to view sports and news as it is happening. Viewers have fresh content often unavailable through any other means. JumpTV also increasingly offers a significant amount of programming on a video-on-demand (VoD) basis.”



## **LEKTOREGO: THE EXPORTATION OF LECTURESHIPS FOR EUSKARA**

The Department of Culture publication, "A Language Policy for the Future" details the implementation of the Basque Government Vice-Counsellor for Language Policy's five-year plan for 2005-09. Section twenty-five states, "Increase the presence of the Basque language abroad through actions that will include the strengthening of cooperative links with the *euskal etxeak* and the program of university language assistants" (Azkarate 2005:58). In 2004-5, the Department of Culture established the *Lektorego*, or lectureship, program, which is managed from the Basque Government's Directorate for the Promotion of the Basque Language.

The *Lektorego* program was developed through the various agreements signed between the Basque Government's Department of Culture (and in some cases in conjunction with the Department of Education, Universities and Investigation and with the General Secretariat of Foreign Affairs in the Office of the Presidency of the Basque Government) and different university departments around the world. Managed by the Department of Culture's Vice-Counsellor of Linguistic Policy, the programs have been met with tremendous success when measured by student registration and participation in the courses. All courses are established with specific requirements to meet the academic expectations of the housing departments and have their corresponding syllabi, required theses and assignments, and exams. Begun with pilot programs in Chile and Uruguay in 2003, the *Lektorego* program was formally established in the Department of Culture in 2005.

The government of the Basque Autonomous Community provides financial and human networking support. It helps the foreign university by funding the annual salary of a Basque language teacher position and in some cases the university also funds a portion of the expenses for travel, entrance visas, insurance, etc. Classroom teaching materials and assessment tools are also provided to teachers through H.A.B.E.

Basque culture and Basque language classes are currently being offered through this program at twenty-four universities in eleven different countries with approximately 600 students participating. For the 2008-2009 academic year this is expected to grow to twenty-seven universities and approximately 700 students (Zinkunegui communications 2008). During 2007-2008 the following universities are participating in the *Lektorego* program and were offering annual courses: University of Chile; Pontifical Catholic University of Chile; University of Valparaiso; Pontifical Catholic University of Valparaiso; National Autonomous University of Mexico; University of the Republic Montevideo, Uruguay; Boise State University; University of Warsaw; University of Helsinki; Popular University of Rome, UPTER; University of Valencia; Masaryk University Brno, Czech Republic; University of Barcelona; Autonomous University of Barcelona; and the Complutense University of Madrid; Free University of Berlin; Goethe University, Berlin.

In Germany, the Freie Universität of Berlin was one of the first institutions to establish a Basque language assistant program. An agreement between the

Department of Culture and the Freie Universität established the Basque language courses, located within the Institute of Romance Philology, for the 2004-5 academic year. An agreement for the period 2004-6 was signed with the Johann Wolfgang Goethe-Universität, Frankfurt am Main as was the creation of a center called *Euskal Ikaskuntzen Alemaniako Etxea, Euskal Liburutegia*, the Basque Studies Center of Germany and the Basque Library. The Department of Education, Universities and Research, the Office of the Presidency and the Department of Culture of the Basque Government were all parties to this agreement.

In Italy, in 2003, it was the Italian Basque organization *Associazione Culturale Euskara - Erromako Euskal Etxea*, the Basque Center of Rome, which began to offer Basque classes at the Università Popolare di Roma, UPTER. The same year, this association contacted the Department of Culture Directorate for the Promotion of the Basque Language and requested financial or teacher assistance to continue providing activities and student courses. The Department of Culture and UPTER agreed to establish the Basque Lektorego Program in 2005-06 with its own Basque Language Department responsible for organizing general and non-academic cultural activities for the university and local community. Today it offers Basque I, Basque II, Basque III, and also a Basque Conversation course. There is also an offering of Basque Culture which includes language, history, literature, mythology and geography.

In the United States, an agreement with Boise State University in Idaho was confirmed for 2005-2008. Boise State was in the process of forming a Minor Degree in Basque Studies through the university's Department of Modern Languages and as in the case of Frankfurt, the Basque Government Department of Culture, the Department of Education and the Office of the Presidency are also parties to this agreement. In this case the funding was substantial enough to also offer several courses and weekend workshops in Basque culture.

In each example at the twenty-four different universities, the Basque language courses also include learning about the Basque Country itself; its culture, traditions, identity, and history. It is hoped that these programs will continue and develop into focal points for learning and using the language and for promoting scholarship and publications in Euskara and about Basque topics. By fomenting international and academic allies, the Basque Government is creating a small but global network of protagonists who are in favor of protecting and using Euskara.

## **ETXEPARE BASQUE INSTITUTE: EUSKARA'S INTERNATIONAL FUTURE**

The most substantial and most recent endeavor of the Basque Government to promote Basque language outside of its boundaries comes in form of the Etxepare Basque Institute. In May, 2008, the executive branch of the Basque Government accepted the unanimously approved Basque parliamentary declaration Ley 3/2007 of April 20, 2007 creating the Etxepare Basque Institute. The Etxepare Basque Institute would now be responsible for coordinating and consolidat-

ing all of the various projects and programs of the Basque Government pertaining to the international promotion of Basque culture and language. This institute will be the center point for diaspora communities, universities, language research centers and investigators wishing to obtain materials, teacher training and numerous smaller projects in favor of Euskara and Basque culture. It will have its own separate legal status but is connected to the Department of Culture and the mission of the institute is to take Basque language and culture to the world.

Its objective is the international promotion, diffusion and projection of Euskara and of Basque culture. It will develop its activities within the general framework of Basque Government foreign affairs and the cultural and linguistic policies of the Basque Autonomous Community. It will pay special attention to university research regarding the Basque language, and will implement activities of cultural promotion in collaboration with other national and international entities. The expectation is to create and foment a global interest in the Basque language.

As it develops, the Etxepare Institute will assume the responsibilities of the majority of international programs for Basque language and culture that are currently being developed by the Directorate of Relations with Basque Collectivities and by the Department of Culture (HABE, Vice-Counsellor of Linguistic Policy, Vice-Counsellor of Culture). Both the Department of Culture and the General Secretariat of Foreign Affairs are members of the Council and the Board of Directors of the Etxepare Basque Institute in order to facilitate necessary coordination.

The mission of Etxepare is in line with the motto of poet and writer Bernat Etxepare, who in his 1545 Basque-language publication wrote in his poem, *Kontrapas*, "*Heuscara ialgui adi campora*" in regards to "Basque language going forth into the world."

The aims of the Basque Institute Etxepare are: a) To internationally promote the instruction, study and use of Basque, and to promote and enhance international recognition of the Basque language and encourage all measures and actions to contribute to disseminating and improving the quality of these activities; b) To contribute to the spread abroad of Basque culture in all its forms and in different languages; c) To bring Basque Country current events to Basque-speaking communities throughout the world and to those places where there are immigrant Basque communities, or cultural or historical trade relations.

The Etxepare Institute will have two branches, one general for Basque culture and one specifically for Basque language. Basque Culture programs will include music, performing arts, visual arts, film, architecture and design. The section for Euskara will focus on teaching, study, use and dissemination of Basque among the general public and among public institutions internationally. It will develop research and teaching of Basque, mainly in universities and other centers of higher education outside the Basque Country, by supporting the establishment of teaching lectureships and assistantships for Basque language

and culture, and act as a clearinghouse for cooperation and assistance for researchers and specialists and for foreign research centers.

Similar to institutions such as the United Kingdom's *British Council*, the *Goethe Institut* of Germany, the Spanish *Instituto Cervantes* or the *Institut Ramon Llull* of Catalonia, the Basque Institute Etxepare is expected to be the "go to" center for information. According to Patxi Baztarrika, Vice-Counsellor for Linguistic Policy, it will conduct cultural outreach in collaboration with other national and international centers and will be responsible for representing Basque issues at language, education and culture expos and exhibitions and especially will promote the sharing of information and materials. It will take over the administration of the Lektorego program and the promotion of activities that support Euskara through computer and information technology, audiovisual resources, teacher training and publication of teachers' guides (Baztarrika, various communications 2007. The main offices of the Etxepare Basque Institute will be located in Donostia-San Sebastián and eventually could have a network of branches in various cities around the world.

According to the press release of the Basque President, Mr. Juan José Ibarretxe of July 14, 2008, the institute was created by Public Law 3/2007 of April 20, 2007, of the Basque Parliament. The stated objectives are to:<sup>22</sup>

- a) disseminate Basque artistic creation through the promotion of programming and scheduling on the international scene.
- b) support traveling exhibits for artists and their works.
- c) facilitate information and knowledge of Basque contemporary creativity and artistic heritage.
- d) organize international cultural exchanges.
- e) promote strategic plans for the dissemination of the arts.
- f) design financial aid programs for cultural agents with the aim of publicizing Basque works on the international scene.
- g) promote literature, thought and research in Euskara through outreach works and scientific research as well as through research journals of Basque philosophy and culture.
- h) promote the international dissemination of Basque culture particularly by supporting cultural offerings created in Euskara.
- i) facilitate dialogue and exchange among Basque opinion leaders and researchers around the world.
- j) promote international authorities' research on Basque linguistic diversity and cultural pluralism.
- k) manage grants to public and private entities meant to develop actions leading to the universal promotion of Basque culture ([http://www.kultura.ejgv.euskadi.net/r46-714/es/contenidos/nota\\_prensa/etxepare\\_institutua/es\\_etxepare/etxepere\\_institutua.html](http://www.kultura.ejgv.euskadi.net/r46-714/es/contenidos/nota_prensa/etxepare_institutua/es_etxepare/etxepere_institutua.html)).

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22. [http://www.kultura.ejgv.euskadi.net/r46-714/es/contenidos/nota\\_prensa/etxepare\\_institutua/es\\_etxepare/etxepere\\_institutua.html](http://www.kultura.ejgv.euskadi.net/r46-714/es/contenidos/nota_prensa/etxepare_institutua/es_etxepare/etxepere_institutua.html)

The area of Advocacy and Outreach for Euskara aims to promote the actions of teaching, study, use and dissemination of the Basque language to the general public and among public institutions in the international arena. Its functions are to:

- a) promote the presence, study and learning of Euskara in universities and other research centers around the world, particularly by supporting the establishment of lectureships and assistantships at universities and acting as an organ of cooperation and assistance for foreign research centers and Basque specialists.
- b) promote the learning of Basque among Basque-speaking communities around the world, mainly through existing Basque *euskal etxeak*.
- c) facilitate, through its own resources or in collaboration with others, the necessary human resources, and linguistic and educational requirements for the study of Euskara abroad.
- d) boost teacher training for specialists in the teaching of Basque as a second language.
- e) arrange for exams to obtain language certificates of knowledge for Basque speakers abroad.
- f) promote the presence of Euskara in the international arena through participation in language trade fairs and exhibitions.
- g) coordinate the promotion of Euskara with other agencies that aim at the promotion and dissemination of Spanish, Catalan and Galician.
- h) coordinate language promotional activities within the Basque government and other public agencies, and especially with the other the Basque territories.
- i) articulate stable cooperative relations with the entities involved in the normalization of Basque.
- j) formalize agreements and/or partnerships with universities and other entities, public or private, domestic or foreign, with the aim of promoting the dissemination of Euskara and works written in Euskara.
- k) manage grants to public and private entities which will develop projects for the global promotion of Basque.
- l) to promote, on its own initiative or in collaboration with others, the implementation of measures to spread Euskara through telecommunications networks and information technology and communication, as well as through the mass media ([http://www.kultura.ejgv.euskadi.net/r46-714/es/contenidos/nota\\_prensa/etxepare\\_institutua/es\\_etxepare/etxepere\\_institutua.html](http://www.kultura.ejgv.euskadi.net/r46-714/es/contenidos/nota_prensa/etxepare_institutua/es_etxepare/etxepere_institutua.html)).

## CONCLUSIONS

All of these measures are significant, especially for a small government, a small diaspora population and a language that has fewer than one million speakers. The Basque Government also has programs and financing to help support other minority languages around the world such as their agreement with Chile to support teaching and learning methods for Rapa Nui on Easter Island, and

Colombia in its efforts to preserve approximately sixty-five indigenous languages, and they have shown overwhelming solidarity with many minority language initiatives.

We have witnessed a great expansion of availability of access to Basque speakers and materials for learning, practicing and using Euskara through the Internet and satellite programming and technological advancements will continue to facilitate access. Possibilities for human physical contact with other fluent Basque speakers, however, is diminishing, and of course this is the goal, to use Euskara. If the motivation is not instrumental and not immediate, the chances of attracting Basque language learners and users diminishes. The Etxepare Basque Institute constitutes a tremendous effort to create the motivation, the materials and the access to and availability of native Basque speakers to other language enthusiasts around the world. Future fieldwork will define and measure the degree of success these programs may have in keeping Euskara off the endangered list and firmly in the marketplace of languages.

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## **INTERVIEWS AND PERSONAL COMMUNICATIONS**

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# International Legislation and the Basque Language

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*Artikulu honetan, euskararen biziraupenari eta sustapenari nazioarteko erakundeek emandako laguntza aztertzen da. Nazioarteko araudiaren ezaugarriei eta hedadurari buruzko azterketan oinarrituta, hiru babes-paradigma aplikatzen zaizkio euskarari: giza eskubideena, gutxiengoena eta hizkuntza-aniztasunarena. Azkenik, nazioarteko legeriaren potentzialtasunen eta mugen balantzea egiten da.*

*Giltza-Hitzak: Nazioarteko Zuzenbidea. Giza Eskubideak. Hizkuntza-gutxiengoak. Hizkuntza-aniztasuna. Europako Kontseilua.*

*En este artículo se analiza la contribución de las instancias internacionales a la preservación y promoción del euskera. A partir del examen de las características y el alcance de la normativa internacional, se aplican al euskera tres paradigmas de protección: los derechos humanos, las minorías y la diversidad lingüística. Por último, se hace balance de las potencialidades y límites de la legislación internacional.*

*Palabras Clave: Derecho internacional. Derechos Humanos. Minorías lingüísticas. Diversidad lingüística. Consejo de Europa.*

*Cet article analyse la contribution des instances internationales à la préservation et à la promotion de l'euskara. À partir de l'étude des caractéristiques et de la portée de la normative internationale, trois paradigmes de protection sont appliqués à l'euskara: les droits de l'homme, les minorités et la diversité linguistique. Avec, pour terminer, un bilan des potentialités et des limites de la législation internationale.*

*Mots-Clé : Droit International. Droits de l'Homme. Minorités linguistiques. Diversité linguistique. Conseil de l'Europe.*

## INTRODUCTION

The United Nations proclaimed 2008 to be the International Year of Languages.<sup>1</sup> The Resolution approved by the General Assembly states that genuine multilingualism “promotes unity in diversity and international understanding” and urges the member states and the UN Secretary to pursue a means of “promoting, protecting and preserving diversity of languages and cultures globally”. At present, UNESCO estimates that close to 6,000 languages are spoken in the world today.<sup>2</sup> However, over the last few decades the linguistic substitution processes are accelerating as a result of the impact that economic and technological globalization, on the one hand, and mass migratory movements on the other, have on the always difficult balance between the coexistence of different languages.

The Basque language represents an outstanding contribution to global linguistic heritage. It is one of the few languages of uncertain and oldest origin, which, linguistically speaking is not related to the seventeen large families in which almost all the languages of mankind are grouped. From the sociolinguistic perspective, the situation of *Euskara* (the Basque language) as regards the number of speakers and areas of use does not differ greatly from some of the official languages of the European Union. However, its condition as a non-state language and the high level of legal-political fragmentation of its territorial area are aspects that weaken its status. This emphasizes the importance of the international dimension of protection, which positively complements and conditions the state and sub-state action of recognition and protection of the Basque language.

This article reflects on this contribution from international instances to the preservation and promotion of *Euskara*. First, we will analyse the characteristics and general scope of international regulations on languages. We will then apply the three main protection paradigms identifiable at international level to the Basque language: these are human rights, minorities and linguistic diversity. And finally, we will assess the potentialities and the limitations of international law in tackling some of the challenges facing the Basque-speaking linguistic community at this time.

## GENERAL CHARACTERISTICS OF INTERNATIONAL LEGISLATION ON LANGUAGES

International law has been consolidated as one of the mainstays of the regime of languages and linguistic minority communities. The interest in languages shown by international instances is nothing new, and it dates back to experiences in the protection of linguistic minorities in the framework of the Soci-

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1. Resolution 61/266. Multilingualism, approved by the 96th plenary session of the General Assembly, on 16th May 2007.

2. Stephen A. Wurm (ed.), *Atlas of the World's Languages in Danger of Disappearing* by the 96th plenary session of the General Assembly, on 16th May 2007., UNESCO, 2001.

ety of Nations (1919-1945). Since its creation in 1945, the UN aimed to redirect linguistic matters towards the human rights protection model. However, this focus proved to be insufficient and, particularly from the 1990s, there was a proliferation of new international instruments regarding the linguistic rights of minorities and the protection of linguistic diversity.

This growing interest shown by international organizations of universal and European scope in different dimensions of linguistic reality has given rise to an international doctrine and regulations that are increasingly more widespread and recognized. Their general characteristics can be demonstrated via the following questions: What are the current focuses of international legislation on linguistic material? What is the general scope of the international instruments in force? And, finally, what position do the two state bodies of France and Spain that currently include the Basque Country<sup>3</sup> adopt in view of this international framework?

It is necessary to observe that languages are not usually subjected to independent treatment in most international instruments. Indeed, their protection is normally directed via the protection of other protection objects. A general view of the international rule of law enables the identification of three great paradigms of protection applicable to the idiomatic terrain:<sup>4</sup> Firstly, human rights, via the formulation of linguistic rights or the identification of linguistic content implicit in other rights; secondly, the protection of minorities, and in particular those of a linguistic and national nature; and thirdly, the protection of linguistic diversity, of which the content is linked at universal level with the diversity of cultural expressions, and at a European level with the protection of regional or minority languages.<sup>5</sup>

The coexistence of a plurality of international and European protection systems is a second factor that must be taken into account. Each of the current international organizations can present an individual approach to the linguistic phenomenon, conditioned by its own aims or objectives. In this way, in systems of universal scope, the UN has traditionally subsumed the linguistic matter in the protection of human rights;<sup>6</sup> however, more recently it has developed the perspective regarding minorities.<sup>7</sup> For its part, the action carried out by UNESCO pre-

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3. In this article, I will use the term “Basque Country” to refer to the seven territories where the Basque language is spoken. From a cultural perspective, the term “Euskal Herria” is also used and refers to a European space or cultural region, located on both sides of the Pyrenees, which includes Basque-speaking territories from the Spanish and French states.

4. Cf. Eva Pons Parera, “Los derechos lingüísticos en el ámbito internacional y comunitario europeo”, in J. M. Pérez Fernández, *Estudios sobre el estatuto jurídico de las lenguas en España*, Atelier, Barcelona, 2007, p. 65 onwards.

5. In fact, the three paradigms are not exclusive: at times they interrelate and reinforce each other (in this way, when the link between the protection of minorities and human rights is highlighted), whilst at other times they can oppose or neutralize each other (e.g. when the states make use of the paradigm of diversity to attempt to elude collective rights).

6. *International Covenant on Civil and Political Rights* of 1966 (ICCPR), and *International Covenant on Economic, Social and Cultural Rights* of 1966 (ICESCR).

7. *Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities* of 1992.

dominantly covers the protection of linguistic and cultural diversity.<sup>8</sup> In the European regional system, the Council of Europe displays more extensive and complete actions, which respond to the triple outline given: human rights,<sup>9</sup> the protection of minorities,<sup>10</sup> and the safeguarding of linguistic diversity.<sup>11</sup> In addition, the Organization for Security and Cooperation in Europe (OSCE) has intervened in the linguistic field, especially since the creation in 1992 of the High Commissioner on National Minorities.<sup>12</sup>

The independent or non-hierarchical action of the above-mentioned organizations can introduce a certain degree of lack of definition or ambiguity in the formulation of linguistic rights. However, it is necessary to highlight the interconnection and complementary nature of the protective action developed by different organizations which have contributed to reinforcing the international profile of linguistic rights, particularly over the last few years.

A third perspective to consider is that regarding the scope of international instruments and the type of link that arises from these to the states. On this subject, it is necessary to warn of the lack of a multilateral treaty of universal scope which has the specific objective of protecting linguistic rights. The Council of Europe, the leading institution in formalizing linguistic dispositions in legally binding multilateral instruments, together with the jurisdictional guarantee of the ECHR and its protocols, provides greater efficiency for its action. Diversely, in the framework of the UN and UNESCO, certain linguistic rights are protected via international treaties on human rights;<sup>13</sup> however, a significant part of the international doctrine on linguistic matters is included in non-binding documents and resolutions, known as *soft law*, with an indicative value for the states.

The stances taken by the states that share the territories of the Basque Country in view of this international legislation differ. The Kingdom of Spain includes in its Constitution (SC) internal linguistic pluralism, by recognizing, along side Spanish, the state's official language, the presence of other "Spanish languages", which will also be declared official by the statutes of autonomy of the autonomous communities (Art. 3 SC).<sup>14</sup> This constitutional treatment offers a suitable base for the reception of the right projected from the international organizations. In this

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8. *Convention on the Protection and Promotion of the Diversity of Cultural Expressions* of 2005.

9. *European Convention on Human Rights*, 1950 (ECHR) and its protocols.

10. *Framework-Convention for the Protection of National Minorities*, 1995 (FCPNM).

11. *European Charter for Regional or Minority Languages*, 1992 (ECRML).

12. *The Hague Recommendations Regarding the Educational Rights of National Minorities*, 1996, and *The Oslo Recommendations on the Linguistic Rights of National Minorities*, 1998.

13. Among the latest ones, in the *Convention on the Rights of the Child*, 1989 (CRC), and in the *Convention against Discrimination in Education*, 1960.

14. In the Spanish system of political decentralization, the autonomous communities are sub-state entities equipped with legislative and executive institutions and the capacity to design and apply their own policies with their powers, which include their own language. The Statute of Autonomy is the founding standard and higher standard of the autonomic rule of law, although its final approval corresponds to the central state by means of Organic Law.

way, Spain has ratified the most relevant treaties of universal and European scope regarding linguistics, which are incorporated within its rule of law as an internal law (Art. 96 SC). The Spanish constitutional system also includes a clause, according to which the *Universal Declaration of Human Rights* (UDHR) and the ratified international treaties regarding human laws must be used to interpret the scope of fundamental laws recognized by the Constitution (Art. 10.2 SC). Problematic matters basically arise in the terrain of the application and materialization of international dispositions, particularly due to the risk that the state authorities tend to minimize the transforming potential of the internal rule of law.

The stance of the French Republic, however, is not comparable. This country maintains a traditional reserve in view of taking on international commitments regarding linguistic and minority laws. This results in France ignoring certain linguistic policy international standards which is particularly difficult to justify when the European Union Charter itself requires new member states to follow its rules on rights of cultural minorities for admission. More specifically, after signing the ECRML, the French Authorities expressly rejected the possibility of ratifying it alleging it to be contrary to the Constitution. However, the positive influence of international and European regulations appears to be behind the apprehensive opening up of French linguistic policy to regional languages. On 21 July, 2008, the French Parliament passed a constitutional reform that recognizes its regional languages as French cultural patrimony, although separately from the article that recognizes the French language as its official language.<sup>15</sup> These events point to an incipient policy of recognition of linguistic minorities in France, because in no way does it declare any official status to the different languages of the French state.

## **HUMAN RIGHT TO USE THE BASQUE LANGUAGE**

In a somewhat surprising way, in the preamble of the ECRML (the typical instrument of the paradigm of diversity) we find the most direct proclamation of the “inalienable right” to use a language in private and public life

conforming to the principles embodied in the United Nations International Covenant on Civil and Political Rights, and according to the spirit of the Council of Europe Convention for the Protection of Human Rights and Fundamental Freedoms.

In this way, it states the legal character of the right of the use of languages, protected by international texts. This right is rated as inalienable due to its connection with human rights, and it is not linked to the internal status of the official nature of languages, but rather it goes beyond it.

Legal doctrine has identified, with the principle of non-discrimination due to language, recognized by diverse international instruments,<sup>16</sup> the grounds of the

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15. This is found in Article 75 which states “Les langues régionales appartiennent au patrimoine de la France.”

16. Art. 2.1 UDHR, Art. 2.1 ICCPR and Art. 14 ECHR.

linguistic freedom enjoyed by everyone. According to its negative primary content, the interdiction of discrimination means the exclusion of all discriminatory treatment which implies the denial or deprivation of rights from using a specific language. It does not confer an autonomous protection to languages and linguistic rights, but rather a protection linked to exercising other rights recognized by the treaties. Along these lines, the UN Human Rights Committee states that the term “discrimination” refers to “distinction, exclusion, restriction or preference which is based on any ground such as (...)language (...) and which has the purpose or effect of nullifying or impairing the recognition, enjoyment or exercise by all persons, on an equal footing, of all rights and freedoms.”<sup>17</sup> Therefore, it implies the need for equal treatment of individuals, without attending to a purpose of protecting differentiated identities. For this reason, it is a case of a minimum protection threshold, opposable against those actions or displays that stigmatize or give unfavorable treatment to certain people or groups due to the use or defence of a language.<sup>18</sup>

Beyond the reference to language in the framework of non-discrimination, the presence of explicit linguistic rights in the human rights instruments is quite small. The protection of linguistic rights is usually articulated indirectly, through the identification of linguistic content implicit in other human rights. That is, from extracting from the recognition of other human rights the guarantee of subjective linguistic positions.

Firstly, the right to use a language is protected by the right to hold opinions and freedom of expression.<sup>19</sup> The content of this freedom is projected not only on the content of the message, but also on the choice of the means or language of expression. The idiomatic dimension of the freedom of expression is not conceived in absolute terms, but rather it can be limited mainly in virtue of the attribution of a constitutional or legal status to certain languages. In such a context, the use of one or more official languages can be prescribed by internal rules of law in public spheres and, under certain conditions, in private spheres. In this way, the status of the official nature of *Euskara* in the community of the Basque Country and in part of the territory of Navarre legitimizes the obligatory nature of its use in the public service and in education, as well as the requirements for linguistic qualification for public agents. In the same way, constrictive linguistic interventions in the private sphere are allowed, as long as they meet the conditions required on the limits to freedom of expression.<sup>20</sup>

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17. *Human Rights Committee General Comment Number 18: Non-discrimination: 10/11/89*, paragraph 7.

18. The interpretation of the principle of non-discrimination regarding the protection of minorities has evolved in order to derive from it certain positive obligations for the states (*infra* epigraph 4).

19. Art. 19 ICCPR and Art. 10 ECHR.

20. Human Rights Committee, *Ballantyne, Davidson, McIntyre v. Canada*, *Communications Nos. 359/1989 and 385/1989*, U.N. Doc. CCPR/C/47/D/359/1989 and 385/1989/Rev.1, of 31st March 1993, which considers Article 19 of the ICCPR applicable to language on commercial signs. More specifically, it requires that the limitations be established by law, that they pursue any of the objectives listed in Art. 19.3. a and b of the ICCPR and that they are necessary in order to achieve the legitimate purpose established (in the case, in order to protect the rights of the French minority in Canada it is not necessary to prohibit commercial signs in English).

On the other hand, the possibilities of limiting freedom of linguistic expression are drastically reduced when their privacy, family, home or correspondence is affected.<sup>21</sup> In the European sphere, this right tends to be conceived at this time in quite broad terms, which reach the sphere of the self-determination of the individual which is deemed necessary in order to lead a decent life.<sup>22</sup> In this way, the courts have prevented the public authorities from conditioning the individual option in favor of a language when the linguistic use is set out in the sphere of private life. An example of this can be found in the Sentence by the Spanish Constitutional Court 201/1997, of 25<sup>th</sup> November, in which the fundamental right to family privacy (Art. 18 SC) protects the power to use the Basque language by an inmate in a penitentiary institution in communications with their his or her family. The penitentiary authorities' powers of control, linked to the individual's situation of special subjection, are not sufficient elements, in the Court's opinion, to legitimize a general restriction of idiomatic freedom, which must be respected.

Another aspect that has been recognized as content of the right to private life is the right to choose a name, without idiomatic restrictions. The European Court of Human Rights states that public interest to protect in the area of naming must not prevail over the parents' desire to choose a name for their child in another language that is not the official language.<sup>23</sup> This doctrine goes beyond the traditional orientation of international texts regarding the right to have a name,<sup>24</sup> where the main legal purpose protected is the identification of a person, whereby the imposition of legal restrictions justified by reasons of public interest is expressly admitted. In Spain, during Franco's dictatorship, people were forced to translate their names to Spanish, whereby the authorities justified refusing to register a child's name in the Register in *Euskara* as it entailed a separatist aim.<sup>25</sup>

It impossible to ignore the fact that freedom of expression normally takes on its meaning when the individual is placed in a certain social context. The impediment by the authorities of the use of a certain language in a framework of collective exercising of the freedom of expression will normally fall on the exercising

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21. Art. 17 ICCPR and Art. 8 ECHR.

22. For all, European Court of Human Rights Sentence *Evans v. The U.K.*, Sec. 4a., 10th March 2006 and, on the same case, the European Court of Human Rights Sentence, Court Room, 10th April 2007.

23. European Court of Human Rights Sentence *Johansson v. Finland*, Sec. 4a., 6th September 200. In the case, the parents wanted to name their son "Axl Mick", which was rejected by those in charge of the Register. Regarding the conflict between public and private interests, the European Court of Human Rights accepts that: "the preservation of a national name practice may be considered part and parcel of that aim and therefore in the public interest". However, insofar as the name does not harm the child and "had already gained acceptance in Finland, and it has not been contended that this has had any negative consequences for the preservation of the cultural and linguistic identity of Finland", the violation of Article 8 of the ECHR is observed.

24. Art. 24.2 ICCPR and Art. 7 CRC.

25. The progressive liberalization of Spanish legislation in this matter has also reached the linguistic terrain (Law of the Register of Births, Deaths and Marriages of 8th June 1957, which has been subjected to successive modifications, the last in 2007).

of rights (e.g. political freedoms of assembly and association<sup>26</sup> or the religious freedom, which can protect the right to choose the language when professing or practicing the religion, whether individually or in a community with others).

A linguistic right specified by international legislation is that everyone who is arrested or accused of a crime shall be informed, in a language which he or she understands, of the reasons for his arrest and the nature and cause of the accusation against him, and have the free assistance of an interpreter if he cannot understand the language of the authorities.<sup>27</sup> It is an individual human right linked to the fact that the person seeking justice or the detainee does not speak or understand the language used by the state authorities. Diversely, this negative condition is not required in the framework of the recognition of minorities' rights of linguistic use before the administration of justice.<sup>28</sup> Recently, a central Spanish court has recognized, with the backing of international regulations, the right of defendants of Spanish nationality to testify in their mother tongue in criminal proceedings -even if these proceedings are outside of the territories where the language is official- regardless of whether they understand the language of the state.<sup>29</sup>

Also regarding the right to education, certain explicit linguistic contents are internationally proclaimed. However, the international instruments on human rights which refer to education in minority languages are still somewhat vague and general. As a general principle, the *Convention on the Rights of the Child*, approved in 1989, establishes that education should be aimed at instilling into the child the respect "for his or her own cultural identity, language and values" (Art. 29.1. c). This clause discredits the homogenizing linguistic-school policies and models, which ignore or underestimate the child's language. However, positive obligations for the states only reach greater expression in the instruments on the protection of minorities or minority languages.

In short, the outline of protection based on individual human rights enables the identification of certain minimum standards. Their efficiency regarding civil liberties may receive greater protection in those territories where *Euskara* does not have an internal legal statute. However, in any case, its general influence on the status and use of languages is necessarily limited, as it does not cover their collective dimension or specify the type of positive measures required to preserve the individual or group idiomatic identity.

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26. Arts. 21 and 22 ICCPR and Art. 11 ECHR.

27. Art. 9 UDHR, arts. 9.2 and 14.3 ICCPR, Art. 5.2 and 6.3, sections a and e, ECHR.

28. Art. 10.3 FCPNM and Art. 9 ECRML.

29. Sentence of the *Audiencia Nacional, Sala penal*, 24th April 2008. In the case judged by the Sentence the right of the accused to use the Catalan language, which is only the official language in the territory of certain autonomous communities, before a central judicial body (previously, this right had been recognized *de facto* by the same Court, by providing an interpreter for those who opted to use *Euskara*).



## PROTECTION OF BASQUE-LANGUAGE SPEAKERS AS A MINORITY

As already mentioned, language is an essentially collective phenomenon, which not only serves the purposes of communication but also of the safeguarding and creation of collective identities. For this reason, the link from linguistic rights to minority protection systems is of special relevance.

On examining the possible projections of this paradigm on *Euskara*, it is necessary to take into consideration that certain basic aspects of the minority protection systems are still vague. To begin with, there is no agree upon definition at the international or European levels of what constitutes a “minority language.” Regarding this issue, we should utilize the most precise concept which identifies *linguistic minorities*,<sup>30</sup> a concept that takes on greater precision when connected with the protection of *regional or minority languages*<sup>31</sup>; whilst at the European level the reference to *national minorities* prevails, in which the linguistic element may not be a determining factor of the particular group identity, even if it is used as a defining target element.<sup>32</sup>

In general terms, the linguistic rights recognized for minorities are an *extra* as regards those sanctioned by the human rights instruments. However, the formulation of international texts tends to be quite open as regards the positive obligations of the states to satisfy the rights stated. In addition, although binding rules exist at the heart of the UN and the Council of Europe, the legal protection of minorities is weakened as it is included, to a certain extent, in non-binding dispositions.

The core of the international legal status of minorities is Article 27 of the ICCPR, which states:

In those states in which ethnic, religious or linguistic minorities exist, persons belonging to such minorities shall not be denied the right, in community with the other members of their group, to enjoy their own culture, to profess and practice their own religion, or to use their own language.

From this disposition, the international action for the protection of minority groups is conceived as a dimension of human rights, basically focussing on their protection from the perspective of non-discrimination.<sup>33</sup>

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30. This concept takes on even greater precision if it is connected to the protection of regional and minority languages (Vid. *infra* epígrafe 5).

31. Vid. *infra* epigraph 5.

32. For instance, the Preamble of the FCPNM mentions the respect of the “ethnic, cultural, linguistic and religious identity of each person belonging to a national minority”.

33. Francesco Capotorti pointed out in his now classic study on the subject that “the struggle against discrimination, on the one hand, and the application of special measures aimed at the protection of minorities, on the other, are just two aspects of the same problem, that is, defending human rights.” Cf. *on the Rights of Persons Belonging to. Ethnic, Religious and Linguistic Minorities*, Human Rights Series 5, New Cork, United Nations.

The content of the principle of non-discrimination in this scope has been specified by the UN Human Rights Committee, distinguishing Article 27 from the guarantees established in Articles 2.1 and in 26 (principle of equality before the law), which together do refer to the extent that it “applies to all individuals within the territory or under the jurisdiction of the state whether or not those persons belong to a minority”.<sup>34</sup> Without detriment to its negative terminology formulation (“shall not be denied”), Article 27 of the ICCPR does not only entail the public authorities’ obligation to refrain from establishing unjustified differences, but it also includes a sense of positive equality in reference to the protection and promotion of the linguistic and cultural identity of the minority.<sup>35</sup>

More specifically, from the above-mentioned Article 27 of the ICCPR the right has been derived to the individual and not only the collective for the use of the actual language, in private and in public, which, according to the Human Rights Committee “should not be confused with other personal rights conferred on one and all under the Covenant”. And although the individual of the protected linguistic rights is sustained, it is recognized that these in turn depend on the minority group’s capacity to preserve their language, to the extent that

measures by states may also be necessary to protect the identity of a minority and the rights of its members to enjoy and develop their culture and language (...) in community with the other members of the group (...) as long as those measures are aimed at correcting conditions which prevent or impair the enjoyment of the rights guaranteed under article 27, they may constitute a legitimate differentiation under the Covenant, provided that they are based on reasonable and objective criteria.<sup>36</sup>

According to the Human Rights Committee, the presence of minorities for the purposes of the application of Article 27 of the ICCPR does not depend upon their recognition by the state and that the applicability of the protective measures set out is general in all those states in which minorities exist. The characterization of the precept as a consuetudinary right involves the impossibility of submitting it to reservations by the states. The matter was raised by the French Republic, which alleged the lack of recognition of minorities in its territory, however, the Committee was clear when ratifying the French state’s adherence to the Covenant, regarding not refusing minorities the use of their own language. This gives the precept an interesting projection regarding the protection of language rights over the territories where the Basque language is used, but no recognition of its official status exists.

The international agreements approved during the 1990’s in the new geopolitical scene arising after the disappearance of the East-West blocks, contribute to specifying the areas of projection of the right to use a language and the posi-

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34. *Human Rights Committee General Comment Number 23, on Article 27, 8th April 1994.*

35. In the Council of Europe, a similar meaning can be given to the principle of non-discrimination, recognized as an autonomous right, in the framework of Protocol Number 12 to the ECHR (in force since 2005).

36. *Human Rights Committee General Comment Number 23, on Article 27, 8th April 1994.*

tive measures that the states must apply to guarantee they are exercised by the members of minorities. The participation of the people in the decision making regarding the adoption of policy at the state and regional levels is highlighted.<sup>37</sup>

As regards the right to use the language in the public sphere, it directly protects the linguistic interactions that take place in the public (or external) space, among people belonging to the minority or in the presence of other people, through the circulation of publications, posters or commercial signs, for example, via private media sources or in the framework of meetings.<sup>38</sup> On the other hand, the use of the minority language is not assured in dealings with the public authorities -particularly where the language lacks internal legal recognition- and is usually conditioned by a demand and a significant number of speakers.<sup>39</sup> With regard to education, the presence of the minority language at school is doubly guaranteed as an alternative by enabling the pupils to learn the language or by establishing its vehicular use in teaching. Some agreement texts also include a right for the minority to create private schools in which their own language is taught or used.<sup>40</sup> Other rights to use the language of members of national minorities are projected in the following areas: People's first names and surnames; practicing religion and religious events for civil purposes; setting up of non-governmental associations and organizations; the creation of own media sources and the presence in publicly-owned media; the private company; independent state institutions (Ombudsman or similar); and penitentiary institutions.<sup>41</sup>

The French Republic, seeking protection in the absence of an internationally accepted minority concept, maintains the lack of a presence of minorities in its territory. Based on this argument, founded on an interpretation of certain constitutional principles, the French authorities have refused to subscribe to the Framework Convention for the Protection of National Minorities. However, despite the fact that the states can condition the application and execution of international legislation on minorities, this does not mean that they can remove themselves from the standards formulated in the framework of the UN and the Council of Europe from the principle of non-discrimination. Therefore, the Basque-speaking linguistic minority present in this territory must be recognized with the right to

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37. Art. 2.3 of the UN Declaration on Minorities

38. Art. 2.1 of the UN Declaration on Minorities and, in more detail, Art. 9.1 FCPNM regarding the freedom of expression (which comprises "freedom to hold opinions and to receive and impart information and ideas in the minority language, without interference by public authorities"), Art. 10.1 ("right to use freely and without interference his or her minority language, in private and in public, orally and in writing") and Art. 11.2 (right to display "inscriptions and other information of a private nature visible to the public") and 3 ("traditional local names, street names and other topographical indications intended for the public also in the minority language", conditioned by the demand and presence of a considerable number of people).

39. Art. 10.2 of the FCPNM and *Oslo Recommendations regarding the linguistic rights of national minorities* Numbers 14 and 15.

40. Art. 30 CRC, Art. 14 of the FCPNM and Art. 4 of the UN Declaration on Minorities.

41. Besides the instruments mentioned in previous notes, vid. in the framework of the OSCE *Helsinki Final Act, 1975* and *Guidelines on the use of minority languages in the broadcast media* (2003).

practice and preserve their language. This entails the adoption of positive measures by the public authorities, in line with the demands formulated on the subject, and the presence of a significant number of speakers of the language.

In the case of the Kingdom of Spain, the official status of the Basque language in most of the territory in which it is used reduces the potential virtual nature of this protective focus.<sup>42</sup> However, a relevant conceptual matter is the identification of the existing national minorities for the purposes of the commitments assumed on ratifying the Framework Convention for the Protection of National Minorities.<sup>43</sup>

The Spanish state's response was as follows: the only one included in the Convention is the Gypsy community – despite acknowledging that it does not constitute a national minority. The Council of Europe demanded an explanation of the role of language as a fundamental element of the identity of “peoples of Spain” or “nationalities” referred to in the Spanish Constitution of 1978 (Preamble and Art. 2), for the purposes of their inclusion in the Convention. The Spanish state, seeking protection in the absence of a definition of the term *national minority* in the Convention, redirected the above-mentioned constitutional concepts to the autonomous articulation of the state into autonomous communities, stressing their inclusion in the “Spanish nation”.<sup>44</sup> Indeed, although the official status of the Basque language in the Basque Autonomous Community and in parts of Navarre grants some superior linguistic guarantees, the recognition as national minorities would enable the action of the Spanish state to be classified by the general principles of the FCPNM, by subjecting to international scrutiny the treatment the minority linguistic groups receive. An example of this is the matter raised by the Consultative Committee responsible for supervising compliance with the FCPNM on the proportionality of the Spanish authorities' measure in 2003 closing down of the Euskara language newspaper “Euskaldunon Egunkaria”.<sup>45</sup>

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42. However, we could raise its applicability to the situation of the Basque language in the so-called non-Basque-speaking area of Navarre, where it does not receive an official status, particularly when associating the regime of linguistic minority to that of protection of regional or minority languages (*Infra* epigraph 5).

43. The Kingdom of Spain signed the Convention on 1st February 1995 and the instrument of ratification is dated 20th July of that same year.

44. In the Spanish state's reply it stated: “However, there is in any event in the Spanish legal-political reality a concept of a people as an entity as such, with differentiated characteristics of ethnicity, religion or identity (...) The populations of the various Autonomous Communities have in common the existence of historical-cultural and linguistic links, but there are no significant ethnic components. The languages of some Autonomous Communities enjoy specific constitutional protection, focused on their recognition as the “official language” along with Spanish in the area of that Autonomous Community and guaranteeing citizens the right to use it in all their relations with the public administrations in that territory, with specific protection covering both autonomous and state authorities. In linguistic terms, the Spanish state complies with the protection established in the European Charter of Regional and Minority Languages, duly signed and ratified by Spain” (Comments of the Government of Spain on the Opinion of the Advisory Committee on the Report on the Implementation of the Framework Convention for the Protection of National Minorities in Spain, CM(2004)6 Addendum, 10 June 2004).

45. Consultative Committee, *Opinion on Spain*, epigraph 53, Document ACFC/INF/OP/I(2004)004. Vid. <http://www.coe.int>

## THE BASQUE LANGUAGE AS PART OF EUROPEAN LINGUISTIC DIVERSITY

As already mentioned, in the 1990s international legislation incorporated new avenues on the linguistic matter, which were added to its traditional treatment linked to the protection of human rights and minorities. This extension of protected linguistic interests is set within the protection of cultural rights and languages as an expression of cultural heritage. The concepts of *linguistic and cultural diversity* take on greater relevance in this context.<sup>46</sup>

In the European framework, the most relevant instrument is the European Charter for Regional or Minority Languages (ECRML), approved in 1992 by the Council of Europe. Nowadays, the Charter is the only specific multilateral treaty on the protection of languages. Furthermore, it stands out when compared with other international instruments regarding the idiomatic subject due to the level of detail with which the positive measures to be adopted by the states are set, and also due to the design and dynamism of the international mechanisms for supervision and control provided. All of this gives the Charter significant opportunities regarding the protection of the Basque language.

The Charter's Preamble mentions the principles on which this legal system of protection are based as being on the one hand, the promotion of linguistic diversity in the European sphere; and, on the other, the principles of democracy and pluralism, which are associated with the activity to promote regional or minority languages. Furthermore, as already mentioned, the text assumes the principles derived from human rights instruments, from which the "inalienable right" to languages is extracted. The Charter does not establish collective rights for linguistic communities, but rather for the protection of European linguistic diversity, opening up new possibilities for the states to establish individual linguistic rights.<sup>47</sup>

The regional or minority languages (a conceptual distinction with no direct legal consequences) are defined as those that are "traditionally used within a given territory of a state by nationals of that state who form a group numerically smaller than the rest of the state's population" (Art. 1.a ECRML). The concept of historicity is applicable to the reality of the Basque language across the Basque Country. The delimitation of the territorial area is in line with the presence of a number of a specific language-speaking people justifying the adoption of the various protective and promotional measures provided for (Art. 1.b ECRML). And it does not only include that territory in which the regional language persists as the majority language, but rather it can be extended to other areas in which it has traditionally been installed and it has become a minority language,<sup>48</sup> as is the case in the so-called non-Basque-speaking area of Navarre or in the Northern Basque

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46. In the UNESCO framework, the Convention on the Protection and Promotion of the Diversity of Cultural Expressions, 2005, was recently approved, which expressly protects cultural policy measures applied by the state authorities which aim to guarantee the presence of a certain language in cultural activities, goods and services (Art. 6).

47. *Explanatory Report*, paragraph 11. <http://conventions.coe.int>

48. *Explanatory Report*, paragraphs 59 and 60. <http://conventions.coe.int>

Country in the French state. The Basque language also meets the requirement that it is not the state language.

Without detriment to the possibility of objectively classifying the Basque language in the Charter's field of application, its protective efficiency is conditioned by its ratification by the states belonging to the Council of Europe. The Kingdom of Spain ratified this instrument in 2001, and, therefore, its rules are applicable and binding for the citizens and the administrative and court authorities.<sup>49</sup> The ratification formula used refers to the languages recognized in the Statutes of Autonomy of the autonomous communities and provides the application of two levels of protection to the Basque language: in the territories of the Basque Autonomous Community and the part of Foral Community of Navarre where the language is official, Part II is applied ("Objectives and principles", Art. 7), and the specific commitments taken on by Spain in the framework of Part III ("Education" -Art. 8-, "Judicial authorities" -Art. 9-, "Administrative authorities and public services -Art. 10-, "Media" -Art. 11-, "Cultural activities and facilities" -Art. 12-, "Economic and social life" -Art. 13-, "Transfrontier exchanges" -Art. 14-). In the rest of the community of Navarre, Part II is applied and "all those dispositions of Part III of the Charter that can be *reasonably* applied in accordance with the objectives and principles established in paragraph 7". This distinction is possible due to the structure of the Charter, which, from basic protection based on Article 7, enables the states to shape the commitments assumed in the framework of Part III, whilst respecting the pre-established minimum levels.<sup>50</sup>

In the area of objectives and principles (Article 7), the general commitment is made by the states to eliminate any restrictive measures, which have the objective of discouraging or endangering the use and development of regional and minority languages. The principle of non-discrimination is established in its positive sense by declaring that,

The adoption of special measures in favor of regional or minority languages aimed at promoting equality between the users of these languages and the rest of the population, or which take due account of their specific conditions, is not considered to be an act of discrimination against the users of more widely-used languages (Art. 7.2).

These commitments affect the state's internal linguistic policy, with legislative and executive implications, by obliging it to review all those rules and decisions that place the Basque language in a disadvantaged position. Furthermore, the mandate is established to promote understanding among all linguistic groups,

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49. In Spain the ECRML, together with its declaration, was approved in the Congress of Deputies, practically unanimously, on 23rd November 2000, it was ratified on 9th April 2001 and published in the Official State Gazette (BOE) on 15th September 2001.

50. More specifically, the Kingdom of Spain ratified 69 paragraphs -from a total of 98- from Part III, placing it in the top level as regards the number and intensity of the commitments made.

whereby this is one of the more under developed aspects in the Spanish context as recognized by the state.<sup>51</sup>

Secondly, the Charter establishes the objective of a resolute action to promote regional or minority languages, their teaching and study at all stages, their use in public and private life, the maintenance and development of links between groups using a regional or minority language and other groups in the state employing a language used in identical or similar form and the promotion of appropriate types of transnational exchanges. In all these aspects, the linguistic affirmative action or promotion policies developed by the Basque Autonomous Community authorities are equipped with additional regulatory coverage. In the Foral Community of Navarre, the Charter can take on the reactive role against the interruption of the affirmative action language policies<sup>52</sup> to the extent that the political authorities are constrained to provide regular information about the measures adopted in favor of *Euskara*. In the same way, the objectives highlighted commit the central institutions of the Spanish state, thus denying the argument it has made to exclusively offload to the autonomous communities the responsibility of protecting languages other than Castilian.<sup>53</sup>

Thirdly, another of the important objectives in the Charter is

the respect of the geographical area of each regional or minority language in order to ensure that existing or new administrative divisions do not constitute an obstacle to the promotion of the regional or minority language in question.

The legal-political fragmentation of the Basque-speaking linguistic area awards special interest to this provision. This way, in the autonomous Foral Community of Navarre, the internal administrative divisions created by the Foral Law for Basque Language -including a Basque-speaking area, mixed area, and non-Basque speaking area- has led in practice to a restriction of the linguistic rights linked to the official status of *Euskara* in the mixed area and to a situation of institutional neglect in the non-Basque area. The Council of Europe has highlighted the necessity of the commitments regarding Part III to be extended to the mixed area, thus reinforcing the legal protection of *Euskara*. As regards the non-Basque-speaking area, the Charter also encourages the development of a policy to promote the use and learning of the language, without the non-official status of *Euskara* being considered an

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51. Until now, two cycles of control have been completed for the application of the Charter, with the presentation of two reports by the Spanish State (the first presented in September 2002 and the second in May 2007) and the approval of two reports by the de del Council of Europe's Expert Committee (the first in April 2005 - which lead to the recommendations Council of Ministers of 29th September 2005- and the second -which was not available when this article was written- dated April 2008). Vid. <http://coe.int>

52. Cf. Xabier Arzo, "Políticas lingüísticas actuales en las tierras del euskara", *Revista de Lengua i Dret*, Number. 47, 2008, p. 56 onwards.

53. This discourse, reiterated in the Spanish State's reports to the Council of Europe, could be questioned in virtue of Article 3.3 CE, which entrusts all public powers with the respect and protection of Spanish linguistic heritage.

obstacle to this.<sup>54</sup> An even more evident situation of a lack of protection of the Basque language is produced in the area of the Condado de Treviño, an enclave of the Community of Castile and Leon that is located inside of Araba, but which belongs administratively to the Community of Castile y León. The lack of recognition of this linguistic reality by the autonomous authorities, and their actions contrary to certain public uses of the language, do not appear to have a place in the Charter's principles.<sup>55</sup>

Together with the general matters highlighted, the control process for the application of the Charter by the Spanish state has enabled the Council of Europe to note certain shortcomings in the internal rule of law and in the actions of the public powers in order to guarantee compliance with the obligations of Part III. In order to illustrate this point we will highlight the following three spheres:

In the education sphere (Art. 8), the options chosen by the Spanish state do not directly consider the need for new legislative developments for the autonomous communities. However, in the unique case of Navarre, in its non-Basque-speaking area, the *Ley del Vascuence* states that teaching the language will be supported and, where appropriate, totally or partially financed by the public powers according to the demand.<sup>56</sup> The precept may contribute to the compliance with this legal provision, insofar as it requires a public activity for promotion aimed at guaranteeing the learning of the language,<sup>57</sup> and also incorporates a dimension of freedom which would prevent the authorization of educational institutions or centers from being denied, based on the reason of using the minority language.

Regarding judicial authorities (Art. 9) the contrast between the commitments made by the Spanish state and the provisions of the internal rule of law is more evident. The Council of Europe has noted that the compliance with the commitments required regarding *Euskara* in the Basque Country would require, among other measures: the modification of the state legal framework to ensure it remains clear that the judicial, legal, civil and administrative authorities of the Basque Country will carry out the procedures in said language on the request of any party involved in the process<sup>58</sup>; the formal guarantee of the defendant's right

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54. *Report of the Committee of Experts on the Charter* (2005), paragraphs 64 to 74.

55. The Spanish Supreme Court, in the Sentence of 2nd February 2005, established the legitimacy of the agreements of the Councils of Condado de Treviño and Puebla de Arganzón to promote the use of *Euskara* in the towns, which had been contested by the Regional Government of Castilla y León. The recent reform of this community's Statute of Autonomy does not mention the Basque language, despite having introduced references to Galician and *Leonés*.

56. Law of the Foral Community of Navarre Law 18/1986, of 15th December, of the Basque Language (Art. 26).

57. Iñaki Agirreazkuenaga Zigorraga, "La Carta Europea de la Lenguas Regionales o Minoritarias como derecho interno", in *Diversidad y convivencia lingüística. Dimensión europea, nacional y claves jurídicas para la normalización del Euskara*, University of the Basque Country-Regional Council of Guipúzcoa, Donostia, 2003 p. 119.

58. The basic regulations on this subject are established in Organic Law 6/1985, of 1st July, of the judicial authorities (Art. 231).



to use *Euskara* even though he or she speaks Spanish; and the necessary legal and practical measures to ensure that a percentage of those employed as legal authorities in public institutions have practical knowledge of the Basque language. The current situation, as observed by the Committee of Experts, makes it practically impossible for a trial to be carried out in *Euskara* in the Basque Country, and what is actually offered is the possibility of using the language with the help of translators and/or interpreters.<sup>59</sup> However, to this date, the Spanish state has not made the above-mentioned reforms, alleging the unity of the judicial authorities and the mobility of the staff of the judicial bodies as the reason for this.

Finally, the presence of the Basque-speaking community in two states highlights the importance of Article 14 of the Charter which states in the interests of regional or minority languages, to facilitate and/or promote cooperation across borders, in particular between regional and local authorities in whose territory the same language is used. In the same way, it encourages the states to apply existing bilateral agreements or to seek to conclude them in such a way as to foster these contacts. Despite the presence of the Spain-France Treaty for Cross-Border Cooperation, signed in Bayonne in 1995, its application to cooperate with linguistic matters is scarce.<sup>60</sup> However, since 1999, the Autonomous Community of the Basque Country has developed an active policy for collaboration and coordination with the institutions of the Northern Basque Country and the Autonomous Community of Navarre regarding linguistic policy. In February 2007, the Basque Government and the Public Office of the Basque Language (association of public interest created in France in 2004, which includes the French state, the Region, the Department and the local councils in a project for a linguistic policy in favor of *Euskara*) held a collaboration agreement, which configures the first framework for a stable relationship regarding this matter.

Despite having initially signed the Charter, the French Republic has explicitly rejected the possibility of ratifying it. Alleging the incompatibility of the Charter's prescriptions with the principles of indivisibility of the Republic, equality of the Law and unity of the French people, which the French Constitution establishes<sup>61</sup> (here we must point out that Article 5 of the Charter specifies that nothing contained in it may be interpreted as contrary to "the principle of the sovereignty territorial integrity of states"). Therefore, the Charter is not directly applicable to *Euskara* in the Northern Basque Country, although this does not deprive its provisions entirely of their effectiveness. Indeed, to the extent that the principle of protection of linguistic diversity is conceived as a supranational European princi-

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59. In this respect, the matter was raised before the Spanish Constitutional court of the possible breakdown of the official status of the Basque language (Art. 3.2 CE) and of the principle of immediacy during the evidence (Art. 24 CE) due to the need for an interpreter to be present in criminal proceedings (Ruling of the TC 166/2005, 19th April).

60. The Spanish State alleges that the lack recognition of the official status of *Euskara* in the French Department of Pyrénées Atlantiques does not facilitate these relations (Vid. *Segundo Informe periódico sobre la aplicación de la CELRM en España*, p. 493).

61. Decision of the *Conseil Constitutionnel* n° 99-412. See <http://www.conseil-constitutionnel.fr/decisión/1999/94412/99412dc.htm>.

ple (currently included in the Charter of Fundamental Rights of the European Union of 2000 and the Treaty of Lisbon of 2007), the Charter represents the expression of the European standard for protection of regional languages. Along these lines, particularly with regard to its hard core (Part II), the inspiring and guiding nature of the Charter must be stated as regards the eventual reform of France's internal linguistic regulation.<sup>62</sup>

## FINAL CONSIDERATION

The development reached by international regulations highlights the interest of this perspective to describe the legal regime covering the Basque language. Through the formulation of general standards that limit the action of the states and the interaction with state and sub-state rules of law, the international and European framework may positively influence the status and uses of *Euskara*, as a minority language with a territory subjected to important legal-political fragmentation.

The projection of human rights instruments and minorities takes on special relevance in situations of a lack of protection of the Basque language from internal rule of law, as an ultimate guarantee of the rights of the citizens and the weakest linguistic groups. In this regard, France's policies are of great interest as it is one of the European states most reluctant to recognize its internal linguistic diversity, including the use of *Euskara*. Its condition as a member of the international and European community entails the subjection to certain minimum standards of protection which in reality it is not implementing. Hopefully, these international standards may contribute to producing positive changes in the way regional or minority languages are considered in the Constitution and in law.

Due to its impact on the internal regulation of Member States of the European Union, we should highlight the *European Charter of Regional and Minority Languages*. The coming into effect of this Charter in Spain requires a reinterpretation of the scope of the legal regime of *Euskara* via its substantive principles and contents. From these we can deduce not only freedoms of use, but also more specific obligations for the public authorities to guarantee and bring into effect the linguistic rights in the regulated areas. Furthermore, the mechanism to ensure compliance by the states gives sub-state institutions and non-governmental organizations the right to voice an opinion, which gives this instrument a dimension as an open and dynamic process. Finally, as an expression of the supranational principle of respect for linguistic diversity, the Charter must act as an inspiration to any eventual reform of linguistic legislation in France.

In any case, the international standards cannot be trusted to resolve most of the legal-political matters that are raised in the process for the standardization

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62. Cf. Iñigo Urrutia Libarona, *Derechos lingüísticos y Euskara en el sistema educativo*, Lete, Pamplona/Iruña, 2005, p. 279.

of the Basque language. Along these lines, it must reject certain attempts at an instrumentalization of human rights which aim to derive specific linguistic policies from these, without taking into account the crucial importance of the historical, political and social factors that operate in a particular context.<sup>63</sup> The progressive adaptation of the internal legal framework on *Euskara* and the constant desire of the political and social elite to protect and promote the language are basic factors in guaranteeing its vitality and current and future expansion.

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63. Along these lines, “some commentators have pushed to strengthen these international standards and/or to reinterpret them (...) But it is doubtful that international law will ever be able to do more than specify the most minimal of standards.” Cf. Will Kymlicka and Alan Patten, *Linguistic Rights and Political Theory*, Cambridge University Press, 2003, p. 34.

# Recognition of the Basque Language in EU Law: A Pending Issue?

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*Europar Batasuneko hizkuntza-legedia eta Batasunaren politikak hizkuntza ez-estataletan eragindako ondorioak aztertzen ditu lanak. Europar Batasuna sortzeko prozesuan zehar, Estatu kideen (eta legegintza-boterea zuten eskualdeen) boterea EBko erakundeen esku geratu da. Erakunde horiek beraien legegintza- eta administrazio-botereak eta botere judizialak dituzte. EBren jardunak bi ondorio eragin ditu hizkuntzen egoeran: batetik, eleaniztasun integralak baztertuta utzi ditu hizkuntza ez-estatalak, eta bestetik, zirkulazio- eta mugimendu-askatasuna ere kaltegarria izan da hizkuntza ez-estatalentzat.*

*Giltza-Hitzak: Europako hizkuntza-legedia. Eremu urriko hizkuntzak. Hizkuntza-politikak. EBko hizkuntza-baldintzak.*

*El trabajo ofrece un análisis de la legislación de la Unión Europea en material lingüística y de los efectos de la política de la unión en las lenguas no estatales. El proceso constructor de la Unión Europea ha supuesto la transferencia de poder de los Estados miembros (y las Regiones con poder legislativo) a las instituciones de la UE, que tienen sus propios poderes legislativo, administrativo y judicial. El impacto de la UE sobre la situación de las lenguas es doble y supone, por un lado, operabilidad de un plurilingüismo integral aplicado con carácter excluyente con respecto a las lenguas no estatales y, por otro, el ejercicio de la libertad de circulación y movimiento, la cual perjudica a las lenguas no estatales.*

*Palabras Clave: Legislación lingüística europea. Lenguas minoritarias. Políticas lingüísticas. Requisitos lingüísticos de la UE.*

*Ce travail présente une analyse de la législation de l'Union Européenne en matière linguistique et la répercussion de la politique de l'Union sur les langues non nationales. Le processus de construction de l'Union Européenne a entraîné le transfert du pouvoir des États Membres (et des Régions à pouvoir législatif) aux institutions de l'UE, qui possèdent leurs propres pouvoirs législatif, administratif et judiciaire. L'impact de l'UE sur les langues est double : il implique, d'une part, l'opérabilité d'un plurilinguisme intégral d'application excluante pour les langues non nationales et, d'autre part, l'exercice de la liberté de circulation et de mouvement, au détriment des langues non nationales.*

*Mots-Clé : Législation linguistique européenne. Langues minoritaires. Politiques linguistiques. Exigences linguistiques de l'UE.*

## INTRODUCTION

In this brief contribution, I intend to explain the position of the Basque language, Euskara, in the European Union and the repercussions of European Community law on the protection and promotion of this language.<sup>1</sup> To do so I will present, firstly, the rules governing the languages of the institutions of the European Union, shown in two levels of institutional recognition: the status of languages of the Treaties and the status of official languages and working languages (section 2). Then we will see the regime in which the other historical and traditional European languages spoken in Member States today have fallen into, including the Basque language (section 3). Thirdly, I propose to show how the Community secondary legislation severely conditions the linguistic policies of the Member States and of their regions, particularly prejudicing the languages which, in accordance with their constitutional order, enjoy official status in only part of the territory of the Member States (section 4). Final considerations will be drawn at the end of this chapter, to point out the urgent need for the European Union to confer some status on those languages (section 5).

## THE RULES GOVERNING THE LANGUAGES WITH INSTITUTIONAL STATUS. OFFICIAL LANGUAGES WORKING LANGUAGES, AND LANGUAGES OF THE TREATIES

Neither the Treaties establishing the European Communities,<sup>2</sup> nor the Treaty on European Union, nor the treaties that have modified them have determined the official languages and working languages of the institutions of the Union. As far as languages are concerned, Community Treaties mostly limit themselves to listing the languages in which versions of the treaty are equally authentic (the languages that acquire the status of languages of the Treaties) and to specifying the institution authorized to determine the rules governing the languages of the institutions and to establish the procedures to follow according to those specifications.

With regard to the languages of the Treaties, Article 314 of the EC Treaty and Article 225 of the EAEC Treaty state the following:

This treaty, drawn up in a single original in the Dutch, French, German and Italian languages, all four texts being equally authentic, shall be deposited in the archives of the Government of the Italian Republic, which shall transmit a certified copy to each of the Governments of the other signatory States.

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1. The Basque language or Euskara is spoken in the Basque Autonomous Community and to which I will refer to as "Basque Country", Navarre and Iparralde (the northern Basque territories administered by France). The legal status of Basque in each of these zones is different. While in the Basque Country it has the status of official language (together with the officialdom of Castilian – which is the official language of the state of Spain), in Navarre it only has the status of wholly official in a part of the territory. In contrast, in Iparralde it is hardly recognized. In this work I refer fundamentally to the Basque Country as it is the zone where recognition is greater, and therefore, where the European Community law has more effect.

2. Treaty establishing the European Community (hereinafter EC Treaty), and Treaty establishing the European Atomic Energy Community (hereinafter EAEC Treaty).

Pursuant to the Accession Treaties, the Bulgarian, Czech, Danish, English, Estonian, Finnish, Greek, Hungarian, Irish, Latvian, Lithuanian, Maltese, Polish, Portuguese, Romanian, Slovak, Slovenian, Spanish and Swedish versions of this Treaty shall also be authentic.<sup>3</sup>

Therefore, the languages of the Treaties are twenty-three.

With regard to the institution responsible and the corresponding procedure, Articles 290 of the EC Treaty and 190 of the EAEC Treaty specify that:

The rules governing the languages of the institutions of the Community shall, without prejudice to the provisions contained in the Statute of the Court of Justice, be determined by the Council, acting unanimously.<sup>4</sup>

Therefore, it is the Council, being the institution representing national interests, which is responsible for determining the rules governing the languages of the institutions. Those rules must be adopted unanimously, and therefore the consent of each and every Member State is required.

The Council determined the rules governing the languages of the institutions in Council Regulations No 1 of 15 April 1958.<sup>5</sup> Those rules grant certain languages the status of official languages and working languages of the institutions of the European Union.

At present, there are twenty-three official languages and working languages of the institutions, according to Article 1 of Council Regulation No 1, as last amended by Council Regulation (EC) No 1791/2006 of 20 November 2006:

The official languages and the working languages of the institutions of the Union shall be Bulgarian, Czech, Danish, Dutch, English, Estonian, Finnish, French, German, Greek, Hungarian, Irish, Italian, Latvian, Lithuanian, Maltese, Polish, Portuguese, Romanian, Slovak, Slovenian, Spanish and Swedish.<sup>6</sup>

These twenty-three languages do not, of course, constitute all of the historical and traditional European languages spoken in Member States today. In fact, there are many more. Currently around two thirds have no institutional recognition. This situation leads us to ask what criteria the Council has used to grant the

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3. Text as last amended by Article 18 of the 2005 Act of Accession. OJ C 325, 24.12.2002, 154, and OJ L 157, 21.6.2005, 210. Similar wording in Article 53 of the Treaty on European Union.

4. OJ C 325, 24.12.2002, 148. See also Article 2(45) and Article 3(24) of the Treaty of Nice.

5. Council Regulation no 1 of 15 April 1958 determining the languages to be used by the European Economic Community [OJ 17, at 385/58] and Council Regulation no. 1 of 15 April 1958 determining the languages to be used by the European Atomic Energy Community [OJ 17, at 401/58]. Currently the content of both Council Regulations is identical. The two Council Regulations are hereinafter referred to as "Council Regulation No 1", in the singular.

6. OJ L 363, 20.12.2006, 80. While there were only six founder States, there were only four official languages and working languages: Dutch, French, German and Italian. The other languages have been incorporated coinciding with the accession of new Member States.

status of official language and working language to some languages, and to refuse it to others.

The preamble to Council Regulation No 1 refers to the criterion followed by the Council establishing that “each of the [...] languages [...] is recognized as an official language in one or more of the Member States”. Clearly, the preamble is ambiguous as the expression “an official language *in* one or more of the Member States” may be interpreted in two ways: as an official language in all the territory of one or more Member States, or as an official language *either* in part of or in all the territory of one or more Member States. We could even argue that the use of the preposition “in”, instead of the preposition “of” favors this second interpretation. However, in view of the practice followed by the Council, we must infer that it has chosen the first interpretation, granting the status of official language and working language of the institutions solely to those languages which are official languages in all the territory of a single Member State or which are official languages of the central institutions of a single Member State. This is why languages such as Catalan, Galician or Basque, which are official languages in *part* of the territory of a Member State (Spain) but do not have recognition in the central Spanish institutions, have not acquired the status of official language and working language.

The general criterion is subject to one exception: the case of Lëtzeburgesch. This language is an official language “in all the territory of a Member State” but did not enjoy the status of official language and working language. The reason for this exception must be sought in the fact that Lëtzeburgesch was not an official language in Luxembourg when this State, as a founder member, joined the European Communities. To date Luxembourg has not requested this status be attributed to Lëtzeburgesch. The status of official language and working language was not granted to Irish either, the national language and the first official language of Ireland when it joined the European Communities in 1973. At that time it was only granted the status of language of the Treaties. Recently, in 2004, Ireland once again expressly requested the status of official language and working language for Irish, which was agreed to in the Council Regulation (EC) No 920/2005 of 13 June 2005.<sup>7</sup> In accordance with this Council Regulation, Irish became an official language and working language as of 1 January 2007 although, the publication of some regulations and other documents of general application is subject to temporary derogation. It is only compulsory to publish in Irish the Regulations adopted jointly by the European Parliament and the Council. In short, since 1 January 2007, the languages of the Treaties are the same as the official languages and the working languages.

Therefore, the differentiation of two levels of institutional recognition among the languages of the European Union (the status of languages of the Treaties,

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7. The fact that, with the accession of Malta, the Maltese language was recognized as official language and working language has favored the recognition of Irish. Remember that, both in Malta and in Ireland, English is an official language.

and the status of official languages and working languages) has now lost significance since Irish has been recognized recently as official language and working language.

What legal effects result from the status of official language and working language? Council Regulation No 1 is not restricted to determining the official languages and working languages of the institutions: it also regulates the legal effects of this status. These effects are as follows: first, official languages are languages in which individuals and Member States can and must draft documents to be sent to institutions, and vice versa (Articles 2 and 3);<sup>8</sup> second, regulations and other documents of general application must be drafted in all the official languages (Article 4); and, third, the *Official Journal of the European Union* must be published in all the official languages (Article 5). As we already know, some effects of Article 4 had been the object of a temporary derogation in the case of the Irish language.<sup>9</sup> Similar temporary derogations have also been established with regard to the Maltese language, but by 31 December, 2008 at the latest can no longer be applied.<sup>10</sup>

As long as official languages are also working languages, these languages must be used in the internal activity of the institutions (Article 6).<sup>11</sup> Although there are twenty-three working languages, only English and, to a lesser extent, French are used, for the most part (Nic Shuibhne 2004:28).

Council Regulation No 1 is limited to granting certain languages the status of *official* language and *working* language of the institutions. There is no other linguistic status foreseen in the Regulation from which other languages can benefit. Official languages and working languages are official languages and working languages of the *institutions*, and this is why the rules governing languages may be different in the case of European Union bodies and agencies, which, as we are already aware, lack the character conferred on *institutions*.<sup>12</sup> This is the case, for example, with the European Central Bank or of the Office for Harmonization in the Internal Market (Trade Marks and Designs) (Milian-Massana 2002:67-71; 2004:229-233).<sup>13</sup>

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8. Member States and persons subject to the jurisdiction of a Member State may select the official language in which the document to be sent to the institutions will be drafted. The reply must be drafted in the same language. Documents which an institution of the Union sends to a Member State or to a person subject to the jurisdiction of a Member State must be drafted in the language of that state.

9. See Council Regulation (EC) No 920/2005 of 13 June 2005 (OJ L 156, 18.6.2005, 3).

10. Council Regulation (EC) No 1738/2006 of 23 November 2006.

11. We note that the English version of Article 6 differs, for example, from the French and the Castilian version.

12. In a strict sense, the institutions are the following: the Council, the Commission, the European Parliament, the Court of Auditors and the Court of Justice.

13. See Case T-333/99, *X v ECB* [2001] ECR II-3021, parag. 186; and Case C-361/01 P, *Kik v OHMI* [2003] ECR I-8283.



According to the mandate foreseen in Articles 290 of the EC Treaty and 190 of the EAEC Treaty, Council Regulation No 1 applies to all institutions except the Court of Justice.<sup>14</sup> The languages to be used in the proceedings of the Court are laid down in Articles 29 to 31 of its Rules of Procedure.<sup>15</sup> However, an amendment introduced by the Treaty of Nice to Articles 290 of the EC Treaty and 190 of the EAEC Treaty states that the rules governing languages must be adopted in the Statute of the Court of Justice. When those rules have been adopted in the Statute, they will enjoy Treaty status. At present, the rules governing languages, with the adaptations required by the special characteristics of the jurisdictional activity, closely follow those established for the other institutions. The languages recognized as a language of a case are the twenty-three official languages and working languages.

It remains to be seen what legal effects result from the status of language of the Treaties.

The languages of the Treaties are the languages in which the text of Community Treaties is equally authentic. This is what is stipulated, as we have seen, in Articles 314 of the EC Treaty, 225 of the EAEC Treaty and 53 of the Treaty on European Union. Therefore, it is possible to invoke before the courts the versions of the Community Treaties drawn up in those languages. When the treaty of Amsterdam came into force on 1 May 1999, another important effect was included; namely, the fact that every citizen of the Union may write to any of the institutions or to some bodies (the Ombudsman, the Economic and Social Committee and the Committee of the Regions) in any of the languages of the Treaties and receive an answer in the same language (Article 21 of the EC Treaty, as amended by Treaty of Amsterdam). In reality, Irish was the only language of the Treaties which benefited from this amendment. This was because the other languages already benefited from that legal consequence, owing to the fact that such consequence is included in the status of official language and working language. Since 1 January, 2007, as Irish is an official language of the institutions of the Union and the citizens of the Union can use it in their relations with the institutions given the circumstance of being a language of the Treaties as well as being an official language. Current interest in the linguistic rule of Article 21 of the EC Treaty, as the languages of the Treaties coincide with the official languages, consists of that rule enjoying the level of the Treaties.

## **THE RULES GOVERNING THE LANGUAGES WITHOUT INSTITUTIONAL STATUS**

During the 1950s, the period when the European Communities were created, there was not much interest in regional or minority languages. On the other hand,

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14. Article 7 of Council Regulation No 1.

15. For the Court of First Instance, Articles 35 to 37 of the Rules of Procedure of the Court of First Instance of the European Communities. The provisions concerning the Court of First Instance's language arrangements apply to the European Union Civil Service Tribunal—a judicial panel attached to the Court of First Instance. [Article 7(2) Annex to Statute of the Court of Justice].

the Communities were created to satisfy exclusively economic objectives and tasks (the most important, to obtain a common market). For this reason regional or minority languages did not earn the attention of the Communities. It was later, with the rousing of these languages (or the permission to be used after periods of dictatorship), and above all, with the increase in the objectives of the Communities (first through the Single European Act, and then with the Treaty on European Union), that the question of these languages interested the institutions of the Communities and of the Union. However, not much has been done. This is because of, among other reasons, the lack of powers in matters of linguistic policy (not in cultural matters) and because the true interest lies in the official languages of the Union, which are, remember, the official languages of each Member State as a whole or of its central institutions. At the present time there are two precepts in the EC Treaty which serve as direct support for the intervention of the institutions of the Union in linguistic matters: Article 149.1 in educational matters, and Article 151.1 for cultural matters. However, given that the language serves as a support in any area, the institutions of the Union adopt linguistic measures in other fields such as on regulating matters for which they have specific powers. Sometimes the regulations affect the official languages of the Union, but other times they affect all of the languages which historically are spoken in its core.

### **The traditional activities provided by European Union law for the regional or minority languages**

In short, the activities provided by European Union law for the regional or minority languages have been very limited. We would highlight, for example:

- 1) The numerous resolutions of the European Parliament encouraging their use, promotion and preservation, although well intended, are not binding.
- 2) Their incorporation in some European programs and plans,<sup>16</sup> though until only recently they have been systematically excluded from the principal language learning programs (such as the so-called "Actions" known as Lingua and Comenius, which are part of the Socrates Program).<sup>17</sup>
- 3) Contribution to financial support of the European Bureau for Lesser-Used Languages up to a short time ago, and the Mercator research and documentation centers.
- 4) Submission of studies and reports on regional or minority languages.
- 5) Provision of some modest financial support to promote and safeguard regional and minority languages, dialects and cultures (de Witte 2004a:118-121).

In any case, since the proclamation in 2001, in Nice, of the Charter of Fundamental Rights of the European Union,<sup>18</sup> the institutions of the European Union

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16. Plans adopted based on Articles 149, 150, 151 and 157 of the EC Treaty

17. See the Annex of the Decision No 253/2000/EC of the European Parliament and of the Council of 24 January 2000 establishing the second phase of the Community action program in the field of education (the Socrates program) (OJ L 28, 3.2.2000, 1).

18. OJ C 364, 18.12.2000, 1.

must respect linguistic diversity. Article 22 of the Charter states that “[t]he Union shall respect cultural, religious and linguistic diversity”. But it is not clear whether the duty of respecting linguistic diversity has important implications for regional or minority languages – for three reasons: (1) because of the difficulty of deducing concrete measures from the general statement of Article 22; (2) because of the Union’s limited spheres of competence to carry out a policy promoting linguistic diversity, and (3) because the Charter of Fundamental Rights of the European Union has little effect since it has not been included in the Community Treaties.

Among the resolutions adopted by the European Parliament to encourage the promotion of regional or minority languages, mention must be given to the Resolution on Languages in the Community, and the situation of Catalan.<sup>19</sup> This Resolution was adopted by the European Parliament on 11 December, 1990, in response to petitions made by the Catalan Parliament and the Parliament of the Balearic Islands that Catalan be recognized as an official language of the European institutions.

The European Parliament was not the institution responsible for recognizing Catalan as an official language of the institutions, since, according to the Treaties, the rules governing languages should be determined by the Council. The resolution limits itself to calling on the Council and the Commission to take the necessary steps to achieving the following objectives:

- the publication in Catalan of the Community’s treaties and basic texts;
- the use of Catalan to disseminate public information concerning the European institutions in all the media;
- the inclusion of Catalan in the programs set up by the Commission for learning European languages;
- the use of Catalan by the Commission’s offices in its written and spoken dealings with the public in the Autonomous communities in question.

Apart from its content, this Resolution is of particular interest to us because, although referring to the Catalan language, later on it was extended to Galician and Basque. A decision of the Committee on Petitions of the European Parliament, adopted on 26 and 27 January, 1993, stipulated that the Galician and Basque languages must receive the same treatment as the Catalan language (Agirreazkuenaga 2003:37). The Basque Parliament had agreed on 21 February, 1992, to demand that the European Parliament confer on Euskara the status of official language of the Community institutions.

Given its limited content, the Resolution of 11 December, 1990, has had reduced impact. Furthermore, one of the points which could most benefit Catalan, Galician and Basque –the inclusion of these languages in Community pro-

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19. OJ C 19, 28.1.1991, 42-43.

grams related to the learning and improvement of European languages— has systematically failed to be carried out. Remember that the Resolutions of the European Parliament are non binding.

This was especially serious for some regional languages such as Catalan, Galician and Basque, which are used systematically as a language of communication in education. In the Basque Country, for example, more than half the students in compulsory education receive classes in Euskara (students in modules B and D); and in Catalonia for example, all students receive a great part of their education in Catalan.

In addition to its seriousness it was also especially unfair, because for the Socrates program (Action 4 “Lingua”, and Action 1 “Comenius”) not only the official languages and working languages, the Irish language (one of the languages in which the treaties was drawn up), and the Lëtzeburgesch (a language spoken throughout the territory of Luxembourg) were admitted, but also the national languages of the European economic area (EEA) countries and the national languages of the newly participating countries.<sup>20</sup> For example, Norwegian (in spite of the fact that on two occasions in a referendum Norway refused to join the Communities and the European Union) and Icelandic were able to join in the Socrates program. Another argument for its unfairness is because Icelandic or Maltese, for example, have fewer speakers than Basque. If we compare with Catalan, the situation is even more insulting: in 2004 Catalan had more speakers than eight of the twenty official languages and working languages (at that time there were twenty) and more, of course, than Irish.

In relation to the language learning programs, the Council has finally rectified its opinion on admitting all modern European languages spoken in the Member States in the last Decision. This was Decision No. 1720/2006/EC of the European Parliament and of the Council of 15 November, 2006, establishing an action program in the field of lifelong learning.<sup>21</sup> This Decision entered into force on 1 January, 2001, and has replaced the 2000 Decision. According to the 2006 Decision, the Lifelong Learning Program covers all “modern foreign languages”. At last, languages other than the official languages and working languages are not excluded. The issue will still be to see what relevance is given to those languages when the program is implemented.

Despite this marked change, we can affirm in general that the regional or minority languages are very disadvantaged in the European Union. Perhaps some of the Resolutions of the European Parliament could help stimulate the promotion of minority languages which are in a precarious or very precarious situation. And it is possible that, for the languages spoken in those states that have been incorporated in recent years, joining the Union has benefited them

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20. See Article 12 of the Decision No 253/2000/EC of the European Parliament and of the Council, as modified by Council Regulation (EC) No 885/2004.

21. OJ L 327, 24.11.2006, 45.

(for example, as we shall see below, through the requirement of respect for and protection of minorities by the candidate states). Yet these measures are not very useful for those regional languages that are already official in their territory and enjoy considerable vitality, to the point that they are languages of general communication in all levels and common to the group (or aspire to be so, as the conditions for this exist). For these languages, which are not many (among which we could include Basque and of course Catalan), the European Union Law is particularly unrewarding. If “[t]he fight for survival of minority languages in the national context is made more difficult by the added European dimension” (de Witte 1992: 292), it turns out that for those official regional languages, European Union Law adds a whole series of seriously damaging privations, which I will present in the next section, to the extent practically of encouraging their absorption.

One of the problems is that the European Community law has almost always treated the group of languages lacking institutional recognition homogeneously, in spite of their differing realities. The European Union has only recently begun to make distinctions in a structured way within the heterogeneous group of languages without institutional recognition, taking into account languages other than the languages referred to in Council Regulation No 1, which enjoy official status in all or part of the territory of the Member States. This has materialized in the Council Conclusion of 13 June, 2005, on the official use of additional languages within the Council and possibly other Institutions and bodies of the European Union,<sup>22</sup> however, as we will see, the recognition has turned out to be quite unsatisfactory.

### **The new activities provided by European Union law for regional or minority languages: The Council Conclusion of 13 June, 2005, on the official use of additional languages within the Council and possibly other Institutions and bodies of the European Union**

Paragraph 1 of the Council Conclusion defines the languages concerned as follows:

1. These conclusions relate to languages *other* than the languages referred to in Council Regulation No 1/1958 whose status is recognized by the Constitution of a Member State on all or part of its territory *or* the use of which as a national language is authorized by law [author’s emphasis added].<sup>23</sup>

The languages that can benefit from the conclusions, are, on the one hand, those that enjoy status through constitutional recognition (without necessarily being recognized as official languages) on all or part of the territory of the Member States, and, on the other hand, those that enjoy the status of national lan-

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22. OJ C 148, 18.6.2005, 1.

23. OJ C 148, 18.6.2005, 1.

guage (being equivalent here to that of official language) by virtue of simple legal rule (without it being necessary that it be foreseen by the constitution). Paragraph 1, does not make clear if the Council Conclusion requires that the status of “national language” be valid in the whole territory of the Member States or not.

Regarding the official uses that will be authorized, the Council Conclusion refers (Paragraph 4) to those stipulated by subsequent administrative arrangements concluded between the Council and the requesting Member State, and possibly by another Union institution or body. These arrangements must comply with the conditions that the Council Conclusion itself establishes in paragraph 5. These conditions limit the possibility of using the languages concerned to three areas: a) the making public of acts adopted in co-decision by the European Parliament and the Council, b) speeches in meetings of the Council and possibly other Union institutions or bodies, and c) written communications to Union institutions and bodies.

Publicizing the acts adopted in co-decision is done via the Internet site of the Council, and a translation of this -being the responsibility of the interested Member State- has no legal value. The Council includes that translation in its archives and provides a copy of it, upon request. With respect to speeches in meetings (passive interpreting), the government of the interested Member State can request of the institution or body a permission to use the language. In the case of the Council, the Council Conclusion adds that “[the] request will in principle be granted, provided it is made reasonably in advance of the meeting and the necessary staff and equipment are available.” Finally, with respect to written communications to Union institutions and bodies, the Council Conclusion does not allow direct delivery, but insists on an indirect delivery via a body designated by the Member State. This body must translate the text of the communication into the language (or into one of the languages) of the Member State, which must at the same time be an official language of the Union, and must then send the original to the institution or body in question, along with a translation of the communication. The same indirect delivery procedure must apply *mutatis mutandis* to the reply from the institution or body in question. That is, the institution or body has to send the reply in the official language of the state to the body designated by it and then this body subsequently has to send the original sender the reply together with a translation to the language used by him or her. In the case of Union institutions or bodies having a fixed period of time in which to reply, the Council Conclusion determines when that period commences and when it ceases. According to the Council Conclusion the period commences from the date on which the institution or body receives the translation sent by the body designated by the Member State, and it ceases on the date on which the institution or body sends its reply to the competent body of the Member State.

Up to now, Spain is the only Member State to have signed administrative arrangements with the Council, the Commission, the Committee of the Regions, the Economic and Social Committee and the European Ombudsman. For the

moment, only the first two agreements have been published in the *Official Journal*.<sup>24</sup> As a result, the Basque language (and what is mentioned below for the Basque language is also valid for Catalan and Galician) may benefit from the recognition contained in the Council Conclusion, in accordance with the development obtained in the administrative arrangements. However, except for the spoken use of the Basque language which the ministers of the Basque government should so decide, and which they are authorized to do, in the meetings of the Council everything else is of little use or effectiveness.

In particular, with regard to written communications to Union institutions and bodies, the truth is that it is advisable not to use the Basque language, mainly for two reasons: 1) because the Council Conclusion puts the petitioning citizen in a vulnerable position with respect to the fixed period, when it exists. Administrative arrangements have attempted to correct this situation requiring that the European institution or body send its reply in Castilian directly to the sender at the same time as to the body designated to effect the translation. But this solution, while commendable from the point of view of legal certainty, is a mockery of the linguistic rights because it converts the version in the language of the sender into little more than an ornament; and 2) because, according to the administrative arrangements, the Union declines responsibility for possible translation errors.

In short, it is not likely that citizens would use any of the three languages concerned (Basque, Catalan and Galician) in their written communications, except, perhaps in informal communications. Indeed, this mode of communication has hardly been used. We would add that, in all cases, also in the assumption we are now commenting on related to the European Parliament, the costs correspond to the Spanish government. The institutions will not pay for translations.

With regard to the European Parliament, its Bureau has decided to accept citizens' correspondence in Basque, Catalan and Galician with certain requirements. However, the situation may arise that the European Parliament may resort to external translation agencies.<sup>25</sup> However, recognition which would have given visibility to these three languages, such as admitting their use in plenary sessions of the Parliament, has not been accepted.

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24. Administrative Arrangement between the Kingdom of Spain and the Council of the European Union, OJ C 40, 17.2.2006, 2; Administrative Agreement between the European Commission and the Kingdom of Spain, OJ C 73, 25.3.2006, 14. "The Council of the European Union has recently authorized (15 July, 2008) the signing of an administrative arrangement with the United Kingdom, allowing the use at the Council of languages other than English whose status is recognized in the United Kingdom's constitutional system."

25. See Document PE 375.126/BUR, 3.7.2006, at 10-11. The Bureau follows the Conference of Presidents' invitation. See Document PE 371.339/CPG, 18.5.2006, at 24-26.

### **Monitoring minority rights in the European Union accession process**

Probably the main impact of European Union law aimed at protecting the regional and minority languages has occurred indirectly – by means of the political criteria required to become a member of the European Union at the time of the last two adhesions. In fact, the European Commission reviewed progress on the situation of minorities in candidate countries on the basis of Articles 49 and 6(1) of the Treaty on European Union, as interpreted by the Copenhagen criteria of 1993 (Hoffmeister 2004). These criteria explicitly mention the “respect for and protection of minorities”, and the review has accordingly obliged the Baltic States and certain Eastern and Central European countries to make concessions to their linguistic minorities (see, among others, Pentassuglia 2001, Hoffmeister 2004).<sup>26</sup> This indirect method continues for future adhesions. The *Progress Reports* are explicit on this point.<sup>27</sup> Although these controls over minority rights have an important influence on internal linguistic policies, what most interests us are the measures which the EU adopts directly through the community legal documents (Regulations, Directives, Decisions, Conclusions, etc.), which affect the use of languages.

### **THE EFFECT OF THE COMMUNITY SECONDARY LEGISLATION ON THE LINGUISTIC POLICIES OF THE MEMBER STATES OR OF THEIR REGIONS**

The accomplishment of free movement of productive factors characterizes international organizations which promote a common or internal market. This is the case, for example, of the European Community, one of the two communities currently found in the European Union.<sup>28</sup> In this way, Community freedoms – the free movement of goods, the freedom of movement for workers, the freedom of establishment, the freedom to provide services – together with free competition, become the spinal cord of the Community and the barriers that get in the way must be eliminated. For this reason, the internal linguistic requirements are, in general, seen as suspects of becoming barriers to free movement and, insofar as they effectively get in the way, they are considered as contrary to European Union law objectives. In this sense the Community law turns out to be a legal framework which could significantly constrain internal linguistic policies, whether they are of the states or of the regions.

Indeed, in order to prevent the states from incorporating linguistic requirements aimed at providing an advantage to their citizens or benefiting their products - measures which, hindering the movement of persons or goods coming

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26. See also the Regular Reports on Accession 1999 to 2004 from the European Commission.

27. See, for example, the *Turkey 2007 Progress Report*, 22-23.

28. Article 1 of the Treaty on European Union states in the third paragraph that “The Union shall be founded on the European Communities, supplemented by the policies and forms of cooperation established by this Treaty [...]”.



from the remaining member states would constitute restrictions contrary to the interior market - the European Union has introduced linguistic provisions in some of the regulations and directives, issued to establish common rules and harmonizing criteria. With the establishment of common linguistic rules for the Member States, these regulations and directives aim, in short, to prevent internal linguistic requirements from actually constituting an arbitrary means of discrimination or an undercover restriction of free movement.

What is happening is that, often, especially if the provisions establish the compulsory use of certain languages, the European rules only take into consideration the official languages of the Member States. One paradigmatic example is the linguistic requirement for labelling.

In general, the directives regulate the language in which compulsory labelling details shall be given: or they may impose what details or indications shall be given in the official language or languages of the Member State where the product is placed on the market;<sup>29</sup> they may also authorize the Member States to impose the use of its national or official language or languages where the product is placed on the market;<sup>30</sup> or authorize Member States to demand that the labelling details be given in one or more languages which they shall determine from among the official languages of the Community. The latter is precisely provided for in Directive 2000/13/EC of the European Parliament and of the Council of 20 March, 2000, on the approximation of the laws of the Member States relating to labelling, presentation and advertising of foodstuffs.<sup>31</sup> Article 16, paragraph 2, reads as follows:

Within its own territory, the Member State in which the product is marketed may, in accordance with the rules of the Treaty, stipulate that those labelling particulars shall be given in one or more languages which it shall determine from among the official languages of the Community.

Furthermore, some directives contain a precept recalling that the imposition of the official language or languages does not impede the use of other languages. In the case of the Directive 2000/13/EC, we find in paragraph 3 of Article 16 : "Paragraphs 1 and 2 shall not preclude the labelling particulars from being indicated in several languages."

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29. For example, Directive 2001/37/EC of the European Parliament and of the Council of 5 June, 2001, on the approximation of the laws, regulations and administrative provisions of the Member States concerning the manufacture, presentation and sale of tobacco products (OJ L 194, 18.7.2001, 26); Directive 2001/83/EC of the European Parliament and of the Council of 6 November, 2001, on the Community code relating to medicinal products for human use, as amended by the Directive 2004/27/EC of the European Parliament and the Council of 31 March, 2004, (OJ L 311, 28.11.2001, 67, and OJ L 136, 30.4.2004, 34).

30. Council Directive of 3 May, 1988, on the approximation of the laws of the Member States concerning the safety of toys (88/378/EEC) and (OJ L 187, 16.7.1988, 1).

31. OJ L 109, 6.5.2000, 29.

Insofar as the community provisions concerning labelling make reference to the official language or languages of the Member States, it transpires that they include only the languages that enjoy the status of official languages in all the territory of each of the states (or in its central institutions). Consequently, the languages that are official in part of the territory of a state remain outside these provisions.

The same happens when a directive – as is the case of the Directive 2000/13/CE of the European Parliament and the Council – authorizes Member States to be able to demand that details appear in at least one or various official languages of the European Union. And this is so because the present twenty-three official languages of the Union are precisely the languages that are recognized as having the condition of official language in the whole of the territory (or in the central institutions) of one or more Member States.<sup>32</sup>

Therefore, European Union law impedes the regional legislatures from establishing that the compulsory labelling details be given in the official language of the region when the product is placed in its market. This explains, for example, that the Catalan legislature, on drawing up their Law 1/1998 of 7 January of Linguistic Policy, finally renounced the disciplining of compulsory labelling details in certain products, among them packaged food products, which are distributed in the territory of Catalonia having to be, at least, in Catalan (Milián-Massana, 2001).

For the same reason, the Parliament of the Basque Country cannot establish such a provision, guaranteeing the presence of the Basque language in the labelling of products. This limitation, which arises from Community Law, is particularly serious for languages such as Catalan and Basque. Remember that these languages are not necessarily minority languages. Apart from having more speakers (Basque) or even much more speakers (Catalan) than some official languages of the European Union, they are languages of general communication in the respective region (Catalan), or in the process of full revitalization (Euskara in the Basque country), that compete clearly with the majority languages and which therefore need the same or similar possibilities as these in order to be able to progress and not be assimilated: in the case in hand, being able to apply the same compulsory measures. Quite distinct is the case of the majority of the regional or minority languages, the scale and vitality of which do not justify the adoption of linguistic requirements though for their protection measures of persuasion or encouragement are enough.

Another example of the same phenomenon of marginalizing languages such as Basque or Catalan can be found in the Directive 94/47/EC of the European Parliament and the Council of 26 October, 1994, on the protection of purchasers

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32. The only language with official effects in the whole of the territory of a Member State which has not acquired the condition of official language and working language of the institutions of the European Union, as we know, is Lëtzeburgesch.

in respect of certain aspects of contracts relating to the purchase of the right to use immovable properties on a timeshare basis.<sup>33</sup> In this case, the Directive establishes a complex system concerning the languages in which these contracts and the information document (which becomes an integral part of the contract) must be drawn up. However, what is interesting to highlight here is that it establishes, *expressis verbis*, that the language or languages “shall be an official language or official languages of the Community” (Article 4); thus marginalizing other languages such as Basque or Catalan. This is serious because these languages are official in the Basque Country and in Catalonia and, therefore, the contracts signed in these territories, respectively, in Basque or in Catalan, are recognized, in terms of languages, as having validity and effectiveness. In other words, the Community provision, which does not impede the use of these languages, insisting as it does on the use of one of the official languages of the Union, actually restricts the officialdom of these languages, thus making them sociologically useless.

This partial abolition of the status of official language also appears in other assumptions. In particular, it is what could happen when, in accordance with the internal distribution of powers, the Administration of the Basque Country instructs and resolves procedures which have been regulated by a European provision which, in turn requires the use of one of the official languages of the Union. Then, as a result of the supremacy of the European Community law, it transpires that Basque, despite being an official language in the Basque Country, is marginalized from the procedure, except for written documents written in Basque accompanied by a translation in Castilian, which implies a displacement – with the corresponding partial loss – of the effects of recognized officialdom of the Basque language. This has happened to Catalan in Catalonia in matters of metrological control, which is an area of regional competence. This question of metrological control is regulated in the Council Directive of 26 July, 1971, on the approximation of the laws of the Member States relating to common provisions for both measuring instruments and methods of metrological control (71/316/EEC), where it stipulates that “The application and the correspondence relating to it shall be drawn up in an official language [one of the official languages of the Union, as the provision interprets] in accordance with the laws of the state to which the application is made. The Member State has the right to require the annexed documents should also to be written in the same official language. The applicant shall send simultaneously to all Member States a copy of his application” (Annex I, § 1.1). The legal conflict between the effects of the status of Catalan as an official language (status recognized at a constitutional level) and the Community provision was brought before the Spanish Constitutional Tribunal, which ruled in favor of the prevalence of the supremacy of the European Community law (Milian-Massana 1995).<sup>34</sup>

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33. OJ L 280, 29.10.1994, 83.

34. STC 236/1991, 12 December 1991.

There are many more Community legal documents which marginalize languages other than those referred to in Council Regulation No. 1/1958, however, I shall terminate their enumeration at this point so as not to excessively lengthen this work. In my opinion, the examples already given sufficiently reflect the phenomenon which I am trying to illustrate. This marginalization does not usually have harmful effects for the majority of the regional languages or minority languages, given that their very condition as minority makes it “natural” that they cannot have recourse to Community provisions on majority languages (due to lack of translators, means, demand...). But it does not work like this, as we have seen, in the case of the languages that are *official* in part of the territory of the Member States, that demonstrate vitality and furthermore are languages of usual and common communication in their territory. In this case the treatment of these languages as a minority language facilitates their assimilation. Their protection requires that, if necessary and considering the principle of proportionality, the same or similar linguistic requirements can be established as those that are established for majority languages. The harmful effect of current Community secondary legislation represents an additional burden that the languages that are official in part of the territory of the Member States must support, and which adds to the already harsh conditions of survival common to all regional and minority languages as a consequence of the addition of the European dimension (for example, linguistic pressure which, *de facto*, accompanies the considerable movement of population which encourages the circumstance that every citizen of the Union enjoys “the right to move and reside freely within the territory of the Member States” (Article 18(1) of the EC Treaty), movement which encourage the use of the majority languages).

This burden arising from Community secondary legislation represents one more reason to add to those that justify the urgent attribution of a status within the European Union for languages that are official in part of the territory of a Member State and, in particular, for the languages that, *in accordance with the constitutional order*, enjoy official status (the status in part of the territory of a member state). This clause “in accordance with the constitutional order”, is not intended to be an arbitrary restriction, but quite the opposite. It constitutes an additional requisite for highlighting those languages that enjoy a true, whole and complete official status within a “region”, these being the languages that are most impaired. On the other hand, we shall see in the following section that this expression is taken up in the Treaty of Lisbon, amending the treaty on European Union and the Treaty establishing the European Community.<sup>35</sup>

It would be incorrect to affirm that all Community legal documents ignore these official regional languages. There are some exceptions, fortunately, but still too few.<sup>36</sup> It is also true that, from the Community freedoms and the fact that “any

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35. The Treaty was signed in Lisbon on the 13 December 2007. See the text in OJ C 306, 17.12.2007, 1. The Treaty has not entered into force, not having yet been ratified by all the Member States.

36. It is worth citing the Directive 2002/83/EC of the European parliament and if the Council of 5 November 2002 concerning life assurance (Annex III). (OJ L 345, 19.12.2002, 1).

discrimination on grounds of nationality shall be prohibited” (Article 12 of the Treaty EC), the Court of Justice has amplified the subjects that in each Member State may enjoy internal linguistic rights.<sup>37</sup> But this amplification, which also benefits regional or minority languages, has certain very limited sociolinguistic effects and does not compensate in any way for the marginalization, already commented, in the Community secondary legislation.

## FINAL CONSIDERATIONS

The Treaty of Lisbon, if it finally comes into effect,<sup>38</sup> will not contribute significant changes in the rules governing languages. Without modifying the present linguistic framework, this Treaty will introduce three new aspects which are worth highlighting. Two are of a general nature and one refers explicitly to the languages that, in accordance with the constitutional order, are official in part of the territory of the Member States. The three new aspects, therefore, could benefit the Basque language.

The two aspects of a general nature affect all languages spoken historically in the European Union and are those that are contained in paragraphs 4 and 8 of Article 1 of the Treaty. In accordance with the first provision, respect for the rich cultural and linguistic diversity of the European Union will become one of the Union’s aims (provision which will become Article 3 of the Treaty on European Union). According to the second provision, the Charter of Fundamental Rights of the European Union of 7 December, 2000, as adapted in Strasbourg, on 12 December, 2007, shall have the same legal value as the Treaties. In this way, its Article 22, which has not undergone any modification, will have full legal value.<sup>39</sup> The real scope of these two aspects remains to be seen. Concerning the first I will comment below on the theme of jurisprudence of the Court of Justice.

What is specifically new can be found in Article 1, paragraph 61, and consists of the following:

This Treaty [the Treaty on European Union] may also be translated into any other language as determined by Member States among those which, in accordance with their constitutional order, enjoy official status in all or part of their ter-

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37. Case 137/84, *Ministère Public c. Robert Heinrich Maria Mutsch* [1985] ECR 2681; Case C-274/96, *Criminal Proceedings c. Horst Otto Bickel and Ulrich Franz* [1998] ECR I-7637.

38. On completing this work – at the end of July 2008 – twenty-three of the twenty-seven Member States had ratified the Treaty. Doubt about its coming into force was posed, above all, with the victory of the “no” to its ratification in the referendum held in Ireland. Although any prediction is risky, it is probable that the Treaty will finally come into force, although with some modifications to overcome the opposition of the Irish population. In any case, possible changes will not affect the linguistic provision of the Treaty, because these provisions are not the focus of Irish contention.

39. Remember that Article 22 states that “[t]he Union shall respect cultural, religious and linguistic diversity”.

ritory. A certified copy of such translations shall be provided by the Member States concerned to be deposited in the archives of the Council.<sup>40</sup>

This provision has just a symbolic value, since it lacks practical effects. However, it has the merit of establishing an objective distinction among the regional or minority languages, on the basis of differentiating the languages that, in accordance with the constitutional order, enjoy official status in part of the territory of the Member States.<sup>41</sup> This distinction could make it easier for the European Union to establish specific recognition in favor of those languages in the future. This seems to be what is referred to in the last part of the first paragraph of the Declaration on Article 53(2) of the Treaty on European Union, annexed to the Final Act of the Treaty of Lisbon:

[...] the Conference confirms the attachment of the Union to the cultural diversity of Europe and *the special attention it will continue to pay to these* [the languages mentioned in Article 53(2), in other words, in accordance with the draft given by the Treaty of Lisbon, the languages that, in accordance with the constitutional order, enjoy official status in part of the territory of the Member States] and other *languages* (emphasis added).

Perhaps the new provision, in spite of being very exiguous, might constitute an embryo for future institutional recognition for the languages that, in accordance with the constitutional order, are official in part of the territory of the Member States (Milian-Massana).

In any case, we have already said that these languages deserve a true status and not symbolic recognition. The European Union ought to attribute to them a recognition which would bring them closer to the status of the official languages and working languages: for example, the status of language of the Treaties (which is what Irish had enjoyed until obtaining on 1 January, 2007, the official and working status) or some similar recognition. The rules governing the languages of the Treaties do not impede this.

The excuse for refusing them a status, that the number of languages would increase a lot,<sup>42</sup> is not exact because the languages that, in accordance with the constitutional order, enjoy official status in part of the territory of the Member

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40. The official languages in all the territory of the Member States can only be Lëtzeburgesch (See above n. 32).

41. This provision already existed—and comes from— Article IV-448(2) of the Treaty establishing a Constitution for Europe, although logically referring to this Treaty. As is known, the Treaty establishing a Constitution for Europe did not come into force. However, Spain had recourse to Article IV-448(2), taking advantage of the recommendation contained in Declaration No 29, on Article IV-448(2), annexed to the Final Act. On 4 November, 2004, certified copies of translations of the Treaty into Catalan, Galician and Basque were deposited in the archives of the Council.

42. The number of languages historically spoken in the Union is currently around sixty-eight (according to data provided by the Euromosaic study, carried out by the European Commission, and including the twenty-three languages which benefit from legal status).

States are very few and I believe would be Catalan, Galician, Basque, Croatian and perhaps Welsh (and Gaelic).

Nor is it a valid excuse that many languages are already recognized, as regards the twenty-three official languages and working languages. It is true that the number of languages recognized in the institutions would be surprising if we compare it with the number of languages normally recognized in international organizations. But it is necessary to remember that the nature of the European Union is not that of a traditional international organization, but that of a supra-national organization, that is, an organization to which the Member States have conferred part of their sovereignty, allowing the Union to adopt regulations and other documents of general application capable of producing a direct applicability or a direct effect on the citizens of the Union. Therefore, the number of official languages – as we have already said with regard to the working languages practically only English and French are used – does not respond exactly to the multilingual will (or, in any case, only to it), but to a requirement to guarantee legal certainty. Because this multilingualism is the only way to equally guarantee communication between all citizens of the Union and its institutions, it is the only way to ensure the publication of the *Official Journal of the European Union* in a comprehensible way for all the citizens of the Member States. If the Institutions of the Union did not translate the regulations, documents of general application, and other documents to the official languages of the Member States, these states would be obliged to translate them in order to guarantee legal certainty. This would represent a mere transfer of economic costs and the risks, given the dispersion of translation centers, of lack of reliability of the norms and of altering the uniform application of European Community law.

The only two languages whose recognition was not necessary to guarantee legal certainty are Maltese and Irish. Therefore, the recognition of these two languages alone could be construed as clearly expressing an intention to favor multilingualism.

Likewise, the European Union should try hard not to discriminate against languages that, in accordance with the constitutional order, are official in part of the territory of the Member States, in the Community secondary legislation, and should only exclude them if strictly necessary. The Court of Justice has vindicated the restrictions which the linguistic compulsory provisions imply for Community freedoms in the case of official languages of the Member States. In this case, the “mandatory requirement” or “imperative requirement” justifying restrictions on Community freedoms to date have been consumer protection, the reliability of medical professionals’ communication with their patients, and the protection of public health.<sup>43</sup> But these justifications probably do not serve to justify the lin-

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43. Case C-51/93, *Meyhui NV c. Schott Zwiesel Glaswerke AG* [1994] ECR I-3879; Case C-33/97, *Colim NV c. Bigg's Continent Noord NV* [1999] ECR I-3175; Case C-169/99, *Hans Schwarzkopf GmbH & Co. KG c. Zentrale zur Bekämpfung unlauteren Wettbewerbs eV* [2001] ECR I-5901; Case C-424/97, *Salomone Haim c. Kassenzahnärztliche Vereinigung Nordrhein* [1999] ECR I-5123.

guistic requirements related to the languages that, in accordance with the constitutional order, enjoy official status in part of the territory of the Member States, because the citizens who speak these languages nearly always already understand the official language of the State. However, the Court of Justice could justify these linguistic requirements, on the basis of other criteria: the promotion or the protection of the languages and linguistic diversity. Up to now, the Court of Justice has not recognized these criteria as “mandatory or imperative requirements”, but it would have reasons to do so, and will have, especially if the provisions of the Treaty of Lisbon come into effect, as this Treaty recognizes among the aims of the Union a respect for its rich cultural and linguistic diversity, a commendable aim which acquires a level similar to the aim to “establish an internal market.”

The institutional recognition at the heart of the European Union of the languages that, in accordance with the constitutional order, are official in part of the territory of the Members States is a matter which is pending resolution and must not be delayed. Meanwhile, the European Union law erodes these languages. It would be a pity as well as regrettable that the European Union should contribute to the assimilation of these languages or aid in the perpetration of what in the domestic sphere, the philosophy of the Nation-state was unable to conclude: “one state, one language”. It is perhaps convenient to recall here what Leibniz wrote in French more than two centuries ago:

Les cartes font connoître les bornes des Etats, mais non pas celles des nations que l'harmonie des langues fait mieux paroistre. Rien ne marque d'avantage la grandeur d'un Empire, que la multitude des nations et langues qu'il embrasse.<sup>44</sup>

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44. My translation for the French original: “Maps enable us to know the frontiers of states, but not those of nations which are better shown by the harmony of languages. Nothing better illustrates the magnitude of an Empire than the multitude of nations and languages which it embraces”. Leibniz, *Projet de lettre à Lefort le Jeune*. Text written by Leibniz in French and taken in this language from the book by Enric Prat de la Riba, *Per la llengua catalana*, Barcelona, Publications of “La Revista”, 1918, p. 52.



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# The Legal Status of Euskara in the French and Spanish Constitutional Systems

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*Euskarak Espainiako eta Frantziako konstituzioetan daukan erregimen juridikoa aztertzen du artikuluak, eta, gero, zazpi lurraldeetako administrazio politikoetako gobernu-egituretan euskarak daukan tokia. Nafarroari doakionez, Euskarari buruz onartutako ofizialtasun murriztailea aztertzen du, bai eta Euskararen erabilera mugatzen duen politika ere. Ipar Euskal Herriari dagokionez, bi gai aipatzen dira, hots, juridikoki ezinezkoa dela euskararen ofizialtasuna erdiestea, eta eskualdeetako hizkuntzak Frantziako Ondare izendatu dituztela berriki.*

*Giltza-Hitzak: Euskara. Ofizialtasuna. Konstituzioa. Estatutua.*

*El artículo analiza el régimen jurídico del Euskara en las Constituciones española y francesa, para después analizar el contenido en las estructuras gubernamentales de cada administración política de los siete territorios. En relación a Navarra analiza la forma restrictiva del reconocimiento de la oficialidad del Euskara adoptada, así como la política limitadora del uso del Euskara. En el País Vasco francés se señala la imposibilidad jurídica de lograr la oficialidad y el reconocimiento reciente de las lenguas regionales como patrimonio de Francia.*

*Palabras Clave: Lengua vasca. Oficialidad. Constitución. Estatuto.*

*Cet article analyse le statut juridique de l'euskara dans les Constitutions espagnole et française, pour ensuite analyser le contenu des structures gouvernementales de l'administration politique de chacun des sept territoires. En Navarre, il analyse la forme restrictive de reconnaissance de l'officialité de l'euskara adoptée, ainsi que la politique limitative de l'usage de l'euskara. Au Pays Basque français, il met en relief l'impossibilité juridique d'atteindre l'officialité et la récente reconnaissance des langues régionales comme patrimoine de France.*

*Mots-Clé : Langue basque. Officialité. Constitution. Statut.*

## **1. THE LEGAL STATUS OF THE LANGUAGE: AN INTRODUCTION**

The legal status of languages had no significant development until the end of last century, given a few exceptions. The legal doctrine and the Law Courts have had neither interest nor the occasion to deal with this question. The reasons for this are varied. In the first place, it was not necessary. The legal system was based on the existence of only one official language and therefore it was not necessary to constitutionalize or codify this fact. The most culturally centralist European State, France, did not include the officiality of the French language in its Constitution until the year 1993, during the ratification of the Maastricht Treaty. Where more than one language existed, the only official language was imposed, even though this imposition had different levels of success. Despite imposing French as the only language used in education, many schools continued teaching in their own regional language, albeit faced with great difficulties. On the other hand, in the beginnings of European Constitutionalism, people's rights were non-existent, or very limited, in the sense that there were no Constitutional rights that could be enforced in the courts. The rights were recognized by law. For this reason, it was not considered necessary to establish the officiality of a language in the Constitution either. If the necessity should arise, it would be the legal system that would establish the officiality.

Nowadays, the situation is totally different, as we will be able to see below. The legal regulation of languages increasingly is acquiring additional importance. Linguistic rights and cultural rights -in general- have been objects of attention of the doctrine. Society is showing commitment to the content and meaning of languages in the comprehension of human rights and law. An illustrative example: the legal status for sign-language has recently been regulated in Spain in order to guarantee the rights of the deaf and deaf-blind, and people with general hearing and speech difficulties. This regulation manifests the change of mentality undergone by society, a society that has become aware of the situation in which people with hearing impairments are forced to live. This change has reached the legislators who have been compelled to regulate the language. Deafness has advanced from obscurity and marginalization to a positive social recognition and this has been produced with the passing of the sign-language law.

Languages had been contemplated as a problem of the minorities by the legal system. Minority rights were frequently linked to linguistic issues and therefore they were analyzed from that perspective. Linguistic law did not form part of the general theory of Law that was imparted in university courses. It was not considered necessary nor had the vitality or importance of languages been checked. In fact, linguistic law was implicitly used in the analysis of general Law and rights, though without conscious intent. This aspect will now be dealt with in depth.

The officiality of a language has several very important legal consequences in the understanding of the legal system. People's rights cannot be understood without including their language. Without communication abilities many other rights would not exist, though this is not exclusively so. For example, there are personal rights that are not always or in every case connected to languages. This

is the case with freedom of conscience or rights to privacy. Other rights may be linked to language, albeit on different levels. An example is the right to an education. The right to an education involves the right to be educated in a language that is understandable,<sup>1</sup> but which may not be the mother tongue. This is totally unfeasible in our current multicultural society. Therefore, education will be imparted in the official language, although to make this language understandable, the public authorities may be obliged to provide special aid to those who lack the necessary linguistic knowledge.<sup>2</sup>

Freedom of speech and of communicating and receiving information is so in any language, although in some aspects it is only so in the official language.<sup>3</sup> If this freedom is considered from the perspective of a defense against the interference of the authorities, this defense will be produced regardless of the language used. Nevertheless, if the question is connected to financing and aiding, or, for example sharing out the scarce frequencies for radio or television broadcasting, in this latter case aid would be limited, and the frequencies would be granted to the media that broadcasts in the official language.

In terms of the right to an effective legal tutelage, individuals possess the right to a translator that will guarantee their defense.<sup>4</sup> If this is not so, they will be condemned *ex-parte*, something which is not permitted under constitutional laws. In our right to legal tutelage, languages form an integral part of that right, independently to whichever the official language may be.

People that wish to contact the public administration cannot do so in any language they choose. In the majority of cases, the public administration is only obliged to attend petitions put forward in the official languages.

With this brief reminder of some of our rights, the intention is to manifest how these rights may only be recognized in the official language, as in the case of education, or how some of these rights may be recognized without bearing in mind each individual's mother tongue, as in the case of effective legal tutelage. The officiality of a language consequently creates rights that are only so in the

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1. MILIAN I MASANA, Antoni: *Derechos lingüísticos y derecho fundamental a la educación. Un estudio comparado: Italia, Bélgica, Suiza, Canadá y España*. Civitas, Madrid, 1994.

2. On the legal regime of the Basque language in education, see URRUTIA LIBARONA, Andoni, *Derechos lingüísticos y Euskara en el sistema educativo*, Lete, Bilbao-Iruña, 2005

3. LASAGABASTER HERRARTE, Iñaki: "El euskera y los medios de comunicación en la Comunidad Autónoma del País Vasco" in COBREROS MENDAZONA, Edorta, (coord.), *Jornadas sobre el régimen jurídico del euskera*, Basque Public Administration Institute (IVAP), Oñati, 1990, pg. 209-234; *ditto* and LAZCANO BROTONS, Iñigo, "La convivencia lingüística en los medios de comunicación en Euskal Herria", *Revista Vasca de Administración Pública [Magazine for the Basque public administration]*, 2004, 69 II, pg. 101-149.

4. ESPARZA LEIBAR, Iñaki and ETXEBARRIA GURIDI José Francisco: "Art. 6. Derecho a un proceso equitativo" in LASAGABASTER HERRARTE, Iñaki (dir.), *Convenio Europeo de Derechos Humanos. Comentario sistemático*, Civitas, Madrid, 2004, pg. 221 a 223.

official language. On the other hand, some rights are recognized independently of the individual's own mother tongue. Legal theory is unaware of this obvious fact. Therefore, it was not unusual to read that linguistic rights are not real rights, nor are they legally liable; where the language must be understood as a part of other rights. Without our language there is no freedom of speech, as it is not possible to communicate and communication is carried out in the language with which each individual is familiar. Identically, languages are not separable from the right to a legal tutelage as without communication there is no defense.

The officiality of a language makes it form part of our rights, with a greater or lesser importance. Furthermore, the officiality obliges public institutions to adopt specific policies. Educational policies will be so in the official language, with independence of whether aid is given for the learning of other languages. Communication among the public administration, regulations and official bulletins will all use the official language, even though in some cases that official language has not yet been formally established.

Legal regulations have anticipated different forms of officiality for languages. Two are the most characteristic systems, the so-called territorial and personal statutes,<sup>5</sup> with the possibility of a third type existing: where only certain rights are granted to the language and it is not given a full official status.

In systems with territorial statutes, the language used in education and in public administration is established in a permanent way. This way, the linguistic stability in that area is guaranteed. This system is used in the monolingual cantons in Switzerland, for example, and the system was explained by the Federal Tribunal when they stated that linguistic borders should be considered intangible. This is a guarantee for the linguistic families of the integrity of the territory in which they are used and in which their culture is spread. The survival of the four national languages in Switzerland would not be possible without a guarantee of their use inside each of the linguistic frameworks, maintaining the traditional Swiss linguistic composition. The cantons are responsible for the maintenance of the homogeneity of the linguistic regions. This system has helped to maintain the linguistic pluralism in Switzerland in an exemplary way.

The systems of personal statutes allow the citizens to choose the language they use to communicate with the public administration, as well as the language in which they receive their education. In this case, a territorial area is not established as a linguistic border where one language is the protagonist. The system is not based on the need to preserve a territory for a language.

These systems are not pure and regulations can take the form of any one of them, depending in great measure on the characteristics of the languages and the problems that we want to solve through the legal regulation of these lan-

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5. OBIETA CHALBAUD, José A.: *Las lenguas minoritarias y el Derecho*, Editorial Mensajero, 1976.

guages. In some cases, the legal regulation establishes a linguistic status that does not recognize the officiality of these languages, but grants them certain rights. As we will be able to see later, this is the case of *Euskara*, the Basque language, in some areas of Navarre.

We will now analyze the way in which the Spanish and French Constitutions declare the officiality of the languages that are spoken in each respective state.

## **2. THE SPANISH AND FRENCH CONSTITUTIONAL FRAMEWORK ON *EUSKARA***

The legal framework on *Euskara* is conditioned by the regulations that are gathered in the Constitutions regarding each of the respective languages. These constitutions can be considered as the outcome of a period of history. In the case of the Spanish Constitution, one must remember the period of Franco's dictatorship from 1939 to 1975. On the other hand, in France we are faced with one of the most strongly consolidated European democracies of all time. However, it feeds on extremely centralist conceptions in its way of understanding the organization of the Spanish State and in the standardization of the French culture, which imposes itself on the rest of the cultures, such as the Breton or Basque. Only Alsace has maintained a characteristic status.

### **2.1. The Spanish Framework: Background**

The history of Spanish constitutionalism is the history of a democracy which did not manage to settle properly until the end of last century. One of the problems for the development of the country's constitutionalism has been precisely the autonomy of the other nations and communities that exist in Spain and, linked to the country, the issues connected to its culture and in particular, its languages. The idea of Spain in the Constitutions has always been centralist and unaware of other cultures different to the Castilian or Spanish. Without pausing at the Constitutional project of the First Republic of Spain, it was the Second Republic that saw the creation of a State that accepted the existence of Regions. The Francoist uprising and subsequent establishment of the dictatorship eliminated any possible recognition of any language other than Castilian. *Euskara* was forbidden and education was imparted solely in Spanish. The initial objective of Francoism was to eliminate cultural differences by imposing the Spanish culture and language. All this was carried out with a much more ambitious objective in mind: to eliminate the existence of the political and cultural characteristics of the Basque country. In spite of all this, it was practically impossible to force a people to disappear<sup>6</sup> and after Franco's dictatorship, the new and current Constitution was passed in 1978. The legal regulation of the officiality of the languages will be studied below.

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6. MICHELENA, Luis: "El largo y difícil camino del euskara" in VVAA, *El libro blanco del euskara*, Euskaltzaindia, Bilbao, 1977, p. 23, note 28.

### **2.1.1. Article 3 of the 1978 Spanish Constitution**

It is appropriate here to literally transcribe the contents of the constitutional regulation in relation to the officiality of languages. The article of the 1978 Spanish Constitution reads as follows:

1. Castilian Spanish is the official language of the Spanish State. All Spanish people have the duty to know it and the right to use it
2. The other Spanish languages will also be official in their respective Autonomous Communities in accordance with the regions' statute of autonomy.
3. The wealth of the different language variations of Spain is a cultural heritage which shall be the object of special respect and protection.

The Basque representatives were against this regulation. The fundamental reason was in the imposition of the obligation to know Castilian. They believed that it was not necessary to establish this obligation and that it could go against the legal status that would regulate languages different to Castilian in the future. The following is an analysis of each of the sections of the article.

#### **2.1.1.1. Castilian as official language**

The officiality of Castilian is established in the first section of the regulation, declaring the Spanish language as the State's official language. References to Castilian as the state's official language, and not denominating it as Spanish, are a question of style. The intention is to avoid repeating the word Spanish more than once. References to the Spanish state should not be interpreted exclusively as references to the central state institutions, but also to all the public administration or bodies, including the Autonomous Communities, local corporations and all the other public powers that may exist throughout the territories of Spain.<sup>7</sup> This consideration cannot be viewed as unnecessary. One must bear in mind that in other systems, such as the Swiss, the legal status on linguistics is established by each Canton. The federation is only competent in the regulation of the legal status in federal bodies, particularly the Parliament and the Government, as well as the other federal legal bodies. However, we must also bear in mind that that if the term "state" to which this regulation refers was understood as applicable only to the central state bodies, Castilian would not be the official language in the Autonomous Communities nor in the regional corporations.

The most debatable term in this regulation is the one that establishes the duty to know Castilian. The obligation has an important symbolic content, although it is necessary to point out that this content does not add anything substantial to the declaration of officiality itself.<sup>8</sup>

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7. Sentence of the Constitutional Court 82/1986, FJ 2.

8. COBREROS MENDAZONA, Edorta: *El régimen jurídico de la oficialidad del euskara*, Instituto Vasco de Administración Pública [Basque Public Administration Institute] (IVAP), Oñate, 1989, p. 37.

The officiality of a language means its recognition by the public authorities as a normal means of communication within these public authorities and between the different public administrations, independently of its reality or importance as a social phenomenon, as well as in its relationship with individuals. The use of the language is totally valid and has legal effect. In this case, Castilian is the standard means of communication within the public administration and of the citizens before these authorities.<sup>9</sup> The duty to know Castilian means “the presumption that all the Spanish people know it”.<sup>10</sup> This legal presumption on the knowledge of Castilian does not imply that if a person states that they are unfamiliar with the language, even if they are Spanish nationals, the public authorities are not obliged to provide aid in some cases, in order to help them understand. This would be the case in a legal process where the defendant has no knowledge of Castilian, or does not understand it properly. To guarantee their right to an effective legal tutelage, they would have to be provided with aid in the form of a translator or interpreter.

#### **2.1.1.2. Other languages different to Castilian**

The second section of the regulation establishes that the other languages are also official, provided that they are also stipulated as official in their respective Statutes of Autonomy. The Statutes of Autonomy are entitled to establish a co-officiality, with a legal status that is similar for both Castilian and the other official languages. However, it is also possible for the legal status for those other languages, different to Castilian, to vary from the legal status given to Castilian. The officiality of Castilian, therefore, does not prevent other languages from being co-official, which at least tendentially may lead to the idea of equality in the legal status of the different languages. When the Autonomous Community regulates the officiality of the relevant Statutes, they do so regarding all the public authorities that act in the Autonomous Community. This would mean that the possible legal status established for the other languages not only applies to the organisms of the Autonomous Community, but also to all the public administrations and bodies that act inside the Community, and included in these public administrations, the Administration of the Armed Forces.<sup>11</sup>

#### **2.1.1.3. Languages as cultural heritage**

The third section of the regulation establishes that other languages form a part of the cultural heritage and must be subject to special respect and protection. An attempt was made to introduce a similar regulation in the French Constitution, but this possibility was rejected by the Senate of the Republic. Despite the possibility of the contents of this last section not seeming to add anything to the declaration of officiality of languages other than Castilian, two important

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9. Sentence of the Constitutional Court 82/1986, FJ 2.

10. Sentence of the Constitutional Court 82/1986, FJ 3.

11. Sentence of the Constitutional Court 123/1988, FJ 5.



questions must be emphasized. The first involves political issues. Unlike previous political periods when minority languages were prohibited, in this case a change in the political direction is established with the recognition of these languages as a part of the cultural heritage, stating that they must be respected and protected. In a State which is traditionally characterized by its centralism, and after a long period of dictatorship, this regulation is of enormous importance. From a legal point of view, the possibility of the authorities protecting languages other than Castilian distinguished that support or promotion of the declaration of officiality. A language may be declared official, but due to its diglossic situation, – i.e. of a conditioned use, subordinated to the use of the official language of the Spanish state – it may be necessary to carry out a support policy in order to promote its use and to make the theoretical officiality genuinely effective and authentic. On a constitutional level there would be no legal objections about a policy of this kind, as the text of the Constitution itself gathers the possibility of the different languages being subjected to special respect and protection.<sup>12</sup>

### **2.1.2. Other rules**

Other regulations included in the Constitution also make reference to languages. In the first place, the Preamble states that the establishment of justice and liberty means the protection of human rights, of culture and traditions, languages and institutions. It is true that the preambles of regulations do not have a legal value equal to their rulings, but they are valid for the interpretation of the rulings that they head. Besides this, they have a political significance or content.

Secondly, on the subject of freedom of speech and communication, it points out that the mass media are under the control of the Spanish State, respecting the pluralism of society and of the various languages of Spain.<sup>13</sup> By establishing a status of competency, the Constitution specifically recognizes the power of the self-governing Communities to assume full competences over the teaching of the Autonomous Community's language.<sup>14</sup> Although we will be dealing with this issue below, the teaching of the language and the legal status on standard education imparted in a language other than Castilian must be differentiated.

Finally, the constitution establishes the publication of its official text in the other languages of Spain.<sup>15</sup>

## **2.2. The French Constitutional Law**

The French legal system is characterized by the contemplation of one single nation, the French nation, ignoring the existence of all the other nations that

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12. COBREROS, cit., p. 48 and 49.

13. Article 20.3 Spanish Constitution.

14. Article 148.1.17 Spanish Constitution.

15. Final Provision-Spanish Constitution.

coexist since ancient times, such as the Basques or the Bretons, to give but two examples. The idea of one single French nation and the interpretation of the principle of equality seen as the officiality of one single language, French, create the foundation on which the French Constitutional Law is formed. Therefore, there is no margin for the recognition of a status of co-officiality for other different languages, in spite of the fact that French was not recognized as the official language of France, with a constitutional status, until 1993.

This legal situation was affected when France signed the European Charter of Minority and Regional Languages, a charter originating in and elaborated by the Council of Europe.<sup>16</sup> As the French Parliament proceeded to ratify the mentioned Charter, the Constitutional Council proclaimed before the passing of the act in a decision dated 15 June, 1999, that:

The European Charter of Minority and Regional Languages confers specific rights on “groups” of speakers of regional or minority languages within “territories” in which these languages are used, and undermines the constitutional principles of the indivisibility of the Republic, equality before the law and the unity of the French people.<sup>17</sup>

Beyond the criticism that can be given to a statement of this kind, this simply serves to confirm the impossibility that exists in the French legal system to recognize a status of co-officiality for the other languages that exist in France. This fact produces many paradoxical situations in international relationships, and even in the European Union itself. Take the situation of Turkey. For example, when the European Union communicated with Turkey and demanded that they respect human rights, among which are included the cultural rights of people such as the Kurdish, the reply from Turkey was immediate: How can you demand that we respect the language of the Kurdish when France is based on the principle of holding French as the only official language?

The possibility of reforming the French Constitution has recently been suggested, through the introduction of a section that marks the existence of other languages in the French state other than French, languages that should be considered as national and cultural heritage. This reform does not pretend to establish the existence of other, co-official languages, but simply to grant them value as part of a cultural patrimony. However, the French Senate has rejected this constitutional reform, with the aid of the French Academy, who declared themselves radically against the possibility. The French Senate vetoes regional languages when it rejects the amendment to modify the Constitution through which “the

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16. SANMARTI ROSET, Josep M.: *Las políticas lingüísticas y las lenguas minoritarias en el proceso de construcción de Europa*, Instituto Vasco de Administración Pública (IVAP), Oñate, 1996.

17. « La Charte européenne des langues régionales ou minoritaires, en ce qu'elle confère des droits spécifiques à des <<groupes>> de locuteurs de langues régionales ou minoritaires, à l'intérieur de <<territoires>> dans lesquels ces langues sont pratiquées, porte atteinte aux principes constitutionnels d'indivisibilité de la République, d'égalité devant la loi et d'unicité du peuple français » (Decision of the French Constitutional Council, 15 June, 1999). URRUTIA LIBARONA, cit., p. 277 to 280.

regional languages belong to the heritage of the nation”; in a 216 votes against and 103 in favor decision. The Senate subscribes the declaration made by the French Academy<sup>18</sup> which, on Monday the 16th of June, 2008, had asked for the amendment to be withdrawn. The recognition of these languages “threatens the national identity and the unity of the Republic”. Against the acceptance of regional languages were the Senators of the Government majority, the entire communist block and the radicals. The Socialists and Centralists were divided and the Greens voted in favor of the diversity; their argument was that French has been the official language since 1539, with Francisco I. Finally, on July 21, 2008 a modification to the French Constitution was approved by one vote referring to the regional languages of the state as state patrimony.<sup>19</sup>

The legal status of Basque in France could not be more negative. This does not prevent individual initiatives from being produced, such as parent and teacher associations developing an educational system that teaches the Basque language and also teaches *in* Basque. These are the *ikastolas*, educational centers that function in Basque set up by an association called *Seaska*, who carry out an important activity albeit faced with great difficulties and problems.

### 3. THE STATUTES OF AUTONOMY IN THE SPANISH STATE

#### 3.1. The Statute of Autonomy of the Basque Autonomous Community

According to the contents of the Spanish Constitution, the legal status of the officiality of Euskara is established by the Statute of Autonomy. The Statute of Autonomy is a regulation that was passed by a special process in the Basque institutions and by a qualified majority in the Congress of Deputies. That is to say,

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18. The declaration of the French Academy reads as follows: “*Depuis plus de cinq siècles, la langue française a forgé la France. Par un juste retour, notre Constitution a, dans son article 2, reconnu cette évidence : « La langue de la République est le français ».*

*Or, le 22 mai dernier, les députés ont voté un texte dont les conséquences portent atteinte à l'identité nationale. Ils ont souhaité que soit ajoutée dans la Constitution, à l'article 1er, dont la première phrase commence par les mots : « La France est une République indivisible, laïque, démocratique et sociale », une phrase terminale : « Les langues régionales appartiennent à son patrimoine ».*

*Les langues régionales appartiennent à notre patrimoine culturel et social. Qui en doute ? Elles expriment des réalités et des sensibilités qui participent à la richesse de notre Nation. Mais pourquoi cette apparition soudaine dans la Constitution ?*

*Le droit ne décrit pas, il engage. Surtout lorsqu'il s'agit du droit des droits, la Constitution.*

*Au surplus, il nous paraît que placer les langues régionales de France avant la langue de la République est un défi à la simple logique, un déni de la République, une confusion du principe constitutif de la Nation et de l'objet d'une politique.*

*Les conséquences du texte voté par l'Assemblée sont graves. Elles mettent en cause, notamment, l'accès égal de tous à l'Administration et à la Justice. L'Académie française, qui a reçu le mandat de veiller à la langue française dans son usage et son rayonnement, en appelle à la Représentation nationale. Elle demande le retrait de ce texte dont les excellentes intentions peuvent et doivent s'exprimer ailleurs, mais qui n'a pas sa place dans la Constitution.”*

19. Art. 75-1. *Les langues régionales appartiennent au patrimoine de la France.*

the Statute of Autonomy is a State law, although it is a law with a particular legal status. It is in this law that the legal status of a language is established and whose regulating precept is transcribed below:

1. «Euskera», the language of the Basque People, shall, like Spanish, have the status of an official language in Euskadi. All its inhabitants have the right to know and use both languages.

2. The common institutions of the Autonomous Community, taking into account the socio-linguistic diversity of the Basque Country, shall guarantee the use of both languages, controlling their official status, and shall effect and regulate whatever measures and means are necessary to ensure knowledge of them.

3. No one may suffer discrimination for reasons of language.

4. The Royal Academy of the Basque Language is the official advisory institution in matters regarding «Euskera».

5. Given that «Euskera» is the heritage of other Basque territories and communities, the Autonomous Community of the Basque Country may request the Spanish Government, in addition to whatever ties and correspondence are maintained with academic and cultural institutions, to conclude and, where necessary, to submit to the Spanish State Parliament for authorization, those treaties or agreements that will make it possible to establish cultural relations with the States where such territories lie and communities reside, with a view to safeguarding and promoting «Euskera».<sup>20</sup>

The following is an analysis of each of the sections of the regulation.

### **3.1.1. Basque as an official language; the language of the Basque people**

The first article establishes the officiality of Euskara, together with Castilian. Both languages are therefore official in the Autonomous Community. Together with the status of officiality, Euskara is established as the Basque Country's own language, in this way making reference to the origins of the language, which emerged and was formed precisely in the Basque Country even though the status of the Basque Country's own language has no special legal value. Euskara is an official language in the Basque Autonomous Community, Euskadi, which means that it has an official status in all the public administration departments located in the Basque Autonomous Community<sup>21</sup>, although it is not granted any preference as far as language rights are concerned.

In accordance with all entities of territorial nature, the status of officiality for the Basque language only affects the territory of the Autonomous Community. This would imply that documents written in Euskara may have a limited effect beyond the territory of the Autonomous Community, and may require translating. The exception would be based on the supposition that the said document, written in Basque, were to have legal effectiveness in a territory where Euskara was also an official language. This would be so in the case of a document being presented before the authorities of Navarre.

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20. Article 6, Statute of Autonomy of the Basque Country, Organic Law 3/1979, 18 December.

21. See section 2.1.1.1.

The consequence of the officiality of Euskara is that all the inhabitants of the Basque Country have the right to know and use both Euskara and Castilian. The concept of inhabitant must be interpreted in its most ample sense: simply a person. What cannot exist as a condition for this recognition of the right to know and use both languages is the demand that the person be registered in a municipality inside the Basque Country. This right to know and use the language bears an enormous importance. On the one hand, it obliges the educational system to guarantee that the people who study in the Basque Country will end their compulsory education with an adequate knowledge of Euskara. The right to use it, on the other hand, means that the people should be able to communicate with the Basque public administration both in Basque and in Castilian, and that department should reply in that same chosen language. This created certain obligations for the Basque public authorities, who must adapt the linguistic characteristics of their workers to the subsequent necessities in order for the citizens to exercise their rights. If the right to use the Basque language exists before the public authorities, the public authorities are obliged to have workers that can provide their services in that language.

### **3.1.2. Legal regulation of the status of officiality of Euskara**

The officiality established in the Statute of Autonomy requires a subsequent law to rule this official status. The Basque Autonomous Community contains various public institutions, some empowered to act in all the territory, i.e. the Parliament and the Basque Government, and others such as the General Assemblies of the institutions of the Historic Territories, which each legislate in their own regions of Bizkaia, Gipuzkoa and Araba. Different types of local entities exist. The powers to regulate the legal framework of Euskara are incumbent to the common institutions. It is the Basque Government who has enacted the law that regulates the officiality of Euskara. This means that the Historic Territories are not capacitated to regulate a specific legal framework, which could be theoretically defended based on the existence of different dialects of the Basque language. However, this is not the case, as the Statute clearly states that the capacity to regulate the use of the Basque language corresponds to the Basque Parliament.

What stands out about this regulation is the reference to the legal framework of the official status given to Euskara, which must be regulated “taking into account the socio-linguistic diversity of the Basque Country”. With this ruling, the intention is to emphasize the fact that in certain areas, Euskara is used by an extremely high percentage of people, whereas in other areas it has practically disappeared. Logically, and in spite of the officiality being granted in all three of the territories of the Autonomous Community of the Basque Country, the policies to carry it out will vary in each of the different territories. On the one hand, in areas with a smaller presence of the language, it would be necessary to promote its use and knowledge giving it a greater public use. On the other hand, in areas where Euskara is scarcely spoken, the necessity for Basque-speaking administration workers is lower. These two aspects, as well as others that are not mentioned, must be taken into consideration by the legislators of the officiality when enacting the corresponding laws.

### 3.1.3. Non-discrimination based on language usage

Non-discrimination based on language usage, together with other causes, is a permanent concern in all the legal systems. Discrimination constitutes a legal category of great complexity and difficulty to define, with a great number and variety of nuances. We will take the existing definition solely as a starting point, without any intention of placing doubt on it. Discrimination does not only occur when different situations are regulated in an equal way, that is to say, discrimination through non-differentiation. It is also produced when different situations are regulated in different ways, when the differentiation is not in line with the general principles of the legal system and, in particular, when that differentiation is not reasonable and adequate to the desired legal intention, or when its application is out of proportion. Discrimination may also occur in the application of the law. This means that the law is not applied in the same way, respecting the contents themselves, but in a way that produces discrimination during the application process.

This prohibition to discriminate is of enormous importance in the area of languages, as it has been an argument frequently used by the courts of law to question the existence of legal frameworks for different languages in cases of co-officiality. Discrimination may occur against the speaker of any language, who contacts the public authorities, or other individuals, and they are not answered in the same language. As has already been pointed out, if people have the right to use Euskara, the public administration must provide workers who are able to adequately attend in Euskara. A consequence of this is the establishment of the requirement to know the language in order to occupy certain employment positions, as well as the recognition of this knowledge as a merit for other working posts. The courts of law originally marked that the requirement to know the Basque language, or rewarding this knowledge skill, was discriminating in itself. This initial interpretation by the High Courts of Justice of the Spanish State evidences the lack of sensitivity shown by those Courts towards minority languages, as well as a clear disregard for current legal rules. The requirement to know an official language in order to take up a public post or activity cannot always be considered discriminatory. In some cases it may be considered discriminatory, for example if the regulation were to establish that anyone who wished to apply for a post in the government or public administration should know Euskara as a requisite to be able to gain admittance to those posts. A general ruling in that sense would have to be understood as discriminatory. Having said this, the requirement to know the Basque language in order to occupy certain posts in the administration can in no way be considered discriminatory. On the contrary, it is something that is completely necessary. If no public employees know Euskara, it will not be possible for the public administration departments to attend to people that use Euskara. The case law in the tribunals has begun to recognize the lawfulness of the demand to know Euskara, or of the consideration it should be given, as a merit for occupying public posts. However, on some occasions the discriminatory ideas against the officiality of the Basque language again appear.

#### **3.1.4. The Basque Language Academy**

The Statute of Autonomy establishes which institution will be the consultative institution in everything connected to Euskara, as a way of avoiding possible questions that may arise as a consequence of the existence of various language organizations or institutions. The Basque Language Academy, *Euskaltzaindia*, was founded on the 5<sup>th</sup> of September, 1918. Its path has followed the political changes that have taken place in the Spanish State since 1918 to the current moment, and it was finally awarded official recognition in the Statute of Autonomy.

#### **3.1.5. International treaties connected to languages**

The Autonomous Community of the Basque Country has no authority to sign international treaties, not even on issues of their own competences. This cannot even be contemplated in the case of counting with the agreement of the Spanish central government, such as is possible in some federal states. There would obviously be different legal techniques to enable the possibility of the Autonomous Community of the Basque Country carrying out international treaties aimed at promoting and developing the Basque language. So far, the activities carried out in this area have been done so with the support of the European Convention on Transfrontier Cooperation, held during the Council of Europe in 1980, and the Treaty of Bayonne, signed on the 10<sup>th</sup> of March, 1997 by France and Spain. Applying these forecasting rules, some activities have been carried out on issues to promote and defend the language, such as the creation of the *Institut Culturel Basque / Euskal Kultur Erakundea*. Nonetheless, in general terms the result of the transborder cooperation has been very limited. One of the main obstacles in the collaboration is precisely that the Basque territories located in the French state have no legal status; therefore they are unable to draw up conventions or agreements with the Basque authorities on the other side of the border in the name of those territories. Added to this, it must be pointed out that the French authorities are still highly reluctant to carry out common policies in cultural issues, and more specifically on matters to do with the development of the Basque language.<sup>22</sup>

#### **3.1.6. Legal regulation of the officiality of Euskara: Basic Law 10/1982 for the Standardization of the Use of Euskara**

Basic Law 10/1982 for the Standardization of the Use of Euskara was approved by all of the political parties represented in the Basque Parliament. This did not prevent the central government of the state contesting the law before the Constitutional Court, which we must see as a lack of understanding by the state's public authorities as to the meaning of the co-officiality of a language. The Con-

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22. See DE CASTRO RUANO, José Luis and UGALDE ZUBIRI, Alexander: *Anuario sobre la Acción Exterior de Euskadi 2005*, Instituto Vasco de Administración Pública (IVAP), Oñate, 2006, p. 92 and on Basque acts in general outside the borders, see, by the same authors *La acción exterior del País Vasco (1980-2003)*, IVAP, Oñate, 2004.

stitutional Court ruled some of the less significant aspects as unconstitutional, but respected the text as a whole. The law regulates the co-officiality of languages, gathers the rights of the citizens and the duties of the public authorities on the matter. It establishes that the officiality is valid in all the public administration departments located in the territory of the Autonomous Community of the Basque Country, declaring the use of Euskara as having full legal effect before the public authorities. At the same time, Euskara is introduced into the educational system, regulating the teaching *of* Basque and *in* Basque and the citizens' right to communicate and receive information in Basque is also recognized. The importance of using Euskara socially is emphasized and an independent administrative organization is regulated: the Basque Advisory Board.

### **3.2. The Statute of Autonomy of the Foral Community of Navarre**

The Statute of Autonomy of the Foral Community of Navarre is denominated as the "Organic Law for the Reintegration and Improvement of the Charter Status of Navarre". The legal regulation of this rule on the officiality of the language is the most restrictive of all the regulations on co-officiality of languages other than Castilian that has been brought about in the different Statutes of Autonomy. In order to see the difference between this regulation and the regulation included in the Statute of Autonomy of the Basque Country, it is best to reproduce its content literally, which reads as follows:

1. Castilian is the official language of Navarre.
2. Basque will also hold official status in the Basque-speaking regions of Navarre.

A Charter Law will determine these regions, regulate the official use of Euskara and, abiding by the framework of the state's general legislation will also oversee teaching in Basque.<sup>23</sup>

The following is an analysis of the principle characteristics of the regulation.

#### **3.2.1. Principle characteristics of the regulation**

As opposed to other regulating laws of language co-officiality, this regulation makes no reference to Euskara as being the language of the people of Navarre. Added to this deficit, of great political importance but no legal influence, is an equally important element: the absence of substantive contents in the regulation. The Statute does not establish the legal status of Euskara, determining the rights and duties of the people that arise from the officiality of that language; it simply refers to what is dictated by a future law that will establish the reach of the official status of the language. In accordance with the established regulation, the status of official language held by Euskara is only guaranteed in Basque-speaking areas of Navarre. In areas where Euskara is not spoken, the language

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23. Article 9 of the Organic Law for the Reintegration and Improvement of the Charter Law of Navarre (LORAFNA).



does not need to be established as official. In the opposite sense, it can also be said that this regulation would not prevent Euskara from being declared official in all the territory of Navarre. Equally, it must also be said that in virtue of this regulation, no person can demand their right to speak Euskara when communicating with the public administration located in Navarre. The regulation falls short and is much poorer than the one brought forward by the Statute of Autonomy of the Autonomous Community of the Basque Country.

Due to these reasons, the legal analysis of Euskara in Navarre requires a reference to the law dictated in the development of this provision of the Statute of Autonomy. This provision is developed by the Charter Law on Basque 18/1986, of 15th December.

### **3.2.2. The Charter Law on Basque**

The study of the Charter Law on Basque considers two determined aspects. The first is the description of its contents, which suggest a division of the territory of Navarre into regions, establishing the linguistic rights of their inhabitants according to these regions or territorial areas. Secondly, we will see how the application of the said Charter Law has evolved.

#### **3.2.2.1. Description of the contents of the Charter Law on Basque**

The established language system defines three regions: Basque-speaking, mixed, and non Basque-speaking. The law establishes the municipalities that make up the Basque-speaking and mixed regions, leaving all the rest of the territory as the non-Basque speaking region. The rights of the people in relation to the Basque language and the obligations of the administration departments are established in each of these regions. A full recognition of the rights of the Basque people can only be said to exist in the Basque-speaking region. In the mixed region, some of the rights are gathered, establishing a gradual incorporation of Basque in education. In non-university education, Euskara will be imparted to students that freely opt for it, in a way that at the end of their education they will have acquired an adequate level of knowledge in the language. That is to say, students that do not request to learn the language have no obligation to do so, and if they do request it, the educational system is only obliged to provide “an adequate level of knowledge”. In the non-Basque speaking region, linguistic rights are at a bare minimum. Given the importance of Iruña-Pamplona, the capital of Navarre, it would have been interesting to provide a special status to the area, and this is something that the Charter Law does not do.<sup>24</sup>

As a whole, two critical aspects of this law can be established. The first would be the inadequacy of the region system and the second, the scarce specificity of the linguistic rights in areas other than the Basque speaking region. In the non-

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24. COBREROS, cit., p. 150.

Basque speaking or mixed regions, the legal status on the use of Euskara and its teachings is very limited and does not clearly establish citizen's rights on the issue.

### **3.2.2.2. Normative development of the legal status of Basque in Navarre**

The application of the Charter Law on Basque demanded regulations to be drawn up by the Foral administration, in order to apply it correctly. In spite of the fact that the Law was passed in 1986, it wasn't until 1994 that the first regulations were dictated in development of the Charter Law. It can be said that the Foral administration of Navarre have shown little interest in the promotion of the Basque language, as well as in guaranteeing the linguistic rights of the Basque speakers. The first regulations adopted in 1994 can be understood as complying by the stipulations of the Law, although they were immediately substituted by a new regulation that interpreted the Charter Law in an extremely restrictive way, evidencing a policy totally against the development and promotion of the Basque language. This was basically due to a change in the politics of the Government of Navarre, presided over by Miguel Sanz Sesma, who is the fundamental protagonist of this policy. The consequence of this change of direction was the resignation of some of the members of the administrative bodies in the Government of Navarre, competent in the area of linguistic politics. The regulations dictated by the Government of Navarre were appealed against before the Courts of Law, where some were declared null due to procedural defects in their elaboration, and later due to the contents themselves. The fact that the youth of the territory, and social demand in general, expressed themselves favorably towards Euskara, particularly in the mixed and non-Basque speaking regions, and against the official policy, might have been one of the reasons that brought the proposal of a more restrictive and limited policy towards the support of the Basque language<sup>25</sup>. There are no more existing legal arguments to justify this restrictive policy. Furthermore, it may even be considered a non-compliance of the Law on Basque itself. Nevertheless, more than one political representative has expressed that giving a legal value to the Basque language may be discriminatory, a point of view in clear contradiction to the jurisprudence of the Law Courts and which has also received an answer in reality itself, as seldom have the public authorities of Navarre demanded knowledge of the Basque language to be able to occupy a post in the Civil Service of Navarre<sup>26</sup>. The development of this policy will lead to a very limited understanding of the rights of Basque-speakers in the mixed and non-Basque speaking regions, and the legal status that is being developed can be described as producing great instability in linguistic rights in general. This has been the opinion of the Council of Europe itself. The European Chart on Regional and Minority Languages, ratified by Spain and fully valid in the territory of

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25. MONREAL ZIA, Gregorio: "La oficiabilidad del euskera en Navarre" in COBREROS (coord.), cit., p. 115-163; ARZOZ SANTISTEBAN, Xabier, "La convivencia lingüística en Navarre", *Revista Vasca de Administración Pública*, 2004, 69, p. 61 and 62. p. 172 onwards.

26. This is the case with the General Director of Universities and Language Policies in the Government of Navarre, Pedro Pegenaute Garde, who proposes the stale criteria of discrimination; see ARZOZ, cit., p. 63, note 68.

Navarre, recognizes rights that convert the regulation of Navarre into a regulation that is clearly against this international legal compromise.

#### **4. FINAL CONSIDERATION**

The legal status of the officiality of Euskara will have different constitutional approaches in France and Spain. For France, there is only one official language, French, and the possibility of declaring other languages official does not exist. Furthermore, the other languages that exist in France cannot even be declared cultural heritage. This French policy expresses a French ethnicism supported by a sole culture that ignores all the rest. This French ethnicism has deep cultural and legal roots, as is evidenced in the rulings and agreements adopted by the French Constitutional Council, the French Academy, and the Senate of France. It must be said that their actions go against the conventions for the protection of minorities and minority languages held in the framework of the Council of Europe.

The 1978 Spanish Constitution included the possibility of declaring languages other than Castilian as official, which was to be followed up by the Statutes of Autonomy approved in each of the Autonomous Communities. In the Basque territory located in the Spanish State, two Autonomous Communities were constituted: The Autonomous Community of Euskadi, or of the Basque Country, and the Foral Community of Navarre. The legal system of languages in each of the communities is different.

The Statute of Autonomy of the Autonomous Community of the Basque Country establishes the official status of the Basque language. The Basque-speakers have the right to communicate with the public administration in Euskara. Education is imparted in Euskara and also contemplates imparting the Basque language when pupils are receiving education in Castilian. The greatest deficit in the guarantee of linguistic rights is produced in the judicial area, where it is something exceptional to be able to carry out a legal process in Euskara. Despite the official status of Euskara, in reality Castilian takes priority, producing a diglossic situation favorable to Castilian. From a political perspective, it must be pointed out that the Spanish political parties use Euskara as a projectile in political debates. The Socialist Party, for example, maintains completely different stands on the issue of official languages in the Basque Country and Catalonia.

In the Foral Community of Navarre, the legal status of Euskara is recognized with great restrictions. On the one hand, due to the division into regions, as the status divides the territory of Navarre into three regions without giving a special status to the capital, resulting in a legal status that is not adequate for the development of the language. With the exception of the Basque speaking region, the legal status of Euskara does not include the linguistic rights of the citizens, particularly the right to an education imparted in Euskara and the right to communicate in the language with the public administration. On the other hand, the public authorities in Navarre have developed a policy which clearly limits the use of

Euskara, resulting in a lack of support and a series of difficulties placed on the development of a Basque educational system, as well as on the establishment of television and radio broadcasting in the Basque language.

The policies developed by the French State and Navarre are clearly against current agreements of the Council of Europe relative to minorities and the protection of minority languages. This legal situation has created a process that is making the Basque language disappear in the French State and producing difficulties in its use and recovery in Navarre. In addition to this, a diglossic situation is being created among the languages in Navarre, much more emphatic and worrying than in the Autonomous Community of the Basque Country. The future of the Basque language will always require a great deal of effort by the public authorities in its defense, which currently only occurs in the Autonomous Community of the Basque Country. The diglossic situation that exists and the lack of support by the public authorities make up the two limitations with which the development of the Basque Country is faced.

# History of the “Normalization” of Basque in the Public Administration Sphere

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*Saiakera honek normalizazio kontzeptuaren argibide bat eskaintzen du, eta Hizkuntz Normalizazioa eta Normalizazio Politikoa bereizten ditu. Gainera, Euskal Autonomia Erkidegoan egungo Espainiako Konstituzioaren testuinguruan egín diren hizkuntza-plangintzak deskribatzen ditu. Era berean, Euskal Foru Tradizioaren eta Foru Kulturaren historia politikoaren azalpen soziolinguistikoa bat ematen du, lagungarri baitzaigu Normalizazio Politikoko gaiet buruzko egungo eztabaida ulertzeko.*

*Giltza-Hitzak: Hizkuntza-normalizazioa. Normalizazio politikoa. Hizkuntza-plangintza. Hizkuntza-plangintzako eredu funtzionala. Foruak. Foru-legea. Foru-kultura. Hedadura funtzionala.*

*Esta ponencia intenta aclarar el concepto de normalización y distingue entre Normalización Lingüística y Normalización Política. Describe la historia de los esfuerzos por implantar planes lingüísticos en la Comunidad Autónoma del País Vasco en el contexto de la Constitución española actual. Ofrece una perspectiva sociolingüística de la cultura y tradición forales vascas con el objeto de ayudar a entender el diálogo actual en materia de Normalización Política.*

*Palabras Clave: Normalización Lingüística. Normalización Política. Planificación lingüística. Modelo funcional de la planificación lingüística. Fueros. Derecho foral. Cultura foral. Difusión funcional.*

*Cet essai propose un éclaircissement du concept de normalisation et distingue entre normalisation linguistique et normalisation politique. Il dresse un historique des efforts de planification linguistique dans la Communauté Autonome du Pays Basque, dans le contexte de la Constitution espagnole en vigueur. Il propose une description sociolinguistique de l'histoire politique de la tradition et de la culture forales basques, description visant à enrichir la compréhension du dialogue actuel portant sur la question de la normalisation politique.*

*Mots-Clé : Normalisation linguistique. Normalisation politique. Planification linguistique. Modèle fonctionnel de planification linguistique. Fors. Loi forale. Culture forale. Diffusion fonctionnelle.*

This paper has been written mainly for the non-specialist audience. The points raised here may also be of interest to the international and Basque audiences. The methodology used is mostly interpretive macro ethnographic and archival.

### **CLARIFICATION OF THE CONCEPT OF NORMALIZATION: TWO MEANINGS, LINGUISTIC AND POLITICAL**

The concept of Normalization has been used in recent times to refer to the recovery of the status of the Basque language from the years of language loss during the Franco era, and it has also been used in the political discourse to express the desire for increased autonomy in the Autonomous Community of the Basque Country, statehood, and independence. There are two meanings of Normalization, one *linguistic*, one *political*. However, the concept has generated considerable confusion in both contexts.

Normalization is a relatively new concept, and it barely appears in the Anglo-Saxon linguistic literature, where the concept of Standardization is most frequently used instead. But they may not be two interchangeable concepts for the reasons that will be described below. According to the data available -from written records and scholarly citations-, the concept of Normalization probably started in the Catalan region and it was used in informal contexts and discussions, during the last years of the Franco regime, on what was to become the future of the regional languages. A change in the status of these languages was imminent. Everyone in the minority language regions, particularly Catalonia and the Basque region, anticipated a change of the status of their regional languages, referred to as the process of language *recovery* (*recuperación del Euskara*), and also anticipated the possibility of planning the recovery of these languages some of which (Basque) had even been proscribed during Franco’s regime.

The discussion became a bit more circumscribed among sociologists and sociolinguists of the Autonomous communities with no apparent experience in empirical work on language planning, but who had read some of the technical literature that had appeared since the mid 1960’s. In these circles, Normalization was perceived as the alternative to language loss, which had been happening to all minority languages in Spain during the Franco dictatorship. This use of the word “normalization” spread rapidly in what today are some of the Autonomous Communities.

Ninyoles writes (1971) a book *Idioma i Prejudici* in which he devotes a chapter to Linguistic Normalization. He says that “Normalization requires *something besides language planning*” (p. 93, my emphasis) though he does not specify -at that point- what it may be, nor does he describe what language planning consists of either, he indicates that “normalization is not a term that can be used in a purely linguistic context” (p. 94). He characterizes normalization as a process consisting of *two* different tasks: “on the *one* hand it means to norm, regulate, codify, standardize a language in order to establish a supradialectal variety; on

the *other* hand it also means to place, or restore a culture to its 'normal' level, to place it at a level of equality among other cultures, at the same level". He, citing Ferguson (1968), indicates that the first task –standardization- is a "requirement of modernization" and it is defined as the process of a language variety for the entire linguistic community as a supradialectal norm" (p. 93-94). In the Basque Autonomous Community (Bizkaia, Guipuzkoa, and Araba) the Euskara Batua, or unified Basque, has been playing this role. It should be noted, though, that tensions still exist to this day in many contexts between the Batua and the Vizcaino variety. Many speakers of Vizcaino feel left out in many decisions pertaining to the unification and modernization of Basque -according to materials collected through ethnographic interviews I have conducted with Vizcaino informants. Nynoles comments that the "acceptance of a supraregional variety is not conceivable without a previous consciousness of community" (p. 95). He adds that "linguistic normalization constitutes a phenomenon of historical proportions" (p. 99).

The *second* task does not consist in formulating "linguistic norms, establish a grammar, a phonetic system and a lexicon but this sense of normalization consists in placing a culture at a 'normal level' and raising it to a level of equality with the other cultures". (p. 100) Ninyoles makes reference to the status of the Valencian language as the object of prejudice and discrimination and advocates to abolish the *diglossic* status that it had and to put an end to the hierarchical difference existing at the time (p. 100) between Valencian and Castellan. This sense of "normalization" moves clearly into the political arena. It prompted the formation of "Antidiglossic societies" in many areas of the current Autonomous Communities including the Basque Autonomous Community ("Txillardegui" -personal communication, 1993).

The term "diglossia" was introduced by Ferguson (1959) to distinguish two language varieties existing in a given linguistic community, one of which is used for formal contexts (a High variety) and another used for informal discourse (Low variety). It was not originally a concept presented as conflictive. But it was a good concept to apply to the conflicting situation existing in many communities in Spain during Franco. It was later expanded to the classification of bilingual communities that may be diglossic or not (Fishman 1976).

Most of the initial efforts to combat diglossia as the culprit of language loss were centered in Barcelona, Valencia, and the Basque region. It was not clear what to do first and what steps to follow. But as soon as appropriate legislation was enacted in each Autonomous Community, the issue became clearer and the focus was placed on the constructive aspect of starting the process of Linguistic Normalization.

Many people had heard about Language Planning as a mechanism to revitalize oppressed languages. There were many case studies of international communities where Language Planning had been applied successfully to standardize and empower a language: Indonesia and Quebec, among others. The situation in Quebec was attractive to many administrators in the Basque Autonomous Com-

munity, though there were significant differences. The situation was particularly serious in the Basque Autonomous Community because of the loss that Basque had suffered during the Franco years. Language was lost in a great number of functions, including Public Administration, because it was not used for that purpose for close to forty years or more. It has been estimated that the number of speakers of Basque who could also write it pretty much knew each other and the total did not supersede 3,500 educated adults (Mikel Zalvide 1989–personal communication). This is an amazing fact considering that the total number of Basque speakers at the time of Franco’s death and the 1975 census estimated that there were 631,301 Basque speakers on the Spanish side and 229,383 on the French side of the Basque Country. The total population of the entire Basque Country was 2,594,000. Many more speakers of Basque could read it than write it, but even the figure of how many could read Basque texts in 1975 is not clear. The number is uncertain as it was almost impossible to keep accurate records.

The “Ikastolas” (*Basque schools*) movement had been going on, clandestinely in some areas, for several years before Franco’s death in defiance of Franco’s policies. The first three Ikastolas started in Gipuzkoa in 1960, two more were added in 1962, and six more in 1963, including two in Bizkaia and one in Araba. The number grew steadily and by 1976 there were 148 Ikastolas at work. Many of these schools operated under adverse official conditions and in some cases in private residences rotating their location to avoid repression. There is no *reliable* statistical information on the exact number of students who were able to read and write in Euskara at the beginning of the Basque schools movement, until much later when record keeping became possible. The figures differ considerably.

In a short time, the discourse on political Normalization took another turn. It went from the initial struggle and confusion of seeing the elimination of its perceived *diglossic* status as a main objective, to a more proactive and clearer stance of empowering the Basque language, the identity, and culture of the Basque Autonomous Community. The first step was to attain legal protection that would bring its political status closer to the *foral* legislation that many of the provinces of the Basque Country had enjoyed, including the Basque Autonomous Community, in years preceding the dictatorship. Many politicians, including several presidents of the dominant Basque Nationalist Party (*Partido Nacionalista Vasco*), defined political normalization as status close to statehood.

In the beginning, the discourse was a bit ambiguous and in listening to politicians like Xabier Arzallus (longtime President of the PNV), political normalization sounded like a utopia. But recently the objectives are clearer and stated straightforwardly. President of the Basque Autonomous Community, Juan José Ibarretxe, has indicated that “today we face two major challenges: One to secure peace in the country which has suffered years of violence perpetrated by ETA; the other to attain political normalization through an agreement with the Spanish State that will allow us to put an end to our long-standing political conflict. A political conflict that goes back to the 19<sup>th</sup> century hemorrhage and must be resolved by political and democratic means, by applying modern principles for formulating the



right to self-determination of peoples as recommended by the United Nations” (Ibarretxe 2008).

In order to understand how the two tasks –linguistic and political- of Normalization differ, we need to understand the nature of the laws that make them possible. Linguistic Normalization was enacted in 1982 by the Basque Parliament that approved the *Normalization Law of the Basque Language* (Law 10/1982). Its scope is clear but no counterpart legislation was enacted concerning political Normalization. The most recent *Political Statute of the Basque Community* approved by the Basque Parliament in 2004 comes close to doing that and to fulfilling the existing legislative gap. However, this law will have to go to a plebiscite. The reason: the linguistic Normalization law hinges upon the Spanish Constitution of 1978 while the Political Statute does not.

Let us review the legislative context first and then discuss linguistic and political normalization as the two distinct processes that they are.

## THE LEGAL CONTEXT OF NORMALIZATION

The *Normalization Law of the Basque Language* (Law 10/1982) was approved by the Basque Parliament with a respectable margin of approval. It provides the framework of activities that can be conducted within the jurisdiction of the Basque Autonomous Community in order to *empower* the use of the Basque language and develop it for use in the institutional life of the Community beyond the informal domains, like the family, informal interpersonal relations and other language functions in which it had been used in the era of the dictatorship where control to prevent its use could not be enforced.

The enactment of the *Normalization Law* marks the beginning of a new era unlike any other that preceded. Under this type of legislation, the Basque language could be planned, standardized, and modernized to be used to satisfy the needs of a modern society. First and foremost it could be used and implemented as the language of public administration. This included, additionally, using Basque for relevant legislative purposes within the Basque Autonomous Community and in the courts. It could be used as the language of education. Although Basque had been used in education for some time in the *Ikastolas*, its use was legitimized as of 1982. The Law also cleared the way to implement a formal process of planning the *corpus* of the Basque language for special purposes in domains where it had not been used, such as in the media, security, and public order and public health. It made it possible to consolidate past effective educational practices and develop educational models to serve the needs of the Community.

The *Normalization Law* rests on the *Statutes of Autonomy* and the *Statutes* rest on the *Spanish Constitution of 1978*. The *Spanish Constitution of 1978* states in its Article three the following:

1. Castellan is the official language of the State. All Spaniards have the duty to know it and the right to use it.
2. The other languages of Spain will also be official in their respective autonomous communities according to their statutes.
2. The wealth of the different linguistic modalities in Spain is a cultural patrimony which will be the object of special respect and protection.

(IVAP 1986: 3; translation supplied)

The *Constitution* of 1978 clearly recognizes the multilingual nature of Spain but it also states that no other language will have nation-wide scope but Castellan. It also states that the cultural differences existing in Spain are a national patrimony and will be the object of respect and *protection* (emphasis supplied). It is hard to imagine what protections have been given in the years past after the passage of the Constitution concerning cultural rights in the Basque Autonomous Community.

The Constitution gives the autonomous communities authority to legislate over the teaching of their respective languages. Section 17 of Article 148 states that “the autonomous communities will have competence on the following matters: promotion of culture, research, and, where the case may be, the teaching of the languages of the autonomous community”. The Constitutional Tribunal intervenes in case of conflict.

The autonomous communities moved swiftly toward drafting and passing their respective Statutes. The Basque Autonomous Community approved its Statute on December 18, 1979, Catalonia on the same date and Galicia on April 6, 1981. They all established co-official status of their respective vernacular languages with Castellan.

The *Statute of Autonomy* (1979) promoted the Basque language, for the first time, to an *official status* in the Basque Autonomous Community. It has been argued that, in the past, the absence of a political entity that provided unifying force to support the Basque language as an official language in what today constitutes the Basque Autonomous Community contributed to the ramification of the language into dialects. The majority of the dialects have survived to this day. In most cases known to us, communities forming a nation select a language variety as the norm, the language that represents the community, and the rest of the existing dialects ally themselves with the official variety. This has not been the case of the existing dialects in the Basque Autonomous Community. Each Basque Community (The Basque Autonomous Community and the Foral Community of Navarre) had its own *foral* laws and neither felt the need to come together to choose an official language for all, in spite of the many commonalities they shared.

Political differences also kept them apart many times in their history.

The first three regions that had voted for a statute of autonomy -Catalonia, the Basque Autonomous Community, and Galicia- were designated “historic nation-

alities” and permitted to attain autonomy through a simple procedure. The other regions would be required to take a slower route, although Andalusia was also designated as an exception to this general rule. It was not a “historic nationality,” but there was much evidence, including mass demonstrations of significant popular support for autonomy. As a result, a special, quicker process was created for it.

The various Statutes of Autonomy reorganized Spain politically. By May 1983 the entire state had been divided into seventeen autonomous communities (*comunidades autónomas*): the *Basque Country*, *Catalonia*, *Galicia*, *Andalusia*, *Asturias*, *Aragón*, *Balearic Islands*, *Canary Islands*, *Cantabria*, *Castile and León*, *Castile-La Mancha*, *Extremadura*, *Navarra*, *La Rioja*, and the regions of *Madrid*, *Murcia*, and *Valencia*. In 1995 two autonomous cities, *Ceuta* and *Melilla*, were added.

The basic political institutions of each political community are similar to those of the Spanish state as a whole. Each has a unicameral legislature elected by universal adult suffrage and an executive consisting of a president and a Council of Government responsible to that legislature.

The powers (*competencias*) to be exercised by the regional governments are also stated in the Constitution and in the regional statutes of autonomy. However, there were differences between the “historic nationalities” and the other communities in the extent of the powers that were initially granted to them. They controlled the organization of their institutions, urban planning, public works, housing, environmental protection, cultural affairs, sports and leisure, tourism, health and social welfare, and the cultivation of the regional language (where there was one). After five years these regions could accede to full autonomy, but the meaning of “full autonomy” was not clearly defined. The transfer of powers to the autonomous governments has been determined in an ongoing process of negotiation between the individual communities and the central government that has given rise to repeated disputes. The communities, especially Catalonia and Andalusia, have argued that the central government has dragged its feet in ceding powers and in clarifying financial arrangements. In 2005, the Spanish Parliament, the *Cortes*, granted greater autonomy to Catalonia, declaring the region a *nation* in 2006. This has not been the case with the Basque Autonomous Community (BAC). However, a number of critics have responded that the BAC is the community with the greatest level of autonomy.

The Spanish Constitution of 1978 provides, in its Article 3, a relatively high level of autonomy. To many constitutionalists, it accords a higher level of autonomy than the 1931 Constitution of the Second Republic. An analytical comparison between them shows that the level of autonomy granted in the 1931 Constitution is diffused to say the least. In its Article 4 it states:

- \* Spanish is the official language of the Republic
- \* Every Spanish citizen has the obligation of knowing the language and the right to use it, without prejudice to rights that the laws of the State recognize to the regional languages or provinces

\* Except as disposed by special laws, no citizen is obligated to know or to use any regional language

No mention is made of the cultural patrimony of the regions, just the language. The text is much more loosely written than in the case of the 1978 Constitution which is not without problems. However, the 1931 legislation is the first Constitution that makes explicit mention of regions. Nevertheless, the 1978 Constitution is the first to make a difference between “nationalities” and “regions” (Acosta España 1981:15).

The first Spanish Constitution is the Constitution of 1812. It divided Spain in seventeen possessions within the peninsula and stated that a “more convenient divisions would be done when the political circumstances permitted” (Article 10). The political situation of Spain was very difficult at this time as the war of independence against Napoleon was taking place and the *Cortes* met in Cadiz and not in Madrid. Many have said that this Constitution was probably the most modern in the liberal world.

After the war, Ferdinand VII returned to the country and annulled the Constitution in order to become an absolute monarch, governing by decrees and restoring the Spanish Inquisition that had been abolished by Joseph Bonaparte. Ferdinand VII made some ambiguous concessions to the liberals making them hope for a more liberal legislation in the future. But the absolutist party did not want to lose ground as its members knew that Maria Cristina and Isabella would make liberal reforms. Therefore, they sought another candidate for the throne and they found it in Ferdinand’s brother Carlos. This decision was also based on the *Salic Law* promulgated by Phillip V of Spain, which declared illegal the inheritance of the Spanish crown by women. This was an attempt to thwart the Hapsburgs’ regaining the throne by way of a female dynastic line.

In the Basque Country at the time there was a strong movement to suppress the Basque ‘*Fueros*’, the legislation that had been used both in the Basque Autonomous Community and Navarre since the creation of *foral* legislation. The Basque Provinces and Navarre sided with Carlos because it was perceived that Carlos was close to them and that the Carlist cause in the Basque Country was a *foralist* cause. This view was arbitrary though it was the first indication of Basque nationalism before the ideology of the Arana brothers, Luis and Sabino. Many supporters of the Carlist cause strongly believed that the traditionalist rule would respect ancient *Foral* institutions.

In 1833, Javier de Burgos, minister of Isabel II, divided Spain in forty-nine provinces. This division has been maintained until recently. Spain had a complicated history of changing Constitutions in a relatively short period of time. During the XIX century there were five different Constitutions. Most of them -1833, 1837, 1845, 1868 (deposition of Isabella II) and 1876- did not recognize or mention ‘regions’. In fact, all of them attempted to eradicate regionalisms. The XIX century is a turbulent time of ideological centralism in which Spain loses many of its colonies abroad and struggles to maintain its unity. Most of the historical regions

lose their autonomy, except the Basque Community and Navarre, which retained their traditional autonomy until 1841 and 1876, respectively. The Basque Community and Navarre maintained a considerable degree of autonomy even until 1936 (Olabarri Gortazar 1981). The Carlist Wars are part of these turbulent times. The First Carlist War takes place between 1833 and 1839. The Second Carlist War takes place between 1872 and 1876.

At the end of the Spanish Civil War (1936-1939) Franco becomes a dictator. Franco dies in 1975. Juan Carlos is appointed King in the same year. There are three years of transition to reorganize the country and return Spain to democracy. The 1978 Constitution marks the return to democracy, but it does it with a certain degree of ambivalence. In Article 2, it states the “indivisible unity of the Spanish nation” and at the same time affirms “the right to autonomy of the *nationalities* and *regions* (emphasis supplied)”. To many, this is not surprising as they see the 1978 document as a form of federalism in which the accent was placed on the centralism inherited from centuries past. To many constitutionalists this is a timid form of federalism (Arino Ortiz 1981:21). It leaves a lot of questions unanswered. Though it provides for strong linguistic regional autonomy and paves the way to efforts of language revival, the central administration left unattended and forgotten the aspirations of Basques to regain autonomy commensurate to the times of *foral* culture legislation.

## LINGUISTIC NORMALIZATION

The Constitution of 1978 provided the legal base for the *Statutes of Autonomy* through which each region organized itself legally and institutionally. The institutionalization process of language normalization starts shortly after the enactment of the *Normalization Law of the Basque Language* in 1982. This is a period of frantic activity through which the goals and the agenda of Normalization are being drawn. The steps to follow and the priorities are not clear yet, though there is a constructive climate in which people look to contribute to the betterment of the Community. Institutions begin to open to the use of Basque Language, educational models are sought and tested, public administration begins to define levels of language competence for government employees, the media begins to use Basque for broadcasting, but there is uncertainty about how to use limited resources and how to implement the Normalization of the language.

A number of steps were taken that began to change the *status* of the Basque Language between 1978 and 1985. Among the most significant are:

1. Approval of the *Statute of Autonomy of the Basque Country*, December, 18, 1979
2. Creation of the Executive Power of the Basque Government and the Basque Parliament, 1980
3. Creation of the “Advisory Council of the Basque Language”, January 11, 1982

4. Approval of the *Normalization Law of the Basque Language*, November 24, 1982
5. Creation of the *Secretariat of Language Policy*, January 17, 1983
6. Decree of the Department of Education and Culture regulating the use of both official languages in education, excluding Higher Education, July 11, 1983
7. Creation of the *Basque Institute for Public Administration (IVAP)*, July 27, 1983
8. Creation of the *Institute of Adult Literacy and Basquization (HABE)*. Hel-duen Alfabetatze eta Berreuskalduntzerako Erakundea, November 25, 1983
9. Approval of the *Statutes of the University of the Basque Country*, March 18, 1985

Credit should be given to the SIADECO (*Sociedad de Investigacion Aplicada para el Desarrollo Comunitario/Aplied Research Society for Community Development*) group for its efforts to conduct a comprehensive survey research on the status of the Basque Language at the time. It was published in 1977. It was divided in ten volumes comprising a variety of topics; Language Loss (vol. 1), Areas of Contact Between Castellan and Basque (vol. 2), Urban Areas (vol. 3), Maintenance and Loss of Basque (vol. 4), Current Situation of Basque (vol.5), Current Situation of Basque in the Basque Speaking Areas (vol. 6), Ikastolas in the Basque Country (vol. 7), Basque Language in Private and Official Centers (vol. 8), Teaching of Basque to Adults (vol. 9), and Basque Language in the Publishing Industry (vol. 10).

The project had been spearheaded by *Euskaltzaindia (Academy of the Basque Language)* in 1969, but initial plans to finance the project failed. It was finally financed years later by the bank Caja Laboral. Siadeco, Caja Laboral and *Euskaltzaindia* jointly defined the objectives of the study. Siadeco included a reputable group of sociologists, some of whom envisioned the study to be used in future language planning efforts of the Basque Language (Vol. 1, p 39). However, the Siadeco Study did not use language planning in the execution of the project or as its methodology. An abridged version of the 10 volume study is later published by *Euskaltzaindia* with the title *Conflicto Lingüístico en Euskadi* (1979). The Siadeco group included sociologists Javier Aguirre, Ramón Iruetagoiena, Iñaki Larrañaga, two industrial engineers Juan José Gabina, and Juan José Rodríguez and one economist, Ramón Gorostidi. Their work was very comprehensive and also planted the idea that language planning was an important tool to be considered in the efforts of linguistic normalization.

Language Planning emerged as an attractive tool to clear the agenda and became the instrument to be used in linguistic Normalization. This method was not new to the world but it was new to the Basque Country. The first and formal introduction of Language Planning as an effective tool of linguistic Normalization of the Basque Language took place in 1984 at the *First Congress of Sociology of Minoritized Languages*, sponsored by the *Basque Association of Sociology* in Getxo, Bizkaia. The audience included Basque sociologists, politicians, func-

tionaries and members of the other historic communities, Catalonia and Galicia, all of whom were looking for a formula to help the task of 'Normalizing' their respective regional languages. One could say that almost anybody who was somebody was in attendance, including then Basque President Carlos Garaikoetxea. The topics dealt with at this gathering generated considerable interest and were followed by other activities, some of them sponsored later by the Basque Government and other interest groups and scholars (Cobarrubias 1985). The Conference included presentations on a variety of topics including the use of Basque, Catalan, and Galician in education as well as other issues of Normalization.

The presentation of 1984: (1) introduced the audience to the distinction between planning the *status* of the language and planning the *corpus* of the language in any Normalization future efforts; (2) introduced the audience to the model of Language Planning as described by Haugen (1966) and later refined in Haugen (1983); and (3) introduced the audience to the *functional model of language planning* and exposed decision makers and politicians interested in Language Planning to the idea that language operates differently in different domains and that there is a limited number of *functions* that must be implemented in order to attain Normalization. This *functional model of language planning* was new to the Basque Country and was adopted as the tool to start the implementation process of Normalization. Understanding how language is used in various domains clarified a number of priorities by taking into account that not all the functions of the language carry the same weight in protecting the language, increasing its use, and expanding the use of the language to domains in which it had not been previously used.

It is also important to note that the *functional model of language planning* permits to identify what is the minimum number of functions needed in a modern society to prevent language loss. Thus, allocations of resources could be made accordingly and policies for incremental use of the language could be designed for specific *language functions* one by one.

The functions most essential in planning for Normalization are: (1) Legal and Official Use, (2) Education, and (3) Public Administration. Of course, actual Normalization requires the implementation of the use of the language in at least seven other language functions, but the first three cited above are essential to the process. This design was based on the experiences in other communities where successful strategies and policies of language planning had been used. The model had predictive value to change the *status* of Basque and time has demonstrated that the status of Basque has risen to levels of functionality it never had before and it is used in domains it has never been used before, including high functions required in higher education.

This *functional model* also defined the tasks needed in preparing the *corpus* of the language to modernize it and these tasks became urgent in order to pave the way to Normalization. Specific legislative rules were issued for people who were to work in Public Administration. Benchmarks of language proficiency were

identified and a yardstick was proposed in order to be appointed. The level of proficiency necessary for an appointment is called or referred to as the EGA level. An administrative unit of translators was created. Specialized glossaries and dictionaries were developed as part of the task of *codification* of the language. Work on the refinement of educational models took a new dimension. Several research studies were conducted to evaluate the effectiveness of the models that had been in use. The work was overwhelming. But a lot was accomplished comparatively speaking *vis-à-vis* other communities in Spain and abroad.

At least four workshops and conferences sponsored by the Basque Autonomous Community *Secretariat of Language Policy* are worth mentioning here. They were commissioned to this writer who worked as a consultant on Normalization for that office. The reports resulting from these activities have not circulated until recently and are now part of the history of the Normalization process.

The workshops -known as *Jornadas* in the Basque Country- dealt with several topics. The first one, in 1985, took place in Vitoria-Gasteiz. It consisted of general training sessions for high ranking government functionaries on Language Planning analysis. The cases that were the subject of analysis included international communities that had used language planning successfully, including, among others, Philippines, Israel, Quebec, and Indonesia. The second *Jornadas de Vitoria* took place in 1986 and focused on Education. The third *Jornadas de Donostia*, took place in 1987 and focused on Legislation. The fourth *Jornadas de Donostia*, also in 1987, discussed strategies on Language Planning.

The conclusions of the *Jornadas* were presented in various confidential documents as recommendations to the Basque Government via the *Secretariat of Language Policy* (Cobarrubias 1986, Cobarrubias 1987). The confidential nature of the recommendations does not permit to reveal details here, but will allow me to summarize part of the action plan. The decision was reached that the priority of resources should be placed in enhancing the use of Basque in *Public Administration* and *Education*. These were the two *language functions* that would contribute more effectively to the Normalization process. Years later we see that the results of the work in mainly both functions are showing considerable progress in the use of Basque and a number of speakers that have been added to the language despite a decline in the general birthrate in the Basque Country. The results are monitored by the *Vice-counsel Office of Language Policy*, formerly *Secretariat of Language Policy*, through surveys conducted every five years. The last survey, dated 2006, shows that the number of bilingual adults over 16-years of age who know Basque includes 137,299 more than in 1991. Furthermore, the number of monolingual adults who do not speak Basque has diminished in the amount of 139,900 with respect to the same date in 1991 (Eusko Jaurlatiza, 2008).

The *functional model of language planning* was sketched out in 1979 and applied in Quebec, Belgium, and also in Mexico and Peru. It was formally presented for the first time at a conference on the *Progress on Language Planning*



in 1979 organized at William Paterson University. It was later published as a series of case studies and theoretical papers in a book (Cobarrubias 1983). The model identified about ten language functions: (1) Legal and Official Use, (2) Education, (3) Public Administration, (4) Commerce and Industry, (5) Media, (6) Religion and Cult, (7) Security and Public Order, (8) Public Health, (9) Recreation and Environmental Use, (10) Family and Interpersonal Relations. It was also discussed in Cobarrubias (1988).

One interesting discovery that could be transferred to the situation in the Basque Country is the fact that these functions of the language carry a different weight. The entrenchment of the language is stronger in the functions of informal use, the family, and interpersonal relations where, even during the most repressive policies of Franco, control could not be enforced. He could only ban Euskara in the public and institutional use of the language. Another discovery is that the first four functions are the most effective in expanding the language and empowering it. This was the experience in Belgium and it is the reason why I have called the joint use of planning efforts in these four functions simultaneously the *Belgian formula* (Cobarrubias 1988). These findings and others were conveyed to the *Secretariat of Language Planning* in the 1987 report.

A great deal has been accomplished in gathering a cadre of functionaries who meet the standards of quality and linguistic competence in the Basque language considered appropriate to work in Public Administration. Substantial work has been done also in Education, where teacher competence and language proficiency of students and teachers has increased dramatically. Concrete and measurable data produced in the latter function make it worth commenting briefly on this initiative.

Three models of Bilingual Education were adopted in the schools. Model A and model B for Spanish speaking children and model D for Basque speaking children. The data showed that model B was the most effective for Spanish speaking children. It was recommended to allocate adequate resources to increase services in model B, improve teaching strategies in the classroom and identify best practices, as well as improve teacher training and professional development. The models in question are as follows:

**Model A  
for Spanish speaking children**

<b>Objectives</b>	Developing good understanding of Basque. Developing communicative competence to cope with daily routines. Developing positive attitude toward the Basque language. Developing competence to help the child become integrated in Basque speaking circles.
Use of Basque	Basque language instruction: 3 to 4 hours a week.
Use of Spanish	All subjects are taught in Spanish except 3 to 4 hours of Basque.

**Model B  
for Spanish speaking children**

<b>Objectives</b>	Use of both official languages as vehicles of instruction. Developing understanding of Basque and communicative competence in Basque. Developing enough language competence to be able to study in Basque.
Use of Basque	Basque language, Social and Natural Sciences. Art.
Use of Spanish	Spanish language arts. Mathematics. Half of the school day in each language.

**Model D  
for Spanish speaking children**

<b>Objectives</b>	Enhancing language competence in Basque and use it as the main vehicle of communication and instruction. Strengthening the cohesion of Basque speaking groups in a Castellan speaking environment, and making Basque the vehicle of Basquization in the Basque Country. Developing good knowledge of Castellan.
Use of Basque	All subjects are taught in Basque, except Castellan language classics.
Use of Spanish	Castellan classes.

Several reports on program effectiveness were produced *Euskara irakaskuntzan: faktoreen* E.I.F.E (1984), (EIFE 1986, EIFE 1989, EIFE 1990). Data collected through these longitudinal research reports demonstrated the effectiveness of models B and D. Not only are these two models instructionally effective but they have contributed significantly to raise the number of young students who now are capable of speaking, reading, and writing in Basque. This despite the fact that the population growth of the Basque Autonomous Community is basically negative with only 1.2 % growth when the growth needed to maintain the current percent of the population is somewhere between 2.2 % to 2.3 % per year (Cobarrubias 1999).

In contradistinction, model A can only produce -with respect to the use of Basque- an increase in cultural sensitivity and a certain degree of passive bilingualism, but it does not help participating students in developing functional proficiency in Basque.

The positive and impressive increase in the use of the Basque language documented in recent surveys conducted by the *Vice-counsel Office of Language Pol-*

icy is, in no small measure, the result of following policies recommended in the consultant reports of early years to focus strongly on the allocation of resources in models B and D, as well as in the increase of the use of Basque in Public Administration (Cobarrubias 1986, 1987).

### **Planning the Corpus of the Basque Language**

The expansion of the Basque language to be able to function as the language of a modern society needs planning the *status* as well as the *corpus*. *Euskaltzaindia* (the Academy of the Basque Language) has played a leading role in the codification of the *corpus* of Basque. The *Vice-counsel Office of Language Policy* has responsibility mostly over the *status* of Basque.

The origin of *Euskaltzaindia* can be dated back to 1918, when members of the Deputy of Biscay led by Resurrección María de Azcue proposed the creation of the Academy. Azcue is considered its founder. The other communities, Gipuzkoa, Araba, and Navarre, joined the effort shortly after. It was not until 1976 that the Academy received the distinction of “Real Academy of the Basque Language”. Since its foundation, the Academy has played an active role in the regularization and diffusion of Basque, and effort centered mostly on the expansion of the *Batua* variety of Basque with the purpose of using as the *basilect* for the future standardization of the language. Lately, it has integrated more and more of the Bizkaian lexicon as the work progresses.

The history of the codification of Basque is long and it is not the intention of this paper to provide an account of it. It has not been systematically presented in an organized work yet. The first codification efforts go back to 1729 with the publication of the first grammar *El Imposible Vencido*, by Larramendi. He also published a dictionary, *Diccionario Trilingue de Castellano, Vascuence y Latin* in 1745 addressing, thus, the two most important tasks of language codification. Other important codifiers are Arturo Campión and Azcue. Campión published his *Gramática de los cuatro dialectos literarios de la lengua euskara* in 1884. He concentrated on the written varieties rather than relying on the spoken varieties in the preparation of his dictionary, which showed great vision for the time. He also, being himself Navarrese, strongly favored the Navarrese variety. Azcue published *Euskal Izkindea (Basque Grammar)* in 1891, a dictionary, *Diccionario Vasco-Español-Francés* in 1906, and *Morfología Vasca* in 1925. The dictionary constitutes a monumental work of codification that places Azcue as a first class lexicographer. His dictionary is based on field work and direct contact with speakers of the language. It codifies a great number of dialectal varieties.

### **Evaluation of Language Planning in the Basque Country**

Evaluation has always been an important component of the language planning process as it allows us to redirect strategies (Rubin 1983). The results of language planning can be evaluated by three crucial indicators:

- 1) Demographic spread
- 2) Geographic spread
- 3) Functional spread

This language planning evaluation model was proposed in a report to the *Secretariat of Language Policy* (Cobarrubias 1986) in support of a *Government Plan 1984-88* designed to empower to the Basque Language at the time. The Government Plan was consistent with the content of the *Normalization Law*. The model distinguishes clearly three areas of indicators that can provide a measure of success of language planning efforts and shows the qualitative difference of each one of these three areas. The concern with demographic spread and geographic spread had existed since the Normalization Law was passed. But the notion of Functional not clearly conceived or discuss at the language planning meetings. The model was presented to the Basque Parliament by the *Secretary of Language Policy* in Garmendia 1994 (p. 9). No customary credit was given to the report of 1986 for borrowing the concept from it. Fuctional spread remains a critical area of language spread for the Basque Language. Considerable efforts have been done in the use of Basque in the media and to a significant degree at the university level. However, it remains an area where much more effort needs to be done in the modernization process of Basque.

Over all, language planning efforts in the Basque Country show positive results in all three areas, more in the first two than in the last, where there is still a lot of work to be completed. The most recent Survey conducted by the *Vice-conunsel Office of Language Policy* has gathered data that positively shows sinificant demographic grwoth in the adult population, sixteen and over. The demographic increase from 1991 to 2006 was 137,200 bilingual speakers who know Basque. This growth has taken place in Navarre and the Basque Autonomous Community. The percentage of growth would be greater if we considered all seven Basque speaking areas. However, in the French provinces the use of Basque has decreased, Navarre has maintained its use with a very small percentage increased of 1,6 points, and in the Basque Autonomous Community has increased by 6 points.

Basque has also spread geographically. The Basque language users tend to concentrate in the North East region of the Autonomous Community. As the *Sociolinguistic Maps* prepared by the *Secretariat of Language Policy* (1989) show, the greatest concentration is in Gipuzkoa, Bizkaia to the East of Bilbao, and Navarre close to the Pyrenees. Efforts must be made to map the most recent geographic spread of the language.

The area of *Functional* spread is still the one in need of considerable work. The Basque language is being codified in areas where it has not been used before, in the sciences and in technology, just to mention two critical areas. More work is necessary to equip Basque with the linguistic tools to be used particularly in high functions at the University level, in specific disciplines, and other areas such as health and technical discourse, which require language modernization.

## POLITICAL NORMALIZATION

Political Normalization has not been so much the focus of the discourses on Language Planning as has been Linguistic Normalization. It has been the focus in the political discourse and in the interpersonal relation debates at lunch, at the bar scene after work, and in the halls of the Universities and other informal settings.

The Political Normalization process is difficult to grasp and has been clouded by the role that ETA has played since its inception. ETA (Euskadi Ta Askatasuna - Basque Homeland and Freedom) was created in 1959 by a group of young people of the PNV party as a reaction to the oppressive policies and violence of the Franco dictatorship, and, in particular, against Basque Nationalism. ETA has monopolized the attention of the media, national as well as international, when it comes to news about the Basque Country. This has relegated other salient accomplishments in the history of the Basque Country and clouded the way history is told. Some historians have acknowledged that the appearance of ETA is the “most important single historical phenomenon that occurred during the Franco era” (García Cortazar, 2000). The role of ETA requires separate attention and should not be confused with the goal of Political Normalization desired by the Basque Society via the democratic process.

*Political Normalization* is entrenched in the rights of the past of a *distinct* society rooted in *foral* culture and law. It has been part of the *identity* of the region for many centuries. The return to *foral* culture is a legitimate right and should not be confused with the objectives of ETA. Foral culture has been a way of life deeply ingrained in the Basque people. To reach a level of recognition of this right by the Spanish state and to restore *foral* law and culture is the claim to Political Normalization. To this end, President Ibarretxe has clearly stated that the objective is “to attain political normalization through an agreement with the Spanish state that will allow us to put an end to our long-standing political conflict” (Ibarretxe 2008). He is not referring to the conflict with ETA, which he repudiates, but to the fact that the Spanish state has not finished its own agenda of granting and restoring the level of autonomy that existed for centuries in what today is the Basque Autonomous Community. To this effect, the Basque Parliament has recently enacted the *Political Statute of the Basque Country* (2004) which re-defines the relation of what today is the Basque Autonomous Community with the Spanish state and its surrounding neighbors.

It is important to note here that *foral* culture and law precedes the Spanish state. The Basque Community has existed as a *foral* community for centuries. The *fueros* and *foral* practice and culture existed long before they were codified in writing. The dates of codification will enhance our understanding of how old and deeply rooted *foral* practice was in the Basque Country. The first *fueros* to be codified in writing are the *Fueros de Navarra* in 1418. They were approved in writing at a meeting of the *Cortes* (Parliament) of the Kingdom in that year. This is a strong indicator that the need to have them available in writing was dictated by the need of the Community to make *foral* legislation standard and effective. The *Fuero de Vizcaya* was codified in writing in 1452 and it is followed by a second

written version in 1526. How early is this? People still believed that the earth was flat. And Spain did not exist yet. The *Fueros of Guipuzcoa* take a little longer to be codified in writing and were formally approved in 1696, but they reflected practices that existed much earlier as in the other two communities. For these communities the *fueros* were the main legal document equivalent to a Constitution in other countries. They were the framework of national identity and culture. However, none of the provinces formed a unified state, each one of them functioned as a mini-state. While the Basque territories had never formed an independent state, Navarre had been an independent Kingdom and a powerful one. It may be said that at one point in history the Basque Provinces were part of the Kingdom of Navarre, and of the preceding Kingdom of Pamplona.

The golden age of the Kingdom of Navarre was under King Sancho III, the Great, who, still alive, divided the Kingdom of Navarre in 1035 among his four sons and, thus, fragmented the powerful kingdom. The dynasty of Navarre had its base on the foundation of the Duchy of Vasconia which lasted until 1234 when Sancho the Strong died without descendents. Not even during the kingdom of Sancho the Great did the Basque language reach official status. This would have been a unique historical moment to assign official status to the language of the Kingdom.

The dismemberment happened in stages and not all of them peaceful. Sancho's sons struggled among them. Garcia Sanchez III died in the battle of Atapuerca (1035) near Burgos and the border of the former Kingdom of Pamplona, apparently fighting ambitious Ferdinand of Castile (not to be confused with Ferdinand of Aragon who married Isabela of Castile much later). There were attempts to recover the historic territory of the Kingdom of Pamplona. Garcia Ramirez, known for that reason as the *Restorer* and the first to actually use the title of King of Navarre, and his son Sancho the Wise fought fiercely against Castile to recover the old Pamplona. The dispute between the two was submitted for arbitration to the English King, Henry II. The claim of Navarre was based on "the proven will of the locals". The Castilians based their claims on their merits as crusaders. The English King decided to give each of them what they controlled militarily at the time. Thus, La Rioja goes to Castile; and Araba, Bizkaia and Gipuzkoa to Navarre. As a consequence, the area which is today the Basque Autonomous Community became part of the Kingdom of Navarre. The decision was ignored for two years but finally accepted in 1179. Sancho the Wise (1150-94), King of Navarre, was a learned man -a patron of learning- and an accomplished statesman. He granted *fueros* to a number of towns and regions and was never defeated in battle.

The partition of the Kingdom continued. Alfonso VIII of Castile decided in 1199 to own the coastal area of Navarre which would allow Castile rapid access to European markets and would isolate the rest of Navarre as well. So he launched an assault while Sancho the Strong was in an expedition in what today is Algeria. The cities of Vitoria and Trevino resisted the Castilian assault. But Vitoria surrendered when the Bishop of Pamplona was commissioned to inform that no reinforcements would be sent. Trevino did not surrender and had to be conquered by the arms. By the end of 1200 the conquest of Western Navarre was complete. Castile granted the right to self-rule (*fueros*) to the fragments of the conquered territory (except

rebellious Trevino and other cities that were ruled directly from Castile). This decision was based on the traditions and customs of Navarre, the *fueros*. Araba was made a County, Bizkaia a Lordship, and Gipuzkoa just a Province. This completed what is known as the Second Partition of the Kingdom of Navarre. This may also clarify why the Basque Autonomous Community was never a State.

The partition and disintegration of the Kingdom of Navarre resulted in the expansion of Castile, which during the XVI century would become the foundation of the Spanish state. During the period of disintegration, Navarre was fragile and it got close to be annexed by France. Historian Americo Castro remarks that “Navarre was exposed to be annexed by France and did not belong to Spain until Ferdinand of Aragon annexed it to his Kingdom”. The annexation of Navarre in 1512 completes the project of building the Spanish state and the beginning of the expansion and unification of Castile attempting, at the same time, to delimit other regional languages and ethnicities. The Basque language remained fragmented into the sections of the fragmented Kingdom. Rene Lafon has remarked that “the Basques have not constituted a sovereign state with Basque language as its official language”. The conglomerate of several communities without linguistic uniformity contributed to the proliferation of the dialects that we know in our days. Even though the existence of a Basque state did not materialize, the idea of a people with a common identity and culture persisted and the language was maintained without support of a government.

Castile absorbed Navarre up to the summit of the Pyrenees Mountains during the period 1512-1526. In order to gain Navarrese loyalty, Castile granted *fueros* to Navarre allowing the region to continue to function under its historic laws. In the meantime, Northern Navarre became increasingly tied to France, a process that was completed when a Navarrese prince became King Henry IV of France. Although not without conflicts, until the era of the French Revolution on both sides of the Pyrenees quasi-independent Basque regions successfully maintained their *fueros*.

The relation among *fueros*, other bodies of law (including the role of precedent), and sovereignty is a contentious one that reaches down to the present day. The various Basque Provinces regarded their *fueros* as tantamount to a Constitution, a view that has been accepted by many over the years. In this view, *fueros* are regarded as granting or acknowledging rights. In the contrasting view, *fueros* were privileges granted by a monarch.

During most of the period after 1800, Spain became a highly centralized state that did not recognize the country's regional diversity. The so called “historical territories” were operating in a legislative vacuum. Decades of civil unrest followed Isabella II's accession to the throne in 1833, as conflicts emerged over the role of the Roman Catholic Church, the monarchy itself, and the direction of Spain's economy. Maria Cristina, a Neapolitan Bourbon and mother of Isabella, was Queen-regent when her daughter –aged three- was proclaimed Queen at the death of the King.

Isabella’s throne could only be maintained with the support of the army. The *Cortes* and the Liberals and Progressives, who established a constitutional and parliamentary government, dissolved the religious orders and confiscated their property (including that of the Jesuits). They also attempted to put the finances in good order. After the First Carlist war the Queen-regent, Maria Cristina, resigned to make way for Baldomero Espartero, Prince of Vergara, the most successful and most popular Isabelline general, who remained regent of the crown only for two years.

Espartero’s reign as regent ended because a cabinet formed by two Generals, O’Donnell and Narvaez, induced the *Cortes* to declare Isabella the Queen at age thirteen. Three years later, the so called *Moderado* Party, Castellan Conservative, made the sixteen-year old queen marry her first cousin, Francisco de Asis de Borbon. But the marriage was not a happy one. Persistent rumors had it that few –if any- of her twelve children had been fathered by her King-consort, who was a homosexual. The Carlist party asserted that her son –later King Alfonso XII- had been fathered by Captain Enrique Puig y Molto. Another version says that the biological father was General Francisco Serrano, Captain of the Royal Guard. Isabella died in 1904 at age seventy-three. Only four of her twelve children reached adulthood.

The First Carlist War starts in 1833 and ends in 1839. The war was long and hard and the Carlist forces achieved important victories in the North under the direction of General Zumalacarregui. Carlos conquers Bilbao, which was defended by the British navy, but he runs out of funds to sustain his efforts. Zumalacarregui dies in 1835 and after his death the liberals dominated the scene but were not able to win the war. Carlists became increasingly tired and without financial support and the war ends with the “Abrazo de Vergara”.

At the end of the first Carlist war, Navarre and the other Basque provinces lost their *fueros* and the power to self-government that had been granted since the support to Phillip V in the War of Succession, even though Navarre maintained its rights by decision of the Regent at the time (1841) -General Espartero. But ultimately Espartero mounted an opposition to the Queen and she had to resign. These were turbulent times and Spain maintained a centralist stance which transformed it into a *Constitutional Monarchy* in 1837. Isabella reigned from 1843 to 1868, a period of political intrigues, small political factions influence, and military conspiracies. *Moderados* ruled from 1856 to 1863 and *Progressives* from 1854 to 1856. Then, the *Liberal Union* ruled from 1856 to 1863. Shortly after, *Moderados* and *Liberal Union* replaced each other in power and tried to keep the *Progressives* out of power planting, thus, the seeds of conflict that led to the *Spanish Revolution* of 1868. Isabella was persuaded to abdicate in Paris on June 25, 1870. She abdicated in favor of her son Alfonso XII. But Alfonso will not become a monarch yet.

After the Spanish Revolution, with Isabella II deposed, the *Cortes* decided to reinstate the monarchy but did not want Isabella back and chose a monarch under a new dynasty. They chose Amadeus (Amadeo) as the new King of Spain.



He swore to uphold the Constitution in Madrid on January 2, 1871. Amadeo had to deal with a very unstable Spanish politics, republican conspiracies and *Carlist* uprising, assassination attempts and separatism in Cuba. He could only count with the support of the Progressive Party whose leaders were involved in electoral fraud. The Progressives split into Monarchists and Constitutionalists creating a highly unstable political climate. In 1872 violence hit a peak. There was a *Carlist* uprising in the Basque and Catalan regions as they wanted to free their regions from the “Castilian corpse”, and after that republican uprisings appeared in most urban areas throughout the country. Amadeus abdicated on February 11, 1873 and Spain was proclaimed a *Republic* the same night. Amadeo made an appearance at the *Cortes* stating that the Spanish people were ungovernable. Amadeo’s reign lasted twenty three months.

The Second *Carlist* War, the most significant of the *Carlist* wars, starts in 1873 at the time when the abdication of the King and the proclamation of the Republic created an opportunity. However, the First Republic only lasted one year (1873-1874). Decentralization led to chaos. Alfonso XII was King of Spain from 1875 to 1885 after a *coup d’etat* restored the monarchy and ended the weak First Spanish Republic. Alfonso XII died of tuberculosis at age 38. For the rest of the XIX century, Spain remains relatively stable with industrial centers emerging in the Basque region and in Catalonia.

Alfonso XIII, born in 1886, was proclaimed King at his birth and succeeded Alfonso XII and reigned from 1886-1931. However, his mother, Maria Cristina of Austria –second wife of Alfonso XII- was appointed regent during his minority years. He assumed control of the state on reaching his sixteenth year. Though his reign began well it did not end well. When the *Second Spanish Republic* was proclaimed on April 14, 1931, Alfonso left Spain, but did not abdicate the throne. He moved to Rome, where he lived in the Grand Hotel until 1941. He died in Rome. Before his death, he had abdicated the rights to the Spanish throne in favor of his fourth (but second surviving) son, Juan, father of the current King Juan Carlos.

One of the stated goals of the Second Spanish Republic was to grant autonomy to the regions, as it did to Catalonia and the Basque provinces; however, self-government for these regions was not reinstated after the Spanish Civil War (1936-1939). After the fall of the Second Republic Franco declared Spain to be a monarchy but he did not permit a monarch until his death in 1975.

Franco’s regime was repressive and any degree of autonomy or recognition of the traditional *foral* government was out of the question. Franco considered Bizkaia and Gipuzkoa as “traitor provinces” and cancelled their *fueros*. The pro-Franco provinces, Araba and Navarre, maintained a degree of autonomy unknown to the rest of Spain, with local telephone companies, bailiff police local forces, road works and a selective taxation system. The rest of the Basque Provinces suffered a tough system of food rationing barely sufficient to survive from their allowance instead. The 1937 bombing of Gernika (Guernica in Spanish) was not only the atrocity by Franco that humanity witnessed and deplored, but was also a symbol of the end of *foral* culture during his dictatorship.

The Constitution of 1978 restores democracy to Spain. However, Spain is not a republic but a *Constitutional monarchy*. Occasionally, errors appear in the discourse caused by the way the Spanish language is used and people speak of Prime Minister of Spain, *Presidente del Gobierno* (President of the Government) as if it were a title used in a republic. However, this is not the case and it gives the idea to some people that Spain's status is a republic. It is not.

Before the Spanish Constitution of 1978 and the system of “autonomous communities” mentioned in the Constitution, the Basque Autonomous Community was recognized and called *Provincias Vascongadas*, a name inherited from the time that a previous Spanish Constitution divided the country into Provinces instead of Autonomous Communities as we saw earlier in the division created by Javier de Burgos in 1833. However, the political structure of the autonomous communities is defined in the *Gernika Statute*, which was approved by a majority in a referendum held on October 25, 1979. This is why some autonomous communities feel that the Spanish Constitution of 1978 offers still an unfinished agenda regarding the level and the type of autonomy accorded to the traditionally called “historic territories.” These are distinct societies with a right to maintaining their cultural identity. They have the right to the recognition of their historical rights and culture within a Constitutional framework reformed to accommodate a new political agreement of coexistence. The Basque people feel that they have only recovered *partially* the political autonomy they had in 1936 at the start of the Civil War.

The so called Basque Conflict is a historical and political conflict that has existed in the Basque Country for approximately 170 years, in the opinion of some political analysts. It became crucial toward the end of the First *Carlist* War and the emergence of the first Constitutional monarchy. The Spanish Crown never treated the Basque Country as a single political unit. However, the traditional juridical structures and legislative autonomy were maintained. In the case of the Kingdom of Navarre *foral* legislation was maintained clearly until 1841, when they still coined their own currency with the inscription “Kingdom of Navarre” and retained its own customs with the Kingdom of Spain in the Ebro River. Of course the Basque Country and the Kingdom of Navarre were already two separate political entities. Others will say that the Basque Conflict should at least be dated back to the end of the Second Carlist War (1873-74) when sovereignty was lost in the Basque Country and the *fueros* were abolished.

Resolving the Conflict in its current form requires addressing two qualitatively very different problems, one which is relatively new; and one which is old:

- 1) Solving the problem of violence of ETA
- 2) Solving the problem of the type of relation that should exist between the Basque Country and Spain (Ibarretxe 2008).

Thus, one is the problem of how to end ETA's activities of violence not justifiable in a democratic world. The other is the need of creating a constitutional architecture that will restore the culture and identity to the Basque Country, both

an integral part of its long history. The 1978 Spanish Constitution falls short of doing that. It must be amended and modernized.

The worse form of the Basque Conflict emerged, as everyone knows, during the Spanish Civil War, which created considerable hate among large segments of the population, particularly among frustrated youth who saw their future expectations of peace ripped off. The memories will last to this day. At the request of Franco, the German Luftwaffe (the Condor Legion) tested out for the first time the tactics of “burn earth” in Gernika in April 26, 1937. This day of bombing innocent civilians should also live in “infamy”.

Many days of bombing followed, including Bilbao, which was occupied in June of 1937. The Basque troops surrendered, many executions by firing squad were carried out, and concentration camps were set up in the Basque Country. A mass diaspora followed, calculated around 175,000 people. This is an enormous figure considering that the total population in 1936 was estimated in only 1,300,000 people. The Basque Country was subject to repression; thousands of nationalists were killed or imprisoned. The Basque language was prohibited.

It is in this atmosphere of severe repression that ETA emerged as a violent response to Spanish state violence and dictatorship, which has not been an uncommon response in oppressed communities. Of course this does not justify ETA but explains the dynamics that took place. The ETA of those days is not the same ETA of today. Neither the Basque Country of the time is the Basque Country of today. The 1978 Constitution restored democracy but it did not restore the levels of Autonomy existing prior to the Civil War. The emergence of ETA was caused by the violence exerted by the centralist government of the dictatorship on the Basque Country and, thus, one could create the argument that the central government has inherited a substantial degree of responsibility in solving the current problem of violence with ETA. The need for a partnership between the central government in Madrid and the Basque Government in the solution of this conflict seems clear.

The other side of the Basque Conflict is moving forward toward Political Normalization with the passage of the *Political Statute of the Community of the Basque Country* approved by the Basque Parliament on December 30, 2004 and published in the *Gazette of the Basque Parliament* in January, 2005.

### **FROM “BASQUE AUTONOMOUS COMMUNITY” TO “BASQUE COUNTRY”**

The 2004 *Political Statute of the Basque Country* changes the name of the Country from *Basque Autonomous Community* to *Basque Country*, changing, thus, the political status from one of “Autonomous Community” to one of “self-government.”

In its Preface, the *Political Statute* states that

The Basque People or Euskal Herria is a *People with its own identity within the community of European peoples, repository of a singular historical, social and cultural heritage*, distributed geographically in seven Territories, currently articulated in three different legal-political regions, and located in two different States. (Emphasis supplied)

The *Basque People have the right to decide their own future*, as determined by absolute majority of the Basque Parliament on February 15, 1990, and in accordance with the right to self-determination of all peoples, recognized at an international level in the International Agreement of Civil and Political Rights and in the International Agreement of Economic, Social and Cultural Rights. (Emphasis supplied)

The exercise of the right of the *Basque People to decide their own future is based on a respect for the right of the citizens of the different legal-political regions in which it is currently articulated*, to be consulted in order to decide their own future. In other words, by respecting the decisions of the citizens of the present Autonomous Basque Community, the decisions of the citizens of the Autonomous Community of Navarre, and the decisions of the citizens of the Basque Territories of Iparralde –Lapurdi, Behe Nafarroa, and Zuberoa. (Emphasis supplied)

*In accordance with these three premises* and forming an integral part of the Basque People, the citizens of the present Autonomous Community of the Basque Country, made up of the Provinces of Araba, Bizkaia and Gipuzkoa, in the exercise of our democratic will and in virtue of a respect for and modernization of our historical rights, set out in the Gernika Statute and in the Spanish Constitution, *declare our wish to draw up a new political agreement for Coexistence*. (Emphasis supplied)

The Statute has sixty-nine Articles and *two final provisions*. The First of the last two provisions states that the Statute replaces the Organic Law of 1979 in the Statute of Autonomy of the Basque Country, and reads as follows:

The model and system of political relations between the Community of the Basque Country and the Spanish State, regulated in this Political Statute, shall succeed and replace, when it comes into force, the one passed by Organic Law 3/December 18, 1979 in the Statute of Autonomy for the Basque Country and any laws and provisions that contradict this Statute shall be abolished.

The last provision concerns the publication of the Statute in the Official Gazette of the Basque Country which will replace the *Gazette* of the Basque Parliament. Important changes are articulated in this document, concerning citizenship, language, status of members of the Diaspora, relations with other communities, international relations and other categories. It is not the purpose of this essay to make a detailed enumeration and comment on all the articles of the Statute but to highlight the salient items described in the document. The following can be mentioned.

Briefly stated, Article 1 establishes the *Community of the Basque Country as a self governing body freely associated with the Spanish State*. Article 2 establishes its *Territory*.

The territorial boundaries of the Community of the Basque Country shall include the geographical and administrative limits that correspond to the current boundaries of the Historical Territories of Araba, Bizkaia and Gipuzkoa, without detriment to the stipulation contained in the fourth transitory provision of the Constitution.

Recognition is given to the right of the Basque Territories of Araba, Bizkaia and Gipuzkoa, Lapurdi, Nafarroa, Nafarroa Beherea and Zuberoa to associate within a territorial framework of relations, in accordance with the wishes of their respective inhabitants.

#### **Citizenship and Nationality (Article 4)**

1. All those persons residing in any of the municipalities of the Community of the Basque Country has the right to Basque citizenship. All Basque citizens shall have, without any kind of discrimination, the rights and obligations recognized in this Statute and current legislation, within the Community of the Basque Country.

2. Basque nationality is recognized officially for all Basque citizens in accordance with the pluri-national nature of the Spanish State. The acquisition, conservation and loss of Basque nationality, as well as its accreditation, shall be regulated by in the Law of the Basque Parliament in accordance with the same requirements demanded in the Laws of the State for Spanish nationality, so that the enjoyment or accreditation of both shall be compatible and shall have the full legal effects determined through a law.

3. No one may be discriminated against because of their nationality nor be arbitrarily deprived of this.

#### **Basque Diaspora (Article 5)**

All persons residing abroad, and their descendants, whose last place of residence was the Community of the Basque Country, and their descendents, may, should they so wish, enjoy Basque nationality and the political rights corresponding to Basque citizens in accordance with the provisions established through a law.

#### **The Basque Language (Article 8)**

1. *The Basque language*, the language of the Basque People and the patrimony of all the Basque People, shall, *together with Spanish*, have the status of the *official language in the Basque Country*, and all its inhabitants shall have the right to speak and use both languages. (Emphasis supplied)

2. Taking into consideration questions of socio-linguistic diversity, Basque institutions shall guarantee the use of both languages, governing their official nature, and shall furnish and regulate the measures and means necessary to ensure that these are spoken.

3. No one shall be discriminated against on the grounds of language, and therefore the linguistic rights of all Basque citizens shall be respected.

4. The Royal Academy of the Basque Language-*Euskaltzaindia*- is the official Consultative Body in matters relating to the Basque language.

#### **Human rights and liberties (Article 10)**

1. Basque citizens are entitled to the fundamental Rights and Obligations set out in the Constitution, the rights and obligations established in the treaties of the European Union, that correspond to them as European citizens, as well as the

human, individual and collective rights recognized internationally and, especially, those expressly contained in the Universal Declaration of Human Rights, the International Agreement on Civil and Political Rights, the International Agreement of Economic, Social and Cultural Rights, and the European Agreement for the protection of Human Rights and the Fundamental Liberties.

To complete the highlights here, I will mention one more important innovation in this document.

**Regime of Free Association (Article 12)**

The citizens of the Community of the Basque Country, in the free exercise of their right to self-determination and in accordance with a respect for and modernization of the historical rights included in the first additional provision of the Constitution, accede to self-government through a singular regime of political relations with the Spanish State, based on free association. The Community of the Basque Country and its representative institutions, establish the aforementioned relationship of free association according to precepts of respect and mutual recognition, and without detriment to its revision, as established in this Political Statute, which, for this purpose, shall represent its basic institutional directive.

The *Political Statute of the Basque Country* approved by the Basque Parliament is a new challenge to Madrid. But it is also a challenge to Basque society itself. To the non-allied political parties; to a large section of the population who does not feel integrated into the new institutions of the Basque Country that have emerged as the result of policies of the current *Statute of Autonomy*; to a segment of the population that does not feel represented by the current leadership; and of course it is a challenge to ETA, still considered the major obstacle to democratic progress and to peace.

The future of the *Political Statute of the Basque Country* will be decided at a Plebiscite on October 25, 2008. But first there is a debate going on concerning the vote to go to a referendum. At a radio interview on 6/25/2008 (*Euskadi Irratia*), President Ibarretxe said: "For the first time in history, a government and a Basque premier are going to present a Referendum project to let Basques from Alava, Bizkaia and Gipuzkoa decide their future, and it is going to be a historical debate." He also stated at another forum "the Government passes a law to let the inhabitants of the Basque Country have the final say" on their political future. In order to facilitate the debate, the Government has issued a *White Paper* on Calling and Regulating a Plebiscite. The Plebiscite does not have the status of a Referendum. It contains two questions approved by the Basque Government and by the Basque Parliament:

- 1) Are you in support of a process of a final dialog on violence if ETA manifests in non-equivocal manner its will to put an end to violence for ever? : YES/NO
- 2) Are you in agreement that the political Basque parties, without exclusions, start a process of negotiation to reach a Democratic Agreement concerning the right of the Basque people to decide and that such agreement be submitted to a Referendum before the end of 2010? : YES/NO

The statutes of other communities like Catalonia and Andalusia allow them the authority to carry out similar consultations. The Basque Government wants to have at least the same rights. To carry this type of consultations does not require authorization from the Spanish State. The Plebiscite will not be legally binding. The Plebiscite will be carried out in accordance with the laws of the Basque Parliament. This is an issue that keeps changing from time to time. For an update on the situation of the dialog and the Plebiscite the official web site can be consulted at [www.euskadi.net](http://www.euskadi.net).

### **FEW GLOTTOPOLITICAL REMARKS**

The rights to *identity* and *culture* claimed by the Basque Country are legitimated by the international community and international institutions. They need now to be recognized by Madrid.

The UNESCO Project Concerning the *Declaration of Cultural Rights* defines *Cultural identity* as the “aggregate of those factors on the basis of which individuals or groups, define and express themselves and by which they wish to be recognized; it embraces the liberties inherent to human dignity and brings together, in a permanent process, cultural diversity, the particular and the universal, memory and aspiration. Choosing one’s cultural identity also includes the freedom of choosing one’s collective identity; therefore, participation in the collective cultural rights of the community is a person’s individual human right as well” [www.unesco.org](http://www.unesco.org).

The restoration of *foral* culture in the Basque Country is a legitimate cultural and identity right. So is the restoration of the Basque language. It is important to note that the Basque language is out of the list of “Endangered Languages” ([www.unesco.org](http://www.unesco.org)) thanks to the recovery efforts done mainly in specific language functions, such as public administration, education and, to some degree, the media. Significant gains have been made considering the timeframe of the effort and the level of governmental investment in these language functions. But other functions remain to be addressed and they define the future agenda of language planning and policy planning. Among them are commerce and industry, public health, and several others where the recovery is still very slow.

In addition to UNESCO, the *European Charter for Regional or Minority Languages* drafted specific protections for coexistence, culture, and linguistic rights of nationalities within the legal framework of the *Council of Europe*. It provided guidelines to governments to enhance the coexistence of minority groups within a state. The concept of minority is left undefined within the document; and therefore, it leaves the option open to apply it to group rights or individual rights. Language is, in this document, the most important element to preserve identity and describes specific obligations of the states to that effect (Kovacs 1993).

As stated earlier, participation in the collective cultural rights of the community constitutes an individual right as well. Very frequently, though, the definition of cultural community identifies it with ethnic community. The end result is that

the issue of claiming a cultural identity and cultural rights gets transferred to the political arena. This move often clouds the issue of claiming cultural rights as a claim of political rights. They should not be equated because they are two different categories of rights (Felfoldi 2001).

This difference becomes important in the debate of the *Political Statute of the Basque Country* and what it claims, given the diversity of the population of the Basque Country. In constitutional terms, it is much harder to defend the level of autonomy articulated in the *Political Statute* as an *ethnic claim* than it is to defend it as a *cultural right*. As we know, the Basque Country is not a homogeneous community. The role of migration, both immigration and outmigration, has been critical in shaping up the current Basque community. For example, immigration rises during the period of 1900-1936 by 50% mostly due to industrialization, and mainly in Bizkaia, definitely more than in Gipuzkoa. The population of Bilbao alone grew by 95.2% in the period 1900-1930. The urban centers were most impacted by immigration. The birthrate and mortality index were high (30% and 20% respectively) but started to fall -slowly at first, drastically in recent times. The net growth added at least 60,000 people. The total population of the Basque Country rose from about 600,000 in 1900 and 890,000 in 1930. The outmigration at the end of the Spanish Civil War, as it was indicated earlier, was about 170,000, and included a large segment of native Basques, in a total population estimated at 1,300,000.

Through most of the twentieth century, the thriving Basque economy, centered on the steel and the shipbuilding industries of Bizkaia and the metal-processing shops in Gipuzkoa, attracted thousands of Spaniards who migrated there in search of jobs and a better way of life. Between 1900 and 1980, the number of people moving into the Basque Country exceeded those who left by nearly 450,000 with the heaviest flow occurring during the decade of the 1960s. In the 1970s, the flow began to reverse itself because of political upheaval and economic decline. Between 1977 and 1984, the net outflow was nearly 51,000. The consequence of this heavy in-migration was a population in the late 1980s that was only marginally ethnic Basque and that in many urban areas was clearly non-Basque in both language and identity. One authoritative source showed data indicating that only 52 % of the population had been born in the Basque region of parents also born there, 11 % had been born in the region of parents born elsewhere, and 35.5 % had been born outside the Basque Country (*Censo de la población y vivienda de la Comunidad Autónoma de Euskadi, Movimientos Migratorios*; (1981); *Censo de Archivos del País Vasco, Alava* (1988); *Censo de Archivos del País Vasco, Bizkaia* (1988); *Censo de Archivos del País Vasco, Guipúzcoa* (1986).

Thus, appealing to the ethnic claim is hard and unclear because of the high percentage of mixed marriages over the years. But we can still make the argument of cultural rights, and claim that altogether the Basque Country is a *Distinct Society* based on its own cultural and unique traditions. This seems an undeniable fact. Tradition blends well with societal forces that have changed the current make up of a modern society that is *culturally unique*.



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# The Basque Language in the Basque Autonomous Community (BAC)

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*Lan honek Euskal Autonomia Erkidegoan euskararen erregimen juridikoa azaltzea du helburu. Euskararen estatus juridikotik abiatuak eta Espainiako Konstituzio Auzitegiak euskararen ofizialtasunari emandako irakurketatik abiatuak, sektore desberdinetan (Administrazioan, irakaskuntzan, komunikabideetan...) euskararen erregimen juridikoa ikertzen da. Halaber lan honek hizkuntzen ofizialtasun bikoitzari antzeman dakizkiokeen ahulezietan eta bereziki etorkizuneko erronketan erreparatzen du.*

*Giltza-Hitzak: Euskal Herria. Hizkuntza Eskubideak. Euskara. Hizkuntza Statusa. Hizkuntza Normalizazioa. Hizkuntza Plangintza. Euskal Autonomia Erkidegoko Estatutua. Euskararen legea.*

*Este trabajo analiza el régimen jurídico del euskera en la Comunidad Autónoma del País Vasco. Partiendo del estudio del estatus jurídico de la lengua vasca y de la lectura y alcance que el Tribunal Constitucional español ha concedido al régimen de doble oficialidad lingüística, el trabajo se adentra en el análisis del régimen jurídico del euskera en los diversos sectores (Administraciones Públicas, educación, medios de comunicación, ámbito comercial...). Asimismo, teniendo en cuenta la experiencia de los últimos 30 años de cooficialidad, el trabajo trata de identificar los puntos críticos del régimen de doble oficialidad lingüística, y reflexiona sobre los retos de futuro.*

*Palabras Clave: País Vasco. Derechos Lingüísticos. Euskera. Status Lingüístico. Normalización lingüística. Planificación Lingüística. Estatuto de Autonomía del País Vasco. Ley del Euskera.*

*Cette étude porte sur le régime juridique de l'euskara dans la Communauté Autonome du Pays Basque. En partant de l'étude du statut juridique de la langue basque et de l'interprétation et portée accordée par le Tribunal Constitutionnel au régime de double officialité linguistique, ce travail analyse en profondeur le régime juridique de l'euskara dans divers secteurs (Administrations Publiques, éducation, médias, domaine commercial...). En outre, compte tenu de l'expérience de coofficialité des 30 dernières années, il tente d'identifier les points critiques du régime de double officialité linguistique et il invite à réfléchir sur les enjeux futurs.*

*Mots-Clé : Pays Basque. Droits Linguistiques. Euskara. Statut Linguistique. Normalisation linguistique. Planification Linguistique. Statut d'Autonomie du Pays Basque. Loi de l'Euskara.*

## DESIGNING THE LINGUISTIC STANDARDIZATION PROCESS

Languages are social communication instruments and, at the same time, they represent an identifying factor for communities which have their own and where these languages are more or less widely spoken. The right to a language is a right for all individuals and for groups of speakers; it is an individual and yet social right. Euskara is a basic element of the Basque People's national personality. It is an instrument of communication also providing integration and social cohesion for citizens and territories in the Basque Country. It is the link between all territories which have it as their own language, comprising a linguistic community where national Basque identity is supported. It is, at the end of the day, the Basque Country's own language, an element which characterises and singularises our community.

Basque lives alongside two of the most powerful languages on earth: French to the north of the Pyrenees and Spanish in the south. The situation of language contact which occurs in all the "Euskara/Basque territories", in Euskal Herria, is characterised by the unequal weight for each of them from the point of view of number of speakers and the social or communicative functions which are carried out in one language or another.

In the same way as occurs in all places where public powers come up against the definition of a linguistic policy, the Basque linguistic policy in the BAC is conditioned by two factors. One is objective, concerning specific language contact situation; and the other is political, referring to different levels of agreement with approaches revolving around its future and promotion, as well as the route to achieve this.<sup>1</sup>

The first factor concerns linguistic diversity in Basque society. This is, by the way, an increasingly and plural diverse society from a cultural and also linguistic point of view, which is nourished by new and diverse sources. Multiculturalism in a political community with two official languages, one with as extensive international spread as Spanish (332 million speakers throughout the world), and the other in a minority situation (700,000 speakers<sup>2</sup> in the Basque Country<sup>3</sup>) sets us future challenges which seem to demand specific measures to make linguistic integration more effective, including the country's own language. This is a real sit-

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1. Linguistic standardisation is not only the result but also the path to achieve it according to VERNET i LLOBET: 1992, 54.

2. According to the last survey, which does not include speakers aged under 16, in absolute terms, we should talk about a linguistic community of less than a million speakers.

3. The number of Basque speakers outside the territory of Euskal Herria is not large and is concentrated fundamentally on the places that Basques have historically chosen for migration in the United States, fundamentally in Boise (Idaho) and San Francisco or Los Angeles (California), where Basque is still a standardised communication element in certain social fields. Outside these nuclei, the Basque Government has recently promoted a campaign to diffuse the Basque language abroad managing to create an approximate total of 40 Basque language chairs in different universities in Europe and America.

uation occurring in practically all stateless populations in Europe and, therefore, a real situation which many minority languages are facing in the European Union and other parts of our world.

Relating to the second factor, the current linguistic standard in the BAC is the result of a political agreement adopted at the start of the 1980s.<sup>4</sup> Law 10/1982, dated 24<sup>th</sup> November, basic law to standardise the use of Basque (LNE) continues to be the keystone in the BAC linguistic system, as the fruit of a plural agreement which would form the backbone of the Basque linguistic model in this territory. As we will have the opportunity to see later on, the different languages which live side by side in the Spanish state have different characteristics and represent different situations, because they are also subject to different legal systems so that, as an example, the linguistic model applied in the BAC has many differences from the Catalan linguistic model.

The Catalan linguistic policy, based on a very different sociolinguistic reality to Basque, started to take shape by adopting the principle of *linguistic conjunction*. Its exponent was the singular teaching model (which combines both languages, with predominant Catalan and which does not separate students for language reasons in the classrooms) and the application of generalised requirement criteria to speak Catalan to be able to apply for public employment in the Catalan Administration. On the contrary, and as a result of political agreement, the BAC model started to move forward by adopting the principle of *linguistic separation*, guaranteeing parents the right to choose the main language for their children's obligatory education (separating them in classrooms and even in different schools). On the other hand, the requirement to speak Basque to apply for work in the BAC administrations is only applied to jobs which have been previously determined as "bilingual" but not in all of them (creating two linguistic groups in public functions) and notifications to citizens are normally given in two columns written in each official language.

The Basque linguistic model in the BAC is characterised by guaranteeing spaces with linguistic freedom, aimed at satisfying the linguistic rights of whoever wants to use one language or another, meaning from one linguistic group or another, Basque speaking and Spanish speaking. There can be no doubt that the model has made significant progress, although its application also suggests aspects which leave pause for thought from the point of view of the increasingly plural future Basque society which is working towards greater integration and linguistic cohesion.

We not should forget either that Basque language is a minority language within an increasingly globalised context where communication and information tends towards globalisation. In short, Basque is a non standardised language. This explains why there is demand for a linguistic policy aimed at standardising

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4. See COBREROS: 1998, 335-336

the use of Basque, Euskal Herria's vernacular and own language, guaranteeing linguistic rights to all citizens, which can be applied to Basque citizens in the Basque Country Autonomous Community (BAC) and the Foral Community of Navarra (CFN).

## **START POINT OF THE STANDARDIZATION PROCESS**

There are many factors which have influenced the social situation of the Basque language, among them, the political persecution it has suffered, or the legal imposition of the use of French or Spanish which its speakers have suffered for several centuries.<sup>5</sup> The Spanish monarchy and French Republic were both set up on the basis of political and legal uniformitarian process. Linguistic diversity was seen as a threat for this standardisation process, leading to a linguistic policy of repression and marginalisation of people's 'own' languages, including Basque.

When the Second Republic was proclaimed in Spain (1931-1936) Basque language obtained the status or rank of official language together with Spanish for the first time since the creation of the Spanish state. Actually, by virtue of the Autonomy Statute approved in October 1936, an autonomous Basque region was created within the Spanish Republic. For the first time, the official status of Basque alongside Spanish was formally declared by Law (Autonomy Statute of 1936, art. 1.3). The official status of Basque was declared only in three out of the four Basque territories in the Spanish state, Araba, Bizkaia and Gipuzkoa, given that Navarra was excluded from the autonomy statute.<sup>6</sup> The fast occupation of Araba by troupes loyal to Generalísimo Francisco Franco after Civil War broke out in 1936, in July the same year, made it practically impossible to make the autonomy statute's regulations concerning linguistic issues effective in this territory. In any case, Basque's official status lasted a very short time. When Franco's troupes took all the territories controlled by the Basque Government in July 1936, this led to a dictatorship which lasted 39 years from 1936 to the dictator's death on 22nd November 1975.

The dictatorship represented the appearance of a scenario aiming to unify the state through standardising the diversity of cultures and languages. One of its characteristics, along with systematically ignoring human rights and the most elementary rules of democracy, was to try and remove all cultural and political vestiges that differentiated the Basque Country from the Spanish state. The Fascist state laid down a linguistic policy to repress any demonstration of Basque or other minority languages in the State, prohibiting and punishing its use very violently.<sup>7</sup> It was therefore prohibited to use Basque in public or in private: it was prohibited to baptise children with Basque names, church services in the Basque

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5. See CASTELLS: 1977, 286-325; 1986, 56-90; EUSKALTZAINDIA: 1977 (*in totum*); INTXAUSTI: 1990, 20-50; TORREALDAI: 1998 (*in totum*); 1982 (*in totum*)

6. See CASTELLS: 1986, 40-68

7. See TORREALDAI: 1998, 138-180

language were forbidden (curiously at first this was only after eight o'clock in the morning), all Basque schools were closed, the Basque language was erased from the administration and education system, even some Basque spellings were banned such as the "k" or the "tx" "due to their separatist connotations...". It went so far as to order families and owners of tombs and pantheons with dead family members' inscriptions in Basque to remove these gravestones and replace them with others in Spanish or simply erase inscriptions in Basque.

It was not only the Basque language which suffered the Fascist state's constrictive measures, but all national languages other than Spanish (such as Catalan or Galician).<sup>8</sup> Obviously, this assimilating linguistic policy had some very serious effects on the Basque language and other repressed languages. At the time the only linguistic policy in favour of Basque was in exile<sup>9</sup> and this provided the initial field of work for the public Basque autonomic power when designing the linguistic planning process.

## **SOCIOLINGUISTIC SITUATION**

The BAC covers a relatively small area, 7,000 km<sup>2</sup>, and is home to 2,100,000 inhabitants.<sup>10</sup> The distribution of the population between the BAC's three Historic Territories is unequal: 53% of this total corresponds to Bizkaia, 32% to Gipuzkoa and 15% to Araba. As a consequence of the very low birth rate, over the last few decades BAC population has decreased, showing progressive aging. We should also add a certain migratory return flow to this which has caused the Basque population to stagnate and even regress. However, from 2001 data seemed to show the start of a slight demographic recovery process.

Something which could be of interest in this snapshot of the sociolinguistic situation relates to the origin of the population. From the 1950s there was a massive migratory flow attracted by industrial employment, mainly in Bizkaia but also in Gipuzkoa. It has been calculated that Basque population doubled during the 20th century due to immigration, fundamentally from Extremadura and Andalusia (Spanish speaking). 27% of the current Basque population (564,656 persons) were born outside the BAC. However, the arrival of foreign immigrant population, although incipient, shows a growing progression year after year. Despite the fact that the percentages which represent immigration today are relative (according to the latest official data it stands at about 5%),<sup>11</sup> we might still think

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8. About Catalonia see FERRER I GIRONES: 1993 (in totum);

9. IRUJO: 2005, 337-486

10. Official data from the Basque Statistics Institute can be consulted on: [http://www.eustat.es/ele0004400/tbl0004432\\_c.html](http://www.eustat.es/ele0004400/tbl0004432_c.html)

11. According to the data provided by the Minister of Work and Social Matters, this refers to 57,395 people who had a residence card or permit in 2005; according to INE data and the Population and Housing Census, 2001 this referred to 31,000 people (data also adopted by EUSTAT - statistics for migratory movements, 2004-). This data can be consulted on the Basque Statistics Institute website: <http://www.eustat.es/estad/arbola.asp?idioma=c>

that there could be certain transcendence in the mid term on the Basque sociolinguistic situation. Full integration of this collective seems to require a specifically focussed linguistic policy, which makes it possible to access the knowledge and use of the country's own language, without being limited to searching for integration through the Spanish language.

To date, four sociolinguistic surveys have been run which analysed the population's linguistic skills: in 1991, 1996, 2001 and 2006 (published in 2008).<sup>12</sup> Using the sociolinguistic survey database and complementing it with data extracted from the population census (from 1981) the BAC Sociolinguistic Map has been created (published in 2005 referring to data from 2001). The Map shows that, in 1981, when the linguistic policy was created, 66% of the population over five years old were monolingual Spanish speakers, 12% were passive bilinguals and 22% bilingual using the Basque language correctly. Ten years later, in 1991, the percentage of monolingual Spanish speakers dropped 10 points to 57%, passive bilinguals rose four points to 16% and bilinguals reached 26%, four points more than in 1981. Finally, in 2001, 50% were monolingual Spanish speakers (984,656 people who do not understand or speak Basque), 32% were bilingual (they speak Spanish well and Basque quite well) and 18% passive bilingual (they speak Spanish well but speak Basque with difficulty, although they understand). This means that in twenty years the percentage of bilinguals has risen 12% whilst the number of monolinguals has dropped 16%.

The 2006 sociolinguistic survey reflects these very same figures and progressions (but excluding young people under sixteen years old). According to 2006 data the BAC has 1,850,500 inhabitants aged sixteen or more, 30.1% of whom (557,600 people) are fully bilingual, meaning that they speak both Basque and Spanish well. A further 339,600 (18.3%) are able to understand Basque although they do not speak it well; these will be referred to as passive bilinguals. The rest (953,300 people, i.e. 51.5%) are non-Basque speakers, in other words, people who do not know Basque at all. Over the past fifteen years, from 1991 to 2006, the number of full bilinguals has increased by 138,400. Their proportion has also grown: from 24.1% of the whole population in 1991 to 27.7% in 1996, 29.4% in 2001, and again to 30.1% in 2006. It is interesting to note that despite the fact that the overall over-fifteen population has constantly grown, there are at present 119,300 fewer completely non-Basque speakers today than fifteen years ago, falling from 59.2% of the population in 1991 to 51.5% in 2006. In the same period the percentage of the population who although they do not speak Basque perfectly can understand it has risen, from 8.5% to 18.3%.

Progressive figures show that Basque's standardisation process is moving forward. The percentage of bilinguals is increasingly higher; whilst monolingual numbers are increasingly lower (an annual increase in the rate of bilingualism of just over 0.5%). There is therefore a constant level of people taking on Basque.

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12. Available in English in [http://www.euskara.euskadi.net/r59-738/en/contenidos/informacion/inkesta\\_soziolinguistikoa2006/en\\_survey/adjuntos/IV\\_incuesta\\_en.pdf](http://www.euskara.euskadi.net/r59-738/en/contenidos/informacion/inkesta_soziolinguistikoa2006/en_survey/adjuntos/IV_incuesta_en.pdf)



The growth of bilinguals and the reduction of monolinguals have occurred in the three Historical Territories with similar percentages although the sociolinguistic situation in each one continues to be diverse, as diverse as the situation they started from. In Araba the percentage of bilinguals has quadrupled in the last twenty years going from 7% to the current 14.2%, in Bizkaia it has gone from sixteen to the current 23%, and in Gipuzkoa from 43 to 49%.

In conclusion, in 2006 one in every three people in the BAC was bilingual. Within the same age group, half of the population of the BAC declared themselves to be monolingual Spanish speaking; and 18% passive bilingual. This is general data but it can be combined with more specific readings. So, if we look more carefully at the different age ranges, those over sixteen are majority monolingual Spanish speakers, whilst one-third is bilingual and less than the 20% passive bilingual. This data contrasts with the data obtained in the lower age range, between five and fourteen years old,<sup>13</sup> where we find that two-thirds 66% is bilingual (186,400 young people), 23% is passive bilingual and only 12% is monolingual Spanish speaking.

The reading is positive, in so far as the data reflects a linguistic transformation tending towards the recover of Basque on the one hand and the projection of bilingualism, understanding this to be a source of cultural wealth. Taking into account the age ranges we have referred to, this is a linguistic transformation which has fundamentally occurred in the schools system. So then, the data also leads us to think about the limitations of the school system to achieve the aim of bringing Basque to students which we will talk about later). It can be understood this way because in the fifteen to nineteen age range, only 56% of students speak both official languages properly. In other words, the school linguistic system designed around the principle of separation guarantees Spanish is learnt but it does not guarantee that students are completely immersed in Basque, which is an aspect currently being corrected (as explained later on). In short, practically half the population finishing obligatory education in the BAC will not attain the legal objective of graduating with an appropriate knowledge of Basque.

Finally, we should highlight the change in the collective of Basque speakers caused by the massive incorporation of young neo-Basque speakers (bilingual and yet their first language is not Basque). Among the youngest generations, new-Basque speakers widely exceed Basque speakers (bilingual with Basque as their first language). Neo-Basque speakers usually speak Spanish at home and live in cities. The data shows that, as opposed to what you might think, the majority of bilinguals over five years old (66.3%) live in urban areas, mainly in the metropolitan areas of the three capital cities (Bilbao, San Sebastian and Vitoria) and in towns with more than 10,000 inhabitants. This is due to the demographic concentration falling mainly in urban nuclei, which are mainly made up of Spanish

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13. This data can be consulted on the Sociolinguistic Map at the following address: [http://www1.euskadi.net/euskara\\_adierazleak/euskara\\_adierazleak\\_dat/docs/O166\\_c.pdf](http://www1.euskadi.net/euskara_adierazleak/euskara_adierazleak_dat/docs/O166_c.pdf)  
Also in the Euskal Herria linguistic indicators system (EAS) which can be accessed over the Internet at [http://www1.euskadi.net/euskara\\_adierazleak/zerrenda.apl?hizk=c&gaia=25](http://www1.euskadi.net/euskara_adierazleak/zerrenda.apl?hizk=c&gaia=25)

More recently in the Fourth Sociolinguistic Survey (op. cit. previous food note) p. 15

speakers where the density of Basque speakers is low, limiting the possibilities of using it. However, the highest density of Basque speakers is found in small and medium sized populations. When all is said and done, relating to measuring use, the number of people who usually speak Basque are less than half the people who are capable of doing so.

## **STATUS OF BASQUE: DOUBLE JOINT OFFICIAL STATUS**

From a legal point of view, the status of Basque is shaped by a triple condition. The Basque language is:

- One of the two official languages in the territory of the Basque Country Autonomous Community, along with Spanish, which is official in the whole Spanish State. It should be highlighted that, by virtue of the Spanish Constitution, it is obligatory to speak Spanish. The duty to know a language only refers to Spanish and not the rest of the official languages in the Autonomous Communities. The duty to speak Spanish has been interpreted so as to exclude by the Constitutional Court, which denied the possibility for Autonomous Communities' legislation to establish a similar duty for their own languages.<sup>14</sup> However, the new Catalonia Autonomy Statute has included in article 6.2 that "All persons have the right to use the two official languages and citizens of Catalonia have the right and the duty to know them. The public authorities of Catalonia shall establish the necessary measures to enable exercising these rights and fulfilling this duty". This article has been appealed against before the constitutional court which should make a decision on its constitutionality.
- Despite not having planned its full official status within the field of the European Union, it is one of the languages referred to in paragraph 2 of article 53 of the Treaty on European Union,<sup>15</sup> occupying an intermediate status

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14. The Constitutional Court has interpreted that "Art. 3.1 of the Constitution establishes a general duty to know Spanish as the State official language; duty agreeing with other constitutional dispositions that recognise the existence of a common language for all Spanish people, and whose knowledge can be presumed in any case, independently of residence or neighbourhood factors. The same does not occur however, with other so-official languages in Spain in the respective Autonomous Communities, as the aforementioned article does not establish this duty for them, without this being able to be considered discriminatory, by not respecting the co-official languages from the aforementioned suppositions which give fundament to the obligatory nature of knowing Spanish. (STC 84/1986, dated 26th June, FJ 2).

15. According to the Treaty of Lisbon amending the Treaty on European Union and the Treaty establishing the European Community, signed at Lisbon, 13 December 2007

See. also, Declaration on Article 53(2) of the Treaty on European Union that rules as follow "The Conference considers that the possibility of producing translations of the Treaties in the languages mentioned in Article 53(2) contributes to fulfilling the objective of respecting the Union's rich cultural and linguistic diversity as set forth in the fourth subparagraph of Article 2(3). In this context, the Conference confirms the attachment of the Union to the cultural diversity of Europe and the special attention it will continue to pay to these and other languages. The Conference recommends that Member States wishing to avail themselves of the possibility recognised in Article 53(2) should communicate to the Council, within six months from the date of the signature of the Treaty of Lisbon, the language or languages into which translations of the Treaties will be made.

along the official languages in the Union and those other languages which have not been recognised for any effect.<sup>16</sup>

- Basque is a minority language which benefits from this status and has been accredited with linguistic rights which are recognised by international law, particularly the European Charter for Regional or Minority Languages in 1992.<sup>17</sup>

To the extent that the latter two aspects have been analysed in relevant chapters of this work, we will focus on the first aspect: the double official linguistic status.

One of the basic aspects of the political-territorial configuration of the Spanish State through the Autonomous Communities relates to language. The very conceptual configuration of the Autonomous Communities in article 143 of the Spanish Constitution (CE) refers to the cultural (and linguistic) factor as fundamental to political autonomy. Relating to the autonomic linguistic regime, article 3.2 of the CE declares the official status of “the other languages in Spain” apart from Spanish in the respective Autonomous Communities according to their Statutes. The autonomy statute (basic institutional standard for the autonomous community) is therefore the instrument which has to establish the profiles of Basque’s official status in the BAC.

The Basque Country autonomy statute (Organic Law 3/1979, dated 18<sup>th</sup> December) called the Gernika Statute, because this is where the Basque Parliament approved it, deals with the status of Basque in two articles, 6 and 35. Article 6 states:

1. Euskara, own language of the Basque People will have, like Spanish, official status in the Basque Country, and all its inhabitants will have the right to know and use both languages.
2. The common institutions of the Autonomous Community, taking into account the sociolinguistic diversity in the Basque Country, will guarantee the use of both languages, regulating their official status and they will arbitrate and regulate the measures and resources required to assure its knowledge.
3. Nobody can be discriminated against for reasons of language.
4. The Royal Academy of the Basque language – Euskaltzaindia is the official consultation institution referring to Basque.
5. As Basque belongs to the heritage of other Basque territories and communities, in addition to the links and correspondence which the academic and cultural institutions maintain, the Basque Country Autonomous Community can request that the Spanish government hold and present, when appro-

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16. URRUTIA, I: 2006 (II), 707-745. On the current Basque statute in the EU see EU Council Agreement, General Matters and foreign affairs, dated 13th June 2005 (doc. 9499/05 press 131). Ref to work of A. MILIAN & MASSANA in this work.

17. Ratification, 9th April 2001; publication in BOE dated 15th September 2001.

priate before the General Courts for authorisation, treaties or agreements which permit cultural relations to be set up with States where these territories or communities are located in order to safeguard and promote the Basque language.

The precept legally configures the status of Basque in the BAC on the basis of five parameters which we will summarise below:

1. *Shared official status.* Spanish is the official language of the whole Spanish state, including the territory of the BAC. The Gernika Statute declares the official status of Basque and Spanish jointly over the territory of the Autonomous Community. The double official status regime jointly between Basque and Spanish produces the effect that the formal legal status of the two languages is equal in this territory. From the formal perspective, the shared official status means equality of languages.<sup>18</sup> As stated in the Constitutional Court “the co-official linguistic regime established by the Constitution and the Autonomy Statutes assumes not only co-existence but also cohabitation of both languages.<sup>19</sup> However, this equality does not formally correspond to real material equality.
2. *Linguistic rights and duties.* The official language status represents implicit recognition of validity and legal effectiveness of manifestations made in this language. The language can be conceived as a formal element of the legal act, but it is above all a communication mechanism. From there we can take it that the declaration of the official nature of Basque also attributed rights to citizens. The official shared nature of Basque and Spanish in the BAC produces the citizens’ basic right to use Basque or Spanish indistinctly.<sup>20</sup> Anyhow the actual sociolinguistic situation in the country and particularly the lack of knowledge of Basque among people working in public services obviously limits Basque speakers’ rights.<sup>21</sup> Freedom of language goes from being a manifestation of freedom of expression to become a subjective public right, which will demand that public powers not only recognise effects of the manifestations made in either of the two official languages but also that the response to exercising the right to choose should be in the same language as the citizen has used. The right to choose the language forms part of the basic content of the statute for shared official status. The use of Basque or Spanish is configured by citizens as a right to freedom, as regardless of the official language that they use in their relations with public powers in the Autonomous Community, they have to produce effects. This is precisely the defining factor for the double official status model applied in the BAC.

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18. COBREROS: 1989, 44; ALBERTÍ, 1999, 93.

19. Constitutional Court Sentence (STC) 337/1994, 23rd December, FJ 6.

20. AGIRREAZKUENAGA: 2003, 84; AGIRREAZKUENAGA: 1999, 109.

21. AGIRREAZKUENAGA: 1998, 343

The Gernika Statute does not explicitly establish linguistic duties with regard to citizens as opposed to the new Catalonia Statute in 2006. It only guarantees linguistic rights and requires that Basque institutions regulate “the required measures and resources to assure knowledge” of both official languages.

The Constitutional Court has stated on this matter that “from recognising the co-official status of Spanish and an autonomous community’s own language the mandate is derived for the public, state and regional powers, to include both official languages as an obligatory school subject, in order to assure the constitutional and statutory right to use it”.<sup>22</sup> The declaration of the official nature of Basque requires that it is incorporated into regulated teaching with the intensity required to assure its knowledge. Here emerges a “duty to knowledge,” a duty to learn the Basque language at school for all the students enrolled in schools in the BAC. This is a duty to learn Basque which emerges indirectly from the official nature of Basque<sup>23</sup>.

3. *Basque as a language in its own right.* During Parliamentary processing of both the autonomy statute and principally the law to standardise Basque, there was intense debate on this term. Reading the discussions leads us to consider the political transcendence that all the parliamentary groups conceded to the concept, to the extent that it could represent an unbalancing factor for the position of legal equality between the two official languages.<sup>24</sup>

The concept of “own language” incorporates a collective dimension, as opposed to an individual dimension which characterises the recognition of linguistic rights linked to double official status. Both act on different planes. The double official status is symmetrical regarding the guarantee for the linguistic rights, whilst the “ownness” is interpreted as a factor which justifies measures awarding preference of use to the own language, acting within the framework of guaranteeing linguistic rights.

The joint official status of Basque and Spanish awards rights to citizens whilst the declaration of own language acts within the field of promoting the language.<sup>25</sup> The nature of “own language” legitimises the measures aimed at encouraging the use of the language declared as such, Basque. In this respect, the Supreme Court has said that

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22. STC 337/1994, 23rd December, FJ 4; also STC 87/1983, 27 October FJ 5 and STC 88/1983, same date, FJ 4.

23. URRUTIA, I: 2005, 366.

24. The minutes from the sessions on 18th and 29th June 1982 (in commission) and 24-25 November (in plenary session), suggesting the positions of the different political groups around the concept have been compiled in the BASQUE PARLIAMENT publication: 1991. Processing art. 6 of the Statute can be following in TAMAYO: 2006.

25. Vid. MIRAMBELL: 1999, 57

it is constitutionally possible for autonomic legislation to incorporate preferential use of the Gallego language in Public Administrations, for the autonomous community and local Galician entities.<sup>26</sup>

The specific scope of the principle of own-ness will depend, not on the concept itself, but on the legislator, who has to work out its scope. So then, the required compatibility between the principle of own-ness and the double official status principle removes the boundaries for operating the former.<sup>27</sup> Standardized operation in the own language (in Basque) is possible; it has to make itself compatible with the citizen's right to choose the language derived from the shared official status.

4. *No linguistic discrimination.* Art. 6.3 of the BAC autonomy statute declares the principle of non linguistic discrimination. In a joint double official status system the principle of equality and non linguistic discrimination is related to the shared status of the languages. Recognition of the same status for both languages supposes that citizens can use the language of their choice; this right must be guaranteed by the public power both in Basque and in Spanish. In the BAC no problems were raised relating to the right to use Spanish and its correlative guarantee. So then the level of Basque among Administration service personnel became a requirement to give real weight to the right to a linguistic option.

The principle of equality of languages has an essentially legal nature, and must be applied to a context or situation of inequality of languages explained by multiple reasons. This is why the public powers have to articulate positive action measures in favour of Basque, the least favoured language, to make the equality principle work. Limiting the differentiation of treatment constitutes discrimination, understanding that this occurs when different treatment cannot be justified, it is not reasonable for the purpose or the measures or effects produced are out of proportion.<sup>28</sup> We should distinguish between “discriminatory treatment” and “unequal treatment” or “positive discrimination” with the aim of making formal equality between Basque and Spanish real and effective.

5. *Promoting linguistic standardization.* Official status is a formal principle but the Gernika statute also assumed its material dimension, by enabling public powers to articulate a process with the end result of producing an egalitarian situation between Basque and Spanish. This enablement is characterised by its purpose. The linguistic standardisation process is conceived as a need that the statute awards to regional institutions.

Apart from the five basic references which have already been mentioned, the Gernika statute contains other linguistic conditions, such as the configuration of *Euskaltzaindia* as an official advisory institution referring to Basque; it recognis-

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26. Constitutional Court Sentence 25th December, 2000 (FJ 7).

27. AGIRREAZKUENAGA: 1999, 112; MILIAN: 2002, 341; VERNET: 1996, 83.

28. On the different perspectives of the principle of equality and no linguistic discrimination see DE WITTE: 1985, 5-40.

es the BAC initiative to request from the central state government that International Treaties or Agreement relating to Basque are held, which has barely been fulfilled (art. 6.5), fundamentally due to lack of initiative or interest from the different central governments. Finally, article 35 of the statute refers to assessing knowledge of Basque as a preferential merit when accessing jobs in the legal system. As far as this is concerned, we should think that merely taking knowledge of Basque into consideration to take possession of and exercise legal functions in the Basque Country is maybe not the most appropriate way of guaranteeing the linguistic rights of subjects that legitimately exercise the option to use their country's own language before a legal body (right referred by the Sentence of the Constitutional Court 82/1986, FJ 11).<sup>29</sup>

## THE BASQUE LANGUAGE STANDARDIZATION LAW

Regarding the *legal framework*, we should emphasise Law 10/1982, dated 24<sup>th</sup> November, basic standardization of the use of Basque (LNE) which continues to be the basic law regulating the issue after more than 25 years in force. This is an important law in its meaning, to the extent that it represented the transit from the previous legal situation of iron ruled monolingualism (Basque was simply prohibited and its use was punished), opening up legal possibilities for teaching and using Basque. As a law it has made significant progress. None of the articles in the LNE have been formally modified or derogated by later laws, which reflects the consensus and parliamentary agreement which we referred to in the introduction, although some of its precepts have been reinterpreted these days in the light of the sector-based ruling which was approved afterwards.

Despite the high level of consensus with which it was approved in the BAC parliament, the LNE was subject to an appeal for unconstitutionality made by the president of the Spanish government, finally resolved by the important Constitutional Court Sentence 82/1986, dated 26<sup>th</sup> June. This sentence, with high legal-technical value, threw out allegation of incompetence made by the president, and only declared unconstitutionality for three precepts which would not affect the basic core of the ruling, so it was thought that the ruling generally "came off well".<sup>30</sup> Nevertheless this fact reflects how the state government views the standardisation of Basque.

There is currently a debate on whether it should be modified.<sup>31</sup> It must be taken into account that current Basque society is very different from the start of the

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29. It shares the opinion of VERNET: 1999, 317.

30. Vid. COBREROS: 1989, 105. The articles declared unconstitutional were 6.2 (relating to the use of the language when there is no agreement between the intervening parties in the procedure; 8.3 (relating to the exclusive use of Basque locally), and 12.1 (on the qualification of the sworn translator).

31. See Basque Parliament resolution no. 4, dated 10th December 1999 which says "the Basque Parliament considers it necessary to develop legislation relating to standardising the use of Basque to make progress in initiatives to standardize Basque in most Basque speaking nuclei, in the media, in State Administration located in the Basque Country, in the socio-economic field, in the new information and communication technologies, in guaranteeing consumers' linguistic rights, in taxation incentives and local public entities." See: Comments by AGIRREAZKUENAGA: 2003, 278.

1980s. Important political transformations have occurred, such as joining the European Union, with the effects this might have on the linguistic perspective. There have been commercial, economic and social transformations, cultural globalization processes, from the world of communications and audiovisuals, the emergence in the technological field of infrastructure, networks, information highways which did not exist when the LNE was approved. We could think about the areas where the LNE is lacking, such as socioeconomics, managing public services, etc. or other fields where the law is too rigid, such as making bilingualism necessary in areas which are majority Basque speaking. But perhaps it would be more urgent to consider the convenience of reforming or reviewing some aspects of the law whose ineffectiveness seems to be demonstrated in practice, as occurs in education and in particular in the linguistic separation system. In short, it is proposed if possible at this time to find new political and social consensus around Basque working towards designing a single linguistic model which incorporates both languages in the same classroom.

As we expressed in the introduction, the law works from recognising Basque “as the most visible and objective sign of identity for our Community and an instrument to fully integrate the individual in it through knowledge and use.” Working from this perspective, Basque is recognized “as an integrating element for all citizens” in the BAC and it affirms the wish to “incorporate the rights of Basque citizens in linguistic matters in our legal ruling.” So then “the character of Basque as a language in its own right for the Basque People and as an official language alongside Spanish should not undermine the rights of those citizens who, for different reasons, cannot use it.”

The regulation contained in the LNE presents the following four characters:

1. It affirms the symbolic perspective of the Basque language, as an expression of the singularity of the Basque People or as an identifying element of a national reality.
2. The law acts as a source of linguistic rights (although many of the rights it declares are derived directly from the double official status regime).
3. We should highlight the linguistic policy model which this introduces, based on the separation principle, with symmetrical rights and duties (for official use) regarding both official languages.
4. The service-related perspective, guaranteeing recognized linguistic freedoms, in which the principle of progression gains ground, attested in many articles<sup>32</sup> and particularly in the third Additional Condition of the LNE. It is clear (and was expressed as such in the Supreme Court Sentence dated 23<sup>rd</sup> January 1998)<sup>33</sup> the lapse of time between the LNE coming into force to the present day means that the progression clause must currently be interpreted restrictively, without space for its allegation to make citizens' linguistic rights more relative.

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32. Vid. Art. 6.1.b, 14.1, 15.2, 20.1, 25 of the LNE.

33. Aran.668, 1998.



The LNE lists citizens' rights and the duties of the public powers concerning linguistic matters. In general, for all BAC citizens, it recognises for the "right to know and use the official languages, both orally and in writing" (art. 5.1). The right to use is recognized for the whole BAC territory, both publicly ("independently of the strictest sense of the state, regional or local character of the different public powers"),<sup>34</sup> and in private. The LNE then declared the following "fundamental linguistic rights":

- a) Right to communicate in Basque or Spanish orally and/or in writing with the Administration and with any Organism or Entity located in the Autonomous Community.
- b) Right to receive teaching in both official languages.
- c) Right to receive periodic publications, radio and television programmes and other media in Basque.
- d) Right to carry out professional, work, political and trade union activities in Basque.
- e) Right to express yourself in Basque at any meeting.

Recognition of these fundamental linguistic rights (developed more specifically in Title 2 of the LNE) is completed with the imposition of public duties. Article 5.3 states that "public powers will guarantee these rights can be exercised, in the territorial field of the BAC, so that they are effective and real." Public powers are entrusted to guarantee the recognised rights. This is not only a matter of guaranteeing a negative status (not limiting the exercise of linguistic freedoms) but also articulating the necessary measures to make them effective. The law configures linguistic rights as real subjective rights.

## **BASQUE AND PUBLIC ADMINISTRATIONS**

The LNE guarantees citizens' right, inherent in the double official status regime, to use both Basque and Spanish when dealing with the Public Administration throughout the whole BAC territory, as well as the right to be attended in the official language of their choice. The second paragraph of art. 6.1 LNE refers to the Administration's response to exercising the right to use Basque, attesting that it would adopt "the opportune measures and the necessary media would be arbitrated to guarantee this right is exercised progressively."

What is the system applied by the Basque Administration to "guarantee this right is exercised progressively" in use? This refers to the system of linguistic profiles.<sup>35</sup> The linguistic profile system is an original system altogether but it has imported its defining basic elements from other European and American models. The main reference point is the bilingual job system applied by the federal administration in Canada, aimed to guarantee "institutional service bilingualism" (Eng-

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34. STC 82/1986, dated 26th June, FJ 2.

35. Vid. AGIRREAZKUENEGA: 1994, 7-50; URRUTIA: 2001, 91-128.

lish/French).<sup>36</sup> The second contribution comes from the linguistic circuits system in the Brussels Capital Region, in Belgium (Flemish/French).<sup>37</sup> And the third is the integration in the sociolinguistic data planning system (the percentage of bilingual population living in the field of influence of the corresponding Administration), characteristic of the Finnish model (Swedish/Finnish).

Art. 14.2 of the LNE states that “the public powers will determine deadlines by which it is mandatory to know both languages.” Linguistic job characterization is conceived as the backbone of the system. The requirement to speak Basque to join the Public Administration met early support in the Constitutional Court doctrine.<sup>38</sup> However, it has always caused legal controversy and was taken to the Courts of Justice. This conflict, resulting from the almost systematic impugnation of any public employment offer published in the BAC in the 1980s, led to negative consequences for the standardization process at the time when the Basque Autonomic Administration was being created and undergoing its greatest expansion. The majority of civil servants taken on at that time were employed without any requirements to speak Basque, meaning that the linguistic rights which the law theoretically guaranteed were diluted in practice to the extent that civil servants do not have the linguistic skills required to deal with Basque speakers.<sup>39</sup>

The linguistic profile system<sup>40</sup> consists of setting a determined linguistic profile (LP) for each job in the civil service. The LP is determined by the level of skill in Basque required to do the job. The LP for each job is set through Job Relations. There are four linguistic profiles in ascending order of Basque skills (LP1, LP2, LP3 and LP4) which are assigned to posts according to the linguistic skills each one requires. Every job has its LP. The second element to take into account is the “obligation date” which is the date when it is obligatory to comply with the LP to access and provide the corresponding job. So, we talk about mandatory LP (where candidates had to accredit their corresponding profile) and non mandatory LP (not requiring profile accreditation). When the LP goes from being offset to mandatory the person currently doing this the job must accredit their LP; a

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36. As I have had the opportunity to justify, the Basque model is separate from it to the extent that it tends towards “individual functional bilingualism” (URRUTIA: 2001, 94).

37. Vid. VANDERNOOT: 2004, 381.

38. See STC 82/1986, dated 26th June, FJ 14 (referring to art. 14.2 LNE). See also ERKOREKA: 1998, 425-439

39. Recent sentences seem to abound in the same line such as the STSJVP dated 26th October 2007 (JUR 2008\32694) which affirms that “there can be no doubt about the constitutional legitimacy of the requirement to speak Basque as a requirement to get a job with the BAC administration, given that the aim is to guarantee co-official status and in short citizens’ rights to use Basque in their relations with the Administration is legitimate. So then the need for this knowledge is not accredited in the slightest when attending to the job’s external relations from the time when, as affirmed in the request, relations are established in Spanish and the documentation required to do the job in Spanish or in English” (FJ 3).

40. See Law 6/1989, dated 6th July, of the Basque Public Function; Decree 86/1997, dated 15th April, which regulates the standardization process for the use of Basque in Basque public administrations.

series of day releases and temporary time off is available to take free classes in the Basque language.

The number of mandatory LP and offset LP is determined according to the “rate of obliged compliance or obligation” which is calculated on the basis of data relating to knowledge of Basque among the population living in the territory corresponding to this administration, using the following formula:

*Rate of obliged compliance = % Basque speakers + (% almost Basque speakers / 2)*

There are two fields which have remained outside the profile system application: healthcare and the police.<sup>41</sup> The education system, however, applies a variation on the system, characterized by the existence of two singular profiles, LP1 (teaching posts which do not use Basque) and LP2 (teaching posts requiring Basque). Obligation rates are determined by law based on the linguistic models followed in the school.<sup>42</sup>

The profile system is just a planning technique but what about the bilingualism model adopted by the BAC? The joint official status of the languages gives legislators several options when configuring the bilingualism model. It is like this to the extent that, as the constitutional court says,

the use by public powers of only one of the co-official languages can be made indistinctly, by ones' own initiative or even chosen by the interested party, when this is regulated, as long as this does not damage the rights of any interest party who can validly plead that they do not know the language being used (...). The fact that the whole procedure can be done in Basque is the natural consequence of the official nature of this language in the BAC, which leads to efficacy, within its field, of the actions carried out in it.<sup>43</sup>

On the basis of this doctrine we should attest that from a legal point of view the use of official languages can be regulated, although this can give rise to very different ways of carrying out the law. The law will determine which legal acts should be carried out simultaneously using the different languages, which acts can be adopted exclusively in the citizen's own language and under what conditions. So then, whatever the legal realization which determines the linguistic model, it should in any case guarantee citizens' right to a language option, without this necessarily meaning the simultaneous use of both official languages.

Article 8 of the LNE establishes, in paragraphs 1 and 2, the basic rules according to which both “legal conditions” and “official resolutions which

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41. For the health sector, Law 8/1997, dated 26th June, of the Euskadi health order, art. 28; and for the Ertzaintza Law 4/1992, dated 17th June, for the Basque Country Police, art. 39-50, and Decree 133/1997, dated 10th June, which regulates the process of standardizing Basque in the Ertzaintza.

42. URRUTIA: 2001, 91-128.

43. STC 82/1986, FJ 9.

emanate from public powers,” such as “the acts where public powers intervene,” “administrative notifications and communications” have to be written in both languages. Sentences from the Basque Country Court of Appeal<sup>44</sup> have extended the requirement to simultaneously write all types of administrative documents in both languages, even material actions. As this is the dominant interpretive line, it must be said that in practice several acts are still dictated exclusively in Spanish, not so much referring to official publications (Official Journals, autonomic bulletins and Foral bulletins are written in double columns in both languages) where the requirements for bilingual writing are mostly guaranteed, but rather in notifications, and mainly in reports and other acts which are exclusively or principally internal. In addition, we should highlight, when we talk about infringement of rights that we are referring to the Basque language, as it is Basque speakers’ linguistic rights which are violated when these notifications are written exclusively in Spanish, with the consequent job of requesting them to be written in Basque.

The joint use of both languages is only exempt for notifications and administrative communications when “the private interested parties expressly choose to use just one of the Autonomous Community’s official languages” (art. 8.2). This refers to notifications in a single language, as an exception to the rule of simultaneous use, which can logically be exercised for both languages.

Relating to the *Periphery State Administration* located in the BAC, the LNE establishes in its Additional Third Condition that the Basque Government will promote, in accordance with the competent bodies, the adoption of measures tending towards progressive standardisation of the use of Basque in State Administration. However, in practice significant progress has not been made relating to introducing bilingualism into central state government work located in the BAC.<sup>45</sup> The linguistic skills of State administration service personnel have become essential, if not the very official nature of Basque will also suffer in this field.

## TEACHING

The basic characteristic of the educational linguistic system is the application of the principle of the freedom to choose the teaching language, which differentiates it from other linguistic systems which have been implanted such as Catalan or Gallego.<sup>46</sup>

The right to choose the teaching language at all education stages is declared in article 15 of the Basque standardisation law which states that “all students have the right to receive teaching both in Basque and in Spanish in the different levels of education.” As previously mentioned, the LNE configures a system of

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44. See, among others, Basque Country Court of Appeal Sentence dated 30th December 1995.

45. See the reflections of AGIRREAZKUENAGA: 1998, 352

46. URRUTIA: 2005: 468-470

“linguistic separatism”,<sup>47</sup> based on the coexistence of different linguistic teaching models. The law introduces the system but it does not set the linguistic models; this work is done through regulatory standards.<sup>48</sup> The linguistic models are as follows:

- Model X: vehicular use of *Spanish* except in English class. This means that classes are given exclusively in Spanish and English classes are taught. Basque is not taught. This model has disappeared in practice and it is only applied for temporary residents in the BAC who do not have previous knowledge of Basque and are not going to acquire it as their stay is temporary. This currently covers 0.1% of students in the BAC.
- Model A: *vehicular use of Spanish* except in English class and for Basque language and literature. This means that classes are given exclusively in Spanish but English and Basque classes are also taught. This currently covers 19.9% of students in the BAC.
- Model B: *mixed vehicular use* of both official languages (50%). The classes are given half in Basque and half in Spanish. English classes are also given. This currently covers 23% of students in the BAC.
- Model D: the vehicular language is *Basque*, except for English and Spanish language and literature. This means that classes are given exclusively in Basque with Spanish language as a subject. This currently covers 57% of students in the BAC.

The most transcendent effect of this system involves separating students into different classes for language reasons.

The system’s development depends on two factors, namely: social demand for each model and the public service field. Planning has to be connected to social demand. The legislation has not configured the right to language options as a right which can be exercised in the public teaching centre of choice. The right to this option must be exercised within the framework established by the public powers. The TSJPV jurisprudence attests that although it is true that the parent’s wishes and the sociolinguistic reality of the area are criteria which prevent the education administration from assigning linguistic models in the centres arbitrarily, behind the back of majority options, these are just planning criteria.<sup>49</sup> These criteria have to be taken into account by the administration, but they do not configure rights. The parent’s right to choose the linguistic option for each centre is not recognised, not even the right to establish a specific model when a determined number request it. Freedom to choose does not imply the configuration of the service.

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47. MILIAN: 1994: 100

48. Decree 138/1983, dated 11th July, which regulates the use of official languages in non university teaching

49. See Basque Country Superior Court Sentence dated 26th October 2000, FJ 4 (Aran RJCA 2724) and STSJCV 28th September 2000, FJ 3.3 (Aran RJCA 2284); STSJCV 9th October 2001, FJ 3 (Aran JUR 42746). This jurisprudence is in accordance with STC 195/1989, dated 27th November, FJ 3 and STC 19/1990, 12th February, FJ 4.

Recognition of the freedom to choose from linguistic models reinforces some models and weakens others. Social demand for the models with the greatest presence of Basque have been constantly increasing, mainly model D (increasing 10 points in the last 10 years), to the detriment of model A (dropping 10 points), whilst B remains practically stable at around 23% of students.

For an outside observer of the Basque sociolinguistic situation, the social push for the Basque-only model is maybe surprising. It is an indubitable demonstration of Basque society's commitment to bilingualism and social awareness that model D guarantees the best balanced levels of knowledge of both official languages (not the case for model A which does not guarantee Basque is learnt) whilst in the remaining teaching subjects the levels of learning and performance do not vary from model to model. On the other hand, academic performance levels and the third language (English) or even fourth language (French as an optional subject) knowledge levels in the Ikastolas or model D schools have obtained excellent results which have been recognised on a European level on numerous occasions.

If the first pillar on which the linguistic system is based is recognition of the freedom to choose the vehicular language, the second pillar is the guarantee of knowledge of both official languages on finishing obligatory schooling. The target to "achieve real skills for written and spoken comprehension and expression in both languages, so that at least they can be used as functional languages and for ordinary use" is established as a priority. The Constitutional Court has referred to learning Basque and Spanish as a consequence of the official character of both languages "this naturally supposes that both languages must be taught in schools in the BAC with the intensity that means this target can be met";<sup>50</sup> on another occasion the same Court added a second target, "on finishing basic studies, students know and can use both co-official languages in the Autonomous Community correctly".<sup>51</sup> This court has put emphasis on the efficacy of achieving linguistic targets. Integrating Basque and Spanish into the teaching system is not understood to be neutral, but aimed at achieving certain targets effectively.

The most controversial aspect of the BAC system lies in numerous technical studies proving linguistic capability deficits among students on finishing obligatory schooling, mainly through model A (where the teaching is given entirely in Spanish) and B (mixed model).<sup>52</sup> This refers to a situation which is currently in the process of being corrected, as it turns out to be incompatible with the shared official status of the languages and with the principle of linguistic integration

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50. STC 87/1983, 27th October, FJ 5 and STC 88/1983, 27th October, FJ 4.

51. STC 337/1994, 23rd December, FJ 12.

52. See for all the most recent from the Basque Educational Research and Evaluation Institute (depending on the Education Ministry), "evaluation of level B2 of Basque," accessible from Internet <http://www.isei-ivei.net/cast/pub/B2CAST.pdf> which concludes the need to reform the current linguistic models in order for students to get the results required by the standard.

which has to act through the education system. The education system cannot lead to creating two communities in the BAC separated by a linguistic barrier as could be occurring in the neighbouring Foral Community of Navarra. It would be better to move towards a more integrating model, a linguistic conjunction model, although equipping it with sufficient flexibility so it can adapt to the country's different sociolinguistic contexts.

Since 2006 there has been intense social and political debate in the BAC relating to whether the linguistic separation system should be modified. The debate took place as a consequence of the demand that the BAC Parliament took to the Basque Government Department of Education in order to design a new education model moving beyond the linguistic models system in force.<sup>53</sup>

Shortly it is expected that the parliament will start processing a new law project concerning linguistic policy in education which will modify the system in force. There are two master lines for the new linguistic system:

1. It clearly establishes the levels of knowledge which have to be guaranteed by the school regarding the official languages and English. The law project adapts to the language learning levels recommended by the European Council.
2. The second fundamental principle is strengthening the autonomy of schools in their linguistic aspect. This approach is based on making it possible for each school to define which language it will use as its teaching language according to the linguistic characteristics of the students and the sociolinguistic environment where the center is located. The basic objective of achieving balanced bilinguals in both official languages has to mark the measure of vehicular use of the official languages. Possibly each sociolinguistic context, each school, requires a determined linguistic policy in order to guarantee language knowledge results from their students. This is precisely what the law project is suggesting. The articulation of each school's linguistic autonomy will be laid down in the linguistic project which has to be approved by each centre, instrument which will regulate the treatment of languages in teaching and extra-curriculum aspects of the school.

Taking into account that the conditions of the surrounding area and social interaction favor the use of Spanish and that the evaluations have demonstrated that exposure to Basque in the teaching-learning process is fundamental in terms of acquiring sufficient oral and written communicative competence, Basque must occupy a pre-eminent position. The law project establishes that at least 60% of non linguistic curricular areas and subjects should be given in Basque language. Schools will have autonomy to determine the language in which the rest of the areas or subjects will be given. Spanish will also be used

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53. Proposal no of the Law "relating to the educational linguistic system" approved on 2nd December 2005 (Official Basque Parliament Bulletin dated 16th December 2005).

as a learning language to guarantee appropriate knowledge of it. Foreign languages will occupy the place each school determines within their linguistic projects, always guaranteeing that the competence levels set for official languages are achieved.

Everybody is aware of the operative difficulties that such an open model can cause. However, working from the valorization of linguistic diversity, the project emphasizes the guarantee for higher levels of bilingualism, which could be sufficiently flexible to respond to and accommodate the different sociolinguistic realities in the country.

Regarding the university area, in the same way as for the non university field, the Statutes for the University of the Basque Country/Euskal Herriko Unibertsitatea (UPV-EHU)<sup>54</sup> establish a linguistic separation model which guarantees students “the right to receive teaching in either of the official languages within the framework of the teaching schedule” (art. 15.b) and “the right to take exams and evaluation tests in either of the official languages within the teaching schedule” (15.j) and also to carry out, publish and defend research in either of the official languages (art. 165.1). In the UPV-EHU, students can take all their studies entirely in Spanish and as far as the linguistic schedule permits it, they can also study totally or partially in Basque. However there are important differences from one faculty to another. Whilst in some faculties it is possible to take all courses in Basque (Law), in other faculties this possibility is minimal, and it must be done in Spanish. Essentially the studies available to students in Basque are a long way from matching what is offered in Spanish, even though an important effort is being made to correct this irregular situation.

## **MEDIA**

There can be no doubt about the transcendence of the written and audiovisual media (radio and television) to diffuse and standardise a minority language. In this respect, article 5.2.c in the Basque standardization law declares the fundamental linguistic right to “receive periodic publications, radio and television programs and other media in Basque.” The scope for this right is specified in articles 22-25 of the LNE.<sup>55</sup>

Article 22 of the LNE refers to the service-related reversal of the right to be informed in Basque, stating the following: “the Government will adopt the measures leading to increasing the presence of Basque in the social media, tending towards the progressive equality in the use of both official languages.” This sets the target of equalling the presence of both languages in the media.

In order to meet this objective, the LNE plans two lines of action:

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54. Approved by Decree 322/2003, dated 23rd December.

55. See LASAGABASTER:1990 and LASAGABASTER and LAZCANO: 2004



1. Relating to the “BAC media” the government “will promote the preferential use of Basque”.<sup>56</sup>
2. Regarding “Radio Televisión Española transmission centers” the Basque Government will boost linguistic standardization in order to “assure appropriate presence of Basque as the Basque Country’s own language”.<sup>57</sup>

Finally the LNE centers different fields which must be included in promotional activities such as “radio-broadcasting, the press and publications, cinematography, theatre and shows and image and sound reproduction media”, regarding those that “will develop the opportune qualification within the laws which consider and regulate the previous points”.<sup>58</sup>

Since the start of the 1980s (when the Basque standardization law was approved) to the present day, the audiovisual world has undergone an enormous evolution which gives us a situation today which was unimaginable twenty five years ago. Think for minute for example that back then the television service was only provided by the state channel Radio Televisión Española and the Basque channel Euskal Telebista (in BAC), whilst now new technology (cable, satellite, TDT, TV over the Internet, telephone TV, local TV, etc.) has multiplied possibilities for receiving information, practically from anywhere in the world. Faced with this new scenario, not contemplated by the LNE, we need to interpret the “right to receive information in Basque” more broadly, linked to the principle of linguistic pluralism.<sup>59</sup>

Regarding Basque on the television, we should start by referring to the Basque public television service ETB. Law 5/1982, dated 20<sup>th</sup> May, created Euskal Irrati Telebista, the Basque Public Radio Television Entity (EITB), to directly manage the public audiovisual service. Art. 3.h of this law refers to the use of Basque adopting “the need for balance in the overall offer of radio/TV broadcasts in the Basque language” as a criterion in the BAC. In the current situation with two channels provided by Basque television Euskal Telebista (ETB), the balance has moved by means of the linguistic specification of each channel: ETB1 in Basque and ETB2 in Spanish. On the other hand, ETB is integrated in the digital platforms which run digital broadcasting via satellite (ETB-Sat integrated in Vía Digital, and Canal Vasco which is mainly broadcast in America and which broadcasts in Basque and Spanish).

As far as Radio Televisión Española (RTVE) is concerned, its new legislation sets the target to “promote territorial cohesion, plurality and linguistic and cultural diversity” in the Spanish state.<sup>60</sup> However, the lack of interest shown by

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56. Art. 23 LNE.

57. Art. 24 LNE.

58. Art. 25 LNE.

59. See art. 20.3 of the Spanish Constitution.

60. Art. 3.2.e) of Law 17/2006, dated 5th June, for state owned radio and television.

RTVE management bodies, along with difficulties to control programming decisions legally has made the real presence of Basque practically nil. Faced with this fact, we could still argue legally that the right to receive information in Basque is an authentic subjective right, whose service-related content could also be required of RTVE programs,<sup>61</sup> mainly in its regional link-ups for both Basque autonomous communities, BAC and CFN (where the presence of Basque is minimal).<sup>62</sup>

Legislation on locally broadcast television also includes the principle of linguistic pluralism.<sup>63</sup> Meanwhile the reform of the standard on terrestrial digital television plans for the state government to boost the use of the different official languages in the state on channels adjudicated in the calls for bids.<sup>64</sup>

One question which has not been established by the LNE, but which is particularly important nowadays, involves setting linguistic quotas for television programs. Law 25/1994, dated 12<sup>th</sup> June,<sup>65</sup> included the order from the state on the European rulings on radio and television broadcasting, establishing in article 5.1 the need for television operators to reserve at least 51% of their time to broadcasting European audiovisual work; the second paragraph of the article states "more than 50% of the reserve time referring to the previous point will be dedicated in turn to showing European work in its original expression in any Spanish language." Relating to local television stations, autonomous communities can set the rules for equivalent contents.

Regarding analogue local television and digital local television (working from law 10/2005, dated 14<sup>th</sup> January),<sup>66</sup> autonomous communities, as well as exercising their authority in matters of linguistic standardization, are also authorized to award authorizations or broadcasting licences (local television concessions).<sup>67</sup> The scope for the use of Basque is set by the regional administration which can

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61. LASAGABASTER and LAZCANO: 2004, 123.

62. See DIAZ NOCI: 1998, 459.

63. Art. 6.c) of Law 41/1995, dated 22nd December, on local land-based television (modified by Law 10/2005, dated 14th June).

64. Law 10/2005, dated 14th June, on urgent measures to promote digital land-based television, for deregulating cable television and promoting pluralism, establishes that "the government will promote the use of the different official languages of the State through channels adjudicated in the concessions to provide public TDT service in the Autonomous Communities which are recognized by their respective autonomy statutes.

65. Law 25/1994, dated 12th July, which incorporates the Spanish legal order directive 89(552/CEE on the coordination of legal, regulation and administrative conditions of the Member States relating to exercising radio and TV broadcasting activities. Modified by Law 22/1999, dated 7th June.

66. See Law 10/2005, dated 14th January, on urgent measures to promote TDT, deregulate cable TV and promote pluralism which modifies Law 41/1995, dated 22nd December on analogue Local Television. Also see Royal Decree 349/2004, dated 12th March, which approves the National Technical Plan for digital Local television.

67. Art. 9 and 13 of Law 41/1995, dated 22nd December, for analogue Local Television.

reserve a number of channels for broadcasting in Basque or a percentage of broadcasting on each channel in this language. The Basque standard on local television has chosen the latter system, with the aim of promoting the use of Basque as the preferential broadcasting language.<sup>68</sup> However, the criterion also relates to the sociolinguistic situation in the broadcasting zone of influence.

In the local television channels managed directly by the municipalities a minimum quota of 50% programming time in Basque is set. This is a minimum and general percentage for all municipally managed local television stations. This percentage should be increased in areas where a higher percentage of bilinguals are living.<sup>69</sup> In this way, in programming zones of influence which include municipalities where the percentage of Basque-speakers is, for example, 70%, the percentage of programs in Basque in the directly managed channels should be 70%.

As far as the local private (or commercial) television channels are concerned, it is established that

privately managed television channels must dedicate at least 20% of programming time to Basque, regardless of the town's sociolinguistic rate. In towns which exceed this percentage, programming will be done in Basque in proportion to the level of bilinguals in the corresponding service area.<sup>70</sup>

This means that the criterion to set the linguistic quota in Basque is the percentage of bilinguals who live in the broadcasting area for the corresponding local television station, setting a minimum quota of 20%. No channel has reserved its programs entirely in Basque, although it has been seen that in towns with less than 50% bilinguals, the government will have the ability to reserve a channel for a later call for bids, if none of the offers presented guarantees this 50% programming from the start.<sup>71</sup> It is also planned to assess improvement in programs in Basque (above minimums) as an adjudication criterion.<sup>72</sup>

Relating to *private television*,<sup>73</sup> with state broadcasting cover, guarantees of linguistic pluralism (regarding Basque) are also absent in practice. Based on the BAC's authority to regulate the use of Basque in the media, it should be possible to set linguistic quotas for programs on private TV stations. The same can be con-

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68. Decree 190/2006, dated 3rd October, regulating the analogue Local Television service, art. 52.1.

69. Art. 22.2 of Decree 190/2006, dated 3rd October, regulating analogue Local Television service. Indexes of bilingual people are extracted from the data made public by the Basque Statistics Institute (EUSTAT) regarding the population of municipalities included in the area of influence of the local television service. As new data is published, the indexes must be altered (art. 22.5).

70. Art. 22.3 of Decree 190/2006, dated 3rd October, quote.

71. Art. 22.4 of Decree 190/2006, dated 3rd October, quote.

72. Art. 14.2.a) of Decree 190/2006, dated 3rd October, quote.

73. See law 10/1988, dated 3rd May, on Private Television. See particularly STC 127/1994, dated 5th May, FJ 8.

cluded for *cable television* for which the Autonomous Communities have certain authorities (percentage of independent audiovisual programs, distribution of certain television services, programme contents) although no linguistic provision has been set yet in the BAC.

As far as the *radio* is concerned, only FM radio is within the BAC's authority.<sup>74</sup> Basque public radio broadcasts entirely in Basque on FM over three channels with wide distribution. There are also specific rules for the linguistic issue relating to municipal and private concessions. Decree 138/1994, dated 22<sup>nd</sup> March, establishing the FM radio broadcasting public service concession regime with frequency modulating for municipal entities, establishes a minimum quota percentage for the presence of Basque in article 2. It is calculated according to the percentage of Basque-speaking population. If the program is aimed at children, the presence of Basque must be equal to the percentage of knowledge of Basque in the age group the program is targeting. Meanwhile Decree 240/1986, dated 11<sup>th</sup> November, refers to indirect management of the public service. The rule does not establish a system of quotas, although it does mention "the balanced use of the two official languages in the Community" among the criteria to adjudicate concessions (art. 8.a). As a complement, the Basque Government annually articulates promotion measures aimed at boosting the presence of Basque (minimum 25 hours a week) in radio broadcasting shows.

This line of promotion is also used to boost the *written press* in Basque. There is currently just one newspaper written entirely in Basque, *Berria* (which took over from the legally closed *Euskaldunon Egunkaria*).

## PRIVATE AND COMMERCIAL SECTORS

Relating to the private sector, article 5.2.d of the Basque standardization law declares "the right to develop professional, labour activities,.... and trade union activities in Basque" as well as the right to "express yourself in Basque in any meeting" (5.2.e). This imposes on public powers that they must guarantee exercising these rights, in order for them to be real and effective (art 5.3).

The LNE contains scarce reference relating to the use of Basque in non-public fields, as this was totally insufficient to articulate a public policy in this field.<sup>75</sup> In the LNE chapter dedicated to the "social use of Basque"<sup>76</sup> it states

Basque public powers will take the opportune measures and required resources working towards promoting the use of Basque in all fields of social life, to make it possible for citizens to carry out different mercantile, cultural, associative, sports, religious and any other activities in this language (art. 26).

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74. Vid. Law 31/1987, dated 18th December, on the Telecommunications Order, art. 26

75. URRUTIA: 2006, 446.

76. Chapter 4 of title II of the LNE.

The linguistic policy planned by the LNE in this *inter private* field is limited to promotion instruments, and not through limiting techniques. The LNE has not planned any type of duty or linguistic limitation (customer service, relations, written use in documentation, invoicing, etc).<sup>77</sup>

In the field of private relations the linguistic regulation presents special complexity to the extent that linguistic interventions can enter into conflict with the principle of linguistic freedom which is basic in this field. However, public powers can intervene to guarantee consumers' rights, which also include linguistic rights, even though their scope will have to have its intensity tempered to the characteristics of each relationship.<sup>78</sup>

Basque Law 6/2003, dated 22<sup>nd</sup> December, approving the Consumers and Users' Statute completed the lack of ruling dedicating special attention to linguistic rights of consumers and establishing linguistic obligations for service providers and goods suppliers.<sup>79</sup> This is a ruling which has been technically refined, using a combination of connection points to articulate the linguistic regime for the socio-economic field.

Consumers and user's statute attests the right to "use both official languages in the terms of this law and other legal rulings" (art. 4.f) Specifically, art. 37 of the consumers' statute declares that "in compliance with the terms of *progression* ... consumers and users have the following linguistic rights:

- a. Right to receive *information on goods and services in Basque and Spanish*.
- b. Right to use *either of the official languages in their relations* with companies or establishments which are operating in the territorial field of the Autonomous Community; these must be in a position to be able to deal with them regardless of the official language they express themselves in."

The specific scope of both linguistic rights is made to depend on the nature of the service providing entity. A distinction is made between public entities, subsidized entities and general interest sectors (including universal and general interest public services) and establishments open to the public. Within these, the ruling differentiates between "large commercial establishments" and those which belong to "large entities" from other establishments, determining respect for each case of different linguistic requirements. Depending on the type of entity the ruling requires guaranteeing different levels of linguistic rights, giving details of the minimum written presence of Basque in each case. The paradigm of the Basque ruling is producing *bilingual* signs, warnings, communications, documents, contracts, invoices, etc. As far as oral use is concerned, the consumers' statute only requires establishments which "are in a position to be able to

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77. URRUTIA: 1999, 67-90.

78. MILIAN: 1999, 465-519.

79. Law 6/2003, dated 22<sup>nd</sup> December, of the Statute for Consumers and Users, articles 37 to 42.

attend” to consumers in Basque. The terms used lead us to understand that an authentic linguistic right has not been declared which might be demanded by consumers. In any case, the standard does not contemplate resorting to sanctions for transgression of the linguistic duties it establishes.

The Basque consumer statute also includes linguistic rulings on matters of labelling regarding products distributed within the BAC, making it possible to use both languages indistinctly, without affecting protection of health and safety, the ruling can require the specific use of a specific language (art. 41). This is consistent with the doctrine laid down by the Constitutional Court Sentence 147/1996, dated 19<sup>th</sup> September, which attests that it is legitimate for the BAC to require the use of their own official language, in the same way that it is legitimate for the state to impose the obligatory use of Spanish on labelling based on state authorizes for health reasons. We could maybe criticise this argument for the excessive expansion of state authority over health which, beyond substantial contents or obligatory information on food ingredients, it also seems to include the language in which they have to be written, which is highly debatable or could even be understood to once again violate the linguistic rights of Basque speakers or speakers of the state’s national languages, except for Spanish.

## **CONCLUSION**

Basque is a basic element of the Basque people’s national identity. It is an instrument of communication, integration and social cohesion for citizens and the Basque territories. Basque is a bond between all territories where it is their own language, forming a linguistic community on which the Basque national identity is based on. It is the Basque Country’s own language.

The double official status regime jointly between Basque and Spanish in the BAC produces the effect that the formal legal status of the two languages is equal in this territory. From the formal perspective, the shared official status means equality of languages. The official shared nature of Basque and Spanish in the BAC produces the citizens’ basic right to use Basque or Spanish indistinctly, that is to say, the freedom of language use.

In any case it is important to point out that there are some factors that work out differences between both languages. Firstly, the co-official character that the Basque language holds in the BAC is not comparable to the Spanish language’s. The Spanish Constitution states that within the Spanish state, citizens have the right and also the duty to know the Spanish language while they only enjoy the right to know the Basque language. Said another way, it is essential to know Spanish and only optional to know Basque. And secondly, the legal declaration of the official status of a non-normalized language can not have immediate effects on the actual situation of it.

The double official status, which governs in the BAC, is of a formal legal nature, having to apply it in a context of unequal position of languages that can

be explained by many factors. Equality of languages at a legal level between Basque and Spanish have to be applied in a context of an unbalance situation between them. By treating them as equal when the reality is that they are in an unequal situation, the danger is that the inequality can be perpetuated. That is why in view of the equality principle it is necessary to take positive actions to ensure the substantive equality for the Basque language in consideration of its official status.

Working from the valorization of linguistic diversity, it is essential to continue making efforts in order to achieve a future Basque society in which language rights will be entirely guaranteed, especially in those areas where the right of using it are not fulfilled, like justice administration, state administration, ... The challenge is to achieve a plural and diverse Basque society but at the same time linguistically more integrated, allowing the right to use both official languages in all contexts without discrimination and ensuring the right to learn and know it.

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# Basque in the Foral Community of Navarre (CFN)

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*Zonatan zatitzeko sistema baten aplikazioa da Nafarroako euskararen estatusaren ezaugarri; era horretara, herritarren hizkuntza eskubideak modulatu egiten dira eskubide horiek erabili nahi diren lekua araber. Atal honetan, egileek euskararen lege egoera deskribatzen dute eta aztertu egiten dute Nafarroako hizkuntza politikaren garapena azken urteetan, zeinak norberaren hizkuntzaren tratamendu gero eta murriztaileagoa ezaugarri duen eta gaitzespenak erakarri dituen europar erakundeetatik.*

*Giltza-Hitzak: Hizkuntza eskubideak Nafarroan. Euskara. Hizkuntzen erregimen juridikoa. Euskara Administrazioan. Hezkuntza. Komunikabideak.*

*El estatus de la lengua vasca en Navarra se caracteriza por la aplicación de un sistema de zonificación lingüística, que modula los derechos lingüísticos de los ciudadanos en atención al lugar donde desean ser ejercidos. En este capítulo los autores describen la situación legal del euskera y analizan el desarrollo de la política lingüística en Navarra durante los últimos años, caracterizada por su tratamiento progresivamente restrictivo respecto de la lengua propia, lo que ha merecido reproches desde instancias europeas.*

*Palabras Clave: Derechos lingüísticos en Navarra. Euskera. Situación jurídica de las lenguas. Euskera en las Instituciones Públicas. Educación. Medios de comunicación.*

*Le statut de la langue basque en Navarre se caractérise par l'application d'un système de zonification linguistique, qui module les droits linguistiques des citoyens, en fonction du lieu où ils sont destinés à être exercés. Dans ce chapitre, les auteurs décrivent la situation juridique de l'euskera et ils analysent le développement de la politique linguistique en Navarre durant ces dernières années, caractérisée par son traitement progressif restrictif par rapport à la langue propre et qui a fait l'objet de reproches de la part des instances européennes.*

*Mots-Clé : Droits linguistiques en Navarre. Langue basque. Statut juridique des langues. Le Basque dans le Secteur Public. Éducation. Médias.*

## **ORIGIN OF THE LEGAL RULING ON LINGUISTIC RIGHTS IN THE FORAL COMMUNITY OF NAVARRE (1978-1986)**

During thirty-nine years of dictatorship under Generalísimo Francisco Franco (1936-1975), the Basque language was prohibited and punished and its use was excluded from all walks of the country's public political and social life, meaning the state administration and the education system. Only after the death of the dictator in November, 1975, and after nine years of protest, were some linguistic rights recognized for speakers of Euskara in the Foral Community of Navarre in 1986, -for the first time since the Kingdom of Navarre definitively became part of the Spanish state after the Second Carlist War 110 years before, in 1876.

Although there has always been strong opposition to guaranteeing the official status of the Basque language from the central Spanish state political and regionalist forces in Navarre, represented after the death of the dictator by the members of parliament from Unión de Centro Democrático (UCD) or from the Partido Socialista Obrero Español (PSOE), Madrid did not generally make serious objections to making the Basque language official, although they rejected full bilingualism.<sup>1</sup> In this way, they would oppose the bilingual model in the judicial branch, considering that it was a state competence, and it was not dictated to require knowledge of Euskara for civil services in the judiciary. Regarding legalization of *Ikastolas* or schools where the classes are given in Basque, both political forces have been very wary and not very enthusiastic about undertaking an education reform linked to guaranteeing education with instruction in Euskara.

By virtue of Article 3 of the Spanish Constitution approved in 1978,

Spanish will be the state's office language. All citizens of the state have the duty to know it and the right to use it. Other languages, such as Basque, Catalan or Gallego, will also be official in their respective Autonomous Communities in accordance with their autonomy statutes.

This means that Spanish will be the only language obligatory throughout the state, including in the autonomous communities with their own languages. Despite their joint official status with Spanish, the constitution introduces factors of inequality, including a generalized duty to know Spanish (without parallel in the compared constitutional right) which puts it in a position of legal superiority over other languages whose official status is limited territorially. In other words, Spanish is imposed as an official language and must be learnt throughout all of *Euskal Herria*, or the Basque Country, under the administration of Spain.

The process to regulate the official status of Basque in the Foral Community of Navarre, *Comunidad Foral de Navarra*, CFN, emerged linked to the Foral parliament declaration of 3<sup>rd</sup> November, 1980, which stated:

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1. In the first democratic elections after the death of the dictator, held in 1977, UCD was the most voted party with 6 MPs, followed by the Partido Socialista Obrero español (PSOE) with 2 and the Partido Nacionalista Vasco (PNV) with 1 MP. Only the PNV defended the full co-official status of Basque in Navarre at the time.

First: Spanish and Basque will be official languages in Navarre.

Second: This principle will be incorporated into the Organic Law for the Reintegration and Improvement of the Foral Regime of Navarre (LORAFNA) as well as the full authority of the Foral Parliament for its regulation by means of a Law.

In the end, this did not happen. The text resulting from the negotiation between the representatives of the Foral Deputation of Navarre (CFN government) and the central state government gave the result as the idea defended by representatives of the *Unión de Centro Democrático* (UCD<sup>2</sup>) and *Unión del Pueblo Navarro* (UPN<sup>3</sup>) that Basque was not declared an official language for all of Navarre.<sup>4</sup>

In August, 1982, the CFN autonomy statute was approved by means of Organic Law 13/1982, dated 10<sup>th</sup> August, for Reintegration and Improvement of the Foral Regime in Navarre (LORAFNA). By virtue of this law, and in accordance with the Spanish state constitution, Navarre became an Autonomous Community within the state with some of their own powers recognizing legislative and executive legal authority for its management, but not judicial power, which is singular and centralized for the whole Spanish state. Regarding language, the LORAFNA establishes in Article 9 that,

1. Spanish is the official language in Navarre.

2. Vascuence<sup>5</sup> will also have official status in Basque speaking areas of Navarre. A Foral law will determine these areas, regulate the official use of Basque, and within the framework of general state legislation, organize teaching of this language.<sup>6</sup>

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2. Unión de Centro Democrático (UCD) with 34.6% of the votes and 166 seats in the Madrid parliament was the most voted party in the state and formed a government between 1978 and October 1982, when Partido Socialista Obrero Español (PSOE) started governing the Spanish state.

3. UPN, Unión del Pueblo Navarro, is a conservative and regionalist political party founded in 1979. UPN emerged in opposition to Basque nationalism, demonstrating its opposition to Navarre joining the Basque Autonomous Community and protecting and diffusing Basque as co-official language in Navarre. From 1982 it ran for election jointly with the Partido Popular. From 1991 both parties presented a single electoral list for all purposes. UPN has gained the most votes in Navarre since 1995, with support giving it around 17 seats in the Navarre parliament in 1995 and 22 in 2007. See, <http://www.upn.org/>

4. Monreal, Gregorio: "Origen de la Ley del Vascuence de Navarra", *Revista Internacional de los Estudios Vascos*, 46, 2, 2001. P. 522. Also see Monreal, Gregorio, "La oficialidad del euskara en Navarra", in Cobreros, E. (Coord.), *Jornadas sobre el régimen jurídico del euskara*, IVAP, Oñati, 1990. Also see, Razquin Lizarraga, José Antonio, *Fundamentos Jurídicos del Amejoramiento del Fuero. Derechos Históricos y régimen foral de Navarra*, Government of Navarre, Iruñea/Pamplona. P. 439.

5. LORAFNA writers chose to use the euphemistic term "vascuence" to designate the Basque language, in this way avoiding the use of the Basque term *Euskara* or *Euskera* or when appropriate the expression "Basque language." The change of name of the law, which was called the law of "Euskara" in the project instead of the "vascuence" law reveals clear political interest. Legally in Navarre the law recognizes *vascuence*, but it does not mention *Euskara* which it believes belongs in the Basque Autonomous Community (BAC) The terminological difference is not founded as Basque is all the same language, with its real reason being to introduce an artificial difference within the same linguistic community, or in other words, another barrier distancing Navarre from the BAC.

6. Ley Orgánica 13/1982, dated 10<sup>th</sup> August, for Reintegration and Improvement of the Foral Regime in Navarre (LORAFNA), article 9.

As opposed to what happened in other autonomy statutes of bilingual autonomous communities, the LORAFNA highlights the absence of the symbol-identity-based elements, as it says nothing about Basque being a language in its own right; nor does it refer to the people of Navarre's basic linguistic rights (the right to use and learn both languages). Nor does it refer to the public authorities' obligations to create a new status for Basque, or to articulate a linguistic policy aimed at standardizing the use of Basque.<sup>7</sup>

The fundamental characteristic of the regulation is the declaration of Spanish as the CFN's official language and the introduction of a zoning regime regarding the official status Basque. The standard's orientation is restrictive. The article begins by affirming the official status of Spanish. Spanish is not official in the CFN because the LORAFNA dictates it so, but because it is laid down by the Spanish Constitution. In these circumstances, it will be understood that this declaration only has formal value; an important formal value which obviously operates in relation to the position of Basque, whose status is not set in the ruling, but which is postponed to the development laws.

In the CFN, joint double official status has not been established for the entire community. It is only linked to the "Basque speaking areas of Navarre" which will correspond to a Foral law (Foral Law 18/1986 concerning "vascuence" in Navarre). In the CFN, the territorial reach of the languages' official status depends on the legislation. Without official status the possibility of producing positive changes towards bilingualism and respecting linguistic freedoms is made much more difficult.

After four years of court action, mainly promoted by Spanish state-run political parties or social forces linked to them, on 26<sup>th</sup> June, 1986, the Constitutional Court of the Spanish state finally declared that the laws regarding standardization of the Basque, Catalan and Gallego languages were constitutional,

Although the constitution does not define, but assumes, what an official language will be, its regulation on the matter affirms that a language is official independently of its actual situation and its weight as a social phenomenon when it is recognized by public powers as a normal medium of communication in and between them and in its relations with private subjects, with full validity and legal effects. Without affecting the fact that in specific fields, such as in court, and for specific purposes, such as avoiding lack of defence, international treaties also permit the use of non official languages for people who cannot use the official languages.<sup>8</sup>

Four years after the autonomy statute (LORAFNA) was approved in Navarre in 1982, and only six months after the Constitutional Court made its sentence public on minority languages (which resolved appeals based on unconstitutionality

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7. Arzoz, Xabier, "Estatuto jurídico del *euskara* en Navarra", in Pérez, J.M. (Coord.), *Estudios sobre el estatuto jurídico de las lenguas en España*, Atelier, Barcelona, 2006. P. 390.

8. Sentence by the Spanish state Constitutional Court 82/1986 dated 26<sup>th</sup> June.

against several linguistic standardization laws), on 15<sup>th</sup> December, 1986, the Foral Law 18/1986 was approved on “Vascuence” in Navarre, regulating the most urgent matters regarding the Basque language in the community, such as:

1. The official status of both languages, Spanish and Basque. As stated in Law 18/1986, it establishes that Spanish and Basque are co-official languages in Navarre but article 2 of this law specifies that Basque will only have official status in areas of Navarre where this language is generally or predominantly spoken (the north zone). In other words, Spanish would be the official language for all of Navarre and Basque would only be an official language in the north of Navarre, known from now on as “Basque speaking area”. This geographic limitation of Navarrese citizens’ linguistic rights led to zoning the community, which in accordance with article 5 of this law has been divided into three large linguistic zones, as we will be able to see later on, called “Basque speaking area”, “mixed zone” and “non Basque speaking area.” Consequently, Basque is not official and continues to be relegated in the state administration and public education system in the south of Navarre, called by law “non Basque-speaking area” which covers the widest area of the autonomous community.
2. Citizens’ rights and public authorities’ duties in linguistic matters. Specifically, article 2 of Foral Law 18/1986, dated 15th December, on Basque in Navarre, establishes that, “the following are essential targets: A. Protect citizens’ rights to know and use the Basque language and define instruments to make it effective. B. Protect the recovery and development of the Basque language in Navarre, highlighting measures to promote its use. C. Guarantee the use and teaching of Basque in accordance with principles of will, progression and respect, in accordance with the sociolinguistic situation in Navarre.”<sup>9</sup> “In accordance with the sociolinguistic situation in Navarre” means that the shelter and protection of Navarrese citizens’ linguistic rights are circumscribed to the north of Navarre, so that inhabitants of the “non Basque-speaking area” do not have the linguistic rights enjoyed by the rest of the population, as Basque is excluded from public administration and the education system in those area.

The objectives declared by the Foral Law 18/1986 are to “protect citizens’ rights to know and use Basque and define instruments to make it effective” and “protect the recovery and development of the Basque language in Navarre.” Demonstrated will is limited to protecting recovery. The will for recovery is not declared, only its protection from a static and conservative point of view. In any case, although much more limited than the rest of the standardization, the Navarre executive branch has to act, but it cannot do so in any old direction; it has to promote and guarantee linguistic freedoms. And this is not only so because of Foral Law 18/1986 but by requirement from the European Charter for Regional or Minority Languages

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9. Understanding “euskaldunización” to be learning the Basque language.

which states in article 7.1.c “an action resolved to promote regional or minority languages in order to safeguard them.”

3. The use of Basque in the Public Administration. Title I, articles 6 to 18 of Foral Law 18/1986, although generically and not particularly accurately, refer to recognizing the right to use Basque and Spanish in relations with public administration in the Foral Community of Navarre. In this respect the law regulates, among other matters, entering documents in public registers and bilingual publication of legal or resolution-based conditions or acts by the administration, as well as notifications and communications (art. 7); all citizens’ right to use the official language of their choice when they deal with the administration (art. 6 and 10); the power to establish the official list of towns and place names (art. 8), writing signs and traffic signs; the power to create the official translators service (art. 9); progressive *euskaldunización*<sup>9</sup> of public administration employees (art. 15). All this, however, remains circumscribed basically to the northern “Basque-speaking” area of Navarre.
4. The use of Basque in teaching. Foral Law 18/1986 regulates everything relating to Basque within the education system in Title II. The law guarantees that *all citizens have the right to receive teaching in Basque and in Spanish at the different educational levels*.<sup>10</sup> These articles establish the governing principles of education in Basque. The law recognizes all students’ right to receive teaching in Basque, whilst establishing that it is mandatory that teaching is also given in the official language which was not chosen to guarantee bilingualism. The government should regulate the different linguistic teaching models and adopt measures which will guarantee that sufficient knowledge of both official languages is acquired by citizens. The law also plans to train teaching staff to make them completely skilled both in Basque and Spanish. In any case, in practice nowadays, education in the Basque language is tacitly prohibited throughout what is called the “non Basque-speaking area” of Navarre, where there are no state schools giving classes in this language, despite the demand.
5. The use of Basque in the media is regulated in Title 3 of Foral Law 18/1986 (art. 27 and 28). The law recognizes citizens’ right to be informed in Basque. Article 27 refers to the guarantee and diffusion of the Basque language in the media, 1. Public administrations will promote the progressive presence of Basque in the social public and private media. For this purpose, the Government of Navarre will draw up plans for economic and material support so that the media uses Basque habitually and progressively. 2. In television and radio stations, and in the other media managed by the Foral Community, the Government of Navarre will make sure that there is an appropriate presence of Basque.<sup>11</sup> In this way the Government

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10. Titular II, chapter 1, article 19, of Foral law 18/1986, dated 15 December, concerning *vascuence*.

11. Title III, on social media, article 27, of Foral law 18/1986, dated 15 December, concerning *vascuence*.

of Navarre has been attributed with promoting Basque in the community's media and on the television and adopting measures to promote and protect Basque in radio broadcasting, press, image and sound media. Despite this, actually nothing has been done in this area within the general budget for Navarre since 2000; the amount of the budget dedicated to it and other ends relating to promoting Basque have been progressively and drastically reduced until they almost disappeared in 2005.

6. As opposed to Law 10/1982, dated 24<sup>th</sup> November, basic standardization for the use of Basque in the Basque Autonomous Community, the social use and other institutional aspects of Basque such as Basque teaching and literacy for adults, promoting the use of Basque in different fields or the responsibility to make sure that this language is unified and standardized in accordance with guidelines issued by *Euskaltzaindia*, the Basque Language Academy, are aspects which are not contemplated in the Basque law in Navarre.<sup>12</sup>

The legal analysis of the CFN linguistic policy model is characterized by one aspect: the fragility of the legal pillars on which it is based, making it possible for them to suffer restrictions from the Government of Navarre, such as the undertaking from 1997 and particularly alarming from 2000 when the Government of Navarre broke up the Linguistic Policy Board for the CFN. In the Foral Community of Navarre, Basque has become one of the main ideological axes for the regionalist or state political forces represented by UPN and PSN, two of the three majority partisan forces in the community. UPN does not assume Basque as a language in its own right in Navarre but as a foreign language, so that political rejection of Basque nationalism goes hand in hand with the rejection of Basque language.<sup>13</sup> It is the very standardization of Basque which is questioned in Navarre, making it, as noted on 19<sup>th</sup> January, 2004, by Bojan Brezigar, director of the European Bureau for Lesser Used Languages (EBLUL), the only government in the European Union which legislates to restrict the use of the country's own language, which he qualifies as "unacceptable":

It is unique in the sense that there has been a regression in the rights of the bilingual community although, on the other hand, the situation of some minority languages in Europe is worse than Basque in Navarre. The Macedonians in Greece, for example, are forbidden to speak their language in public. This is a very serious situation. But in Europe there is no other case, apart from Navarre, where the level of protection for the minority language has gone down. It is the only case and causes us great concern. It is not acceptable that in a Europe

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12. The most striking aspect of the law is the total abstraction of historical memory, and lack of definition regarding its objectives. This is a law which does not mention the word "standardization" whilst referring to a ruling with these characteristics, although with limited content. Its preamble refers to the objective of "preserving" and "avoiding the deterioration" of the language. Nothing is said about the standardization of its use or about the boost to generalize its knowledge and the guarantee of linguistic freedoms. The terms used are extremely languid.

13. Erize, Xabier: "El discurso contrario a la normalización de la lengua vasca en Navarra", *Revista Internacional de los Estudios Vascos*, 46, 2, 2001. P. 661.



which talks increasingly about cultural and linguistic diversity, promoting all languages in the Union, saying that all languages have the same dignity, that a region as developed and advanced as Navarre goes into reverse in terms of protecting a minority language, Basque. I'll say it again: it is not acceptable. It is very worrying.<sup>14</sup>

As a consequence of the restrictive legislation, the legal and social situation of Euskara has been made much more precarious, as we will see below.

## **LEGAL SYSTEM, BASQUE, AND PUBLIC ADMINISTRATION IN THE CFN**

As we have mentioned, Navarrese citizens' linguistic rights when dealing with public powers depend on where they are physically in Navarre. Linguistic zoning supposes the application of a different legal regime in each of its zones, which occasionally generates serious collisions between zones and also compromises citizens' linguistic rights.

In fact, the main differentiation between the models to protect, guarantee and broadcast the Basque language within the education system of the Basque Autonomous Community and that of the CFN is the zoning which the CFN has set up by virtue of article 5 of Foral Law 18/1986. Members of parliament from *Unión del Pueblo Navarro* (UPN) supported in their current majority by the *Partido Socialista de Navarra* (PSN), promoted dividing Navarre's citizens into three zones, a "Basque-speaking zone", a "mixed zones" and a "non Basque-speaking zone". UPN defended the thesis that, given that the majority of the population in the north of Navarre is bilingual and that most of the population in the south of Navarre does not speak Basque, the territory's sociolinguistic situation imposed this division, with different rights relating to linguistic uses. In this way, a community of barely 600,000 inhabitants was divided into the aforementioned three zones. The two most serious immediate consequences of this measure are as follows:

- Zoning jeopardizes the universal character of the diffusion and transmission of the language and the culture, one of the fundamental pillars to diffuse human values. In this respect, this measure, far from integrating the population and universalizing the culture, generates increasing division between the two linguistic communities: Basque in the north and Spanish in the south.
- Zoning guarantees the full co-official status of Basque in the north of the territory (the Basque speaking area) but discriminates against Basque speakers in the mixed zone and puts Basque outside the law in the south zone. In this respect, Euskara remains completely excluded from the public

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14. "Bojan Brezigar, President of the European Office of Minority Languages, "It is unacceptable that Navarre has gone into reverse on protecting Basque." *Euskararen Berripapera*, No 141, February, 2004.

education system, the media and public administration in this area. In other words, echoing prohibitions from Franco's dictatorship, zoning tacitly imposes absolute prohibition of the use of the Basque language in all fields of public life (administration and education) in the south of Navarre. We should highlight again that the European Bureau for Lesser Used Languages (EBLUL) has repeatedly condemned the Government of Navarre's linguistic policy, a main exponent in Europe of governmental authorities persecuting a native language.

In accordance with this zoning of linguistic rights, which remain in practice circumscribed in the so-called "Basque speaking" zone of the CFN, a fragmented linguistic policy system has been articulated which divides citizens into three large groups according to their place of residence:

1. In the Basque speaking area: A double linguistic official status regime has been established, where both Basque and Spanish are official. It recognizes citizens' right to use both Basque and Spanish in their relations with the public administrations and the right to be attended in the language of their choice. Notifications and communications should be written in both official languages, except for interested parties who expressly request the use of just one language. This raises the question of whether notifications emanating from Navarrese administrations located in the "mixed" zone but sent to citizens in the "Basque-speaking" zone have to be written in both languages or not. In this respect, the Superior Court of Navarre has demonstrated that to determine the language of communications you have to be in the place of residence of the interested party (and not the regime applicable to the zone where the administration is located).<sup>15</sup> Consequently practically all documentation which is not circumscribed to the "Basque-speaking" zone must be written in Spanish which in practice affects the linguistic rights of people living in the "Basque-speaking" zone.
2. In the mixed zone: The law does not recognize the official status of Basque in this area, where the capital city of the community (Iruñea/Pamplona) is based along with its administration headquarters. Article 17 of Foral law 18/1986 declares that citizens have the right to speak to the public administration in Basque although it does not establish that the reply will be in Basque. Public administration will be limited by law to "take measures to guarantee that this right is exercised" without giving any details of what this might comprise. In practice, CFN administration does not have enough employees that speak Basque to be able to guarantee that citizens' rights to use Basque is respected, and linguistic rights are therefore impracticable.

In summary, the regulation of the use of Basque in the mixed zone is full of vague issues. Foral decree 135/1994, dated 4<sup>th</sup> July, does not man-

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15. Navarre Court of Appeal Sentence, 20<sup>th</sup> May 2004.

age to specify where “bilingual administrative circuits” will be located, citizens’ possible communications in Basque with the administration are not regulated in any way and finally the verb ‘tend’ is used excessively. It is clear that it leaves the door open to almost any action by the public administration. Discretion is such that the administration itself could stop using Basque, as occurs in practice, or it could reach levels of bilingualism which are similar (but never the same) as exists in the Basque-speaking area and continue within the law.

3. In the non Basque-speaking area: Basque does not legally exist in this zone. It does not recognize the right to use Basque to deal with public administrations, and if this is done, administrations will request that the interested party should present a written translation in Spanish to open a file, as only documentation in Spanish is legal.<sup>16</sup> Social desire for progression towards bilingualism in this zone does not appear in the legislation. Basque is completely excluded from the administration in this zone as not even co-official status is recognized nor are there qualified employees to make its use effective.

Regarding CFN administration and civil servants’ linguistic capabilities, articles 15 and 17 of Foral Law 18/1986 establish the obligation to speak Basque for certain public roles both in the Basque-speaking area and in the mixed zone. After its approval, several instances aimed to eliminate this condition although the sentence from the state Constitutional Court 82/1986 declared that this measure agreed with and respected the Constitution. This resolution has been confirmed by the recent sentence from the Supreme Court dated 20<sup>th</sup> March, which not only re-endorses being able to demand the use of Basque (or any other vernacular language) but it also permits this use to be extended further even in the “non Basque-speaking” area where the only official language is Spanish. In any case, the Government of Navarre does not require its civil servants to learn Basque, even though it is supposedly mandatory to know this language in their job located in the Basque-speaking area. Refresher courses are voluntary. Logically this leads to citizens’ linguistic rights being affected.

As an illustration we can state that only one position out of the 1405 civil servant jobs in the CFN governmental administration is required to speak Basque.

## **BASQUE IN THE EDUCATION SYSTEM OF THE CFN**

The CFN has not developed an educational ruling of its own despite having the legal and political tools to do so.<sup>17</sup> In parallel, as occurs with rights related to

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16. Alli Aranguren, Juan Cruz, “Perfiles institucionales de la lengua vasca en la Comunidad Foral de Navarra”, en *Euskara* 46, 2001. P. 1019. The author understands the lack of necessity to process a request if the interested party does not provide the translation.

17. By virtue of law 12/1997, dated 4<sup>th</sup> November, there is a Navarre School Council or Superior Education Executive or Local Councils. This is a Council for consulting purposes including different social sectors implicated in infant and obligatory education (non university, 3 to 18 years old).

public administrations, educational linguistic rights vary from one linguistic zone to another in the CFN. The right to learn Basque as a result of Basque instruction presents different outlines depending on the geographic place where they are to be exercised,

By virtue of Foral Law 159/1986 for non university studies, students can choose different linguistic models in which to study in obligatory primary and secondary teaching (3 to 18 years old): models A, D, B or G.

- Model G: Teaching entirely in Spanish. Basque is not taught, not even as an optional subject.
- Model A: Teaching entirely in Spanish with Basque as a subject.
- Model B: Mixed teaching in Basque and Spanish according to the following proportion: 40% in Basque and 60% in Spanish.
- Model D: Teaching entirely in Basque with Spanish as a subject.

Despite not being regulated by Foral Law 159/1986 there are two other models in the CFN: the British, and the Integrated Language Treatment, TIL. The Government of Navarre's Department of Education created two new linguistic models in 2003, Model I and J. The idea was to promote a new Anglophone linguistic model in the CFN thereby displacing models "in" or "with" Basque (D and B) which have expanded constantly since they were set up in 1986. However, the European Bureau of Lesser Used Languages from the European Union concluded in their report in 2003 that the Government of Navarre should extend the teaching of Basque (models D and B) throughout the community of Navarre. In this light, the models I and J were not put into operation but in 2003 the British model (education in Spanish and English) was created.<sup>18</sup> However, given the failure of this model, which was not adopted for years except by 1% of students, in 2008 the Department of Education created a new model, Integrated Language Treatment (TIL), with two linguistic aspects (Spanish and English with optional subject in Basque) and despite its failure it maintained the British model. The TIL is taught 40% in English, 40% in Spanish and 20% in a third language, which can be Basque (only in "Basque-speaking" or "mixed" zones) or any other language chosen by the school.

Despite the fact that Foral Law 18/1986 leaves many things unspecified, Foral decrees and development orders contain very exhaustive regulations. The teaching of Basque as a subject is only obligatory in the Basque-speaking area and this is due to the official status of this language in this zone. But teaching "in" Basque of all subjects in the education system is voluntary or optional, both in this zone and in the mixed zone. In the "non Basque-speaking" area, Euskara

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18. The British project emerged by virtue of the Agreement signed in 1996 between the Spanish Ministry of Education and Science and the British Council School of Great Britain for the progressive implantation of bilingual schools. This agreement specifies that one in every five professionals teaching in the schools using this system must be a native English speaker (British more precisely) or have completed a stay of five or more years in an Anglophone country. Despite the fact that this is not met in the CFN, the system was set up in 2003.

is completely excluded from the education system. The voluntary principle is therefore the most outstanding principle of the Foral Law 18/1986. It governs citizen's will in the "Basque-speaking" and "mixed" zones when choosing the linguistic model and when dealing with the administration. Citizens of the "non Basque-speaking" zone do not have this right to choose, as Basque is left out of the education system and excluded from public administration. In summary,

1. In the "Basque-speaking" zone the double official status regime requires school learning both in Basque and in Spanish. Learning both languages (as a subject) is obligatory for all students in this zone. Also, as far as the teaching transmission language is concerned, the legislation recognizes parents' rights to choose the official teaching language for their children (Basque or Spanish). This is a separation system, similar to what is applied in the BAC. In this zone the teaching is given through three models: in Basque (model D), in Spanish (model A) or mixed (model B). Parents can choose the model they want within the existing services available.
2. In the "mixed zone" on the other hand, learning Basque at school is voluntary; this means that it is not an obligation imposed by law nor derived from the status of the Basque language, as in this zone the official status of Basque has not been declared. Article 25.1 says that "in the non university education levels, Basque teaching is given to students who want it, so that at the end of their schooling they can obtain sufficient knowledge of this language." In the "mixed" zone, teaching "in" Basque is also voluntary. The law states the existence of streams "in" the Basque language in the "mixed" zone schools for students that request it. In addition to model G (entirely in Spanish), this zone offers models A (with Basque as a subject), B (mixed model) and D (model in Basque).
3. Regarding the "non Basque-speaking area", Basque is tacitly excluded from the public education system. Article 26 of Foral Law 18/1986 rules that "teaching Basque will be supported and, when necessary, totally or partially financed by public powers with criteria to promote and boost it, in accordance with the demand." The ruling does not quote teaching "in" Basque but only teaching "of" Basque, without declaring the right to receive it. The terms "support" and "financing" seem to move the prescriptions towards private teaching. The ruling has not foreseen the possibility of providing teaching "in" Basque in the "non Basque-speaking" zone. If a student enrolls in the TIL model, 20% of the subjects that can be given in the "other language" could be in Basque but also could be in French, German or any other language (whenever teachers are qualified to do so) that is not the Basque language which, as a language in its own right in Navarre, is the only one excluded from the education system.

The excessively restrictive character of the law is demonstrated by it being impossible to create schools which have instruction in Basque. Despite the legal restriction, there are five *Ikastolas* or private schools where classes are given following model D (teaching in Basque) in the "non Basque-speaking" zone. These

five centers are private initiatives (parent cooperatives) which provide teaching in Basque in a zone where the law does not include this possibility. This is an incomprehensible situation from a democratic perspective, regarding voluntary will and people's rights, particularly regarding education. Moreover, it is understood to be contrary to international ruling; by virtue of article 8.2 of the European Charter for Languages, the commitment to authorize teaching "of" or "in" Basque can only be made relative to circumstances such as the number of people requesting it, but in no case can this be because it was a "regional or minority language." In the educational field, there is a clear need to look again at the provisions of Foral Law 18/1986 for the postulates of the European Language Charter.<sup>19</sup>

Schematically, the proportion of students per zone and linguistic model in the academic year 2004-2005 was as follows:

Basque speaking area (8.11% of students in the CFN)<sup>20</sup>:

Model D and model B (in Basque): 85.82%

Model A (Spanish with Basque): 14.18%

Model G (in Spanish): 0.0%

"Mixed" zone (60.73% of students in the CFN)<sup>21</sup>:

Model D (in Basque): 27%

Model A (Spanish with Basque): 20.03%

Model G (in Spanish): 52.97%

Non Basque-speaking area (31.16% of students in the CFN)<sup>22</sup>:

Model D (in Basque): 2.3%

Model A (Spanish with Basque): 25.85%

Model G (in Spanish): 71.85%

The lack of proportion between zones and models jumps out; it is the consequence of a fault in the system and imbalanced linguistic policy resulting from the zoning or ghetto-creating policy for linguistic rights.

As we have said, growth for models D and B has been steady over the years, from 1986 to the present day 2008. In the academic year 2007-2008, a total of

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19. It should also be indicated that bilingualism is one of the key elements in school performance and that it is inversely proportional to school failure. School failure in the BAC and CFN is much below the Spanish state average; specifically in the CFN it stands at around 17% whilst the state average is 30%. Limiting bilingualism, from this perspective, indicates denying an important part of the student population an important tool to help prevent students failing.

20. European Council, *Second Periodic Reports on the application of the European Charter of Regional and Minority Languages*, 2006. Pp. 154-156.

21. European Council, *Second Periodic Reports on the application of the European Charter of Regional and Minority Languages*, 2006. Pp. 205-209.

22. European Council, *Second Periodic Reports on the application of the European Charter of Regional and Minority Languages*, 2006. Pp. 236-240.

90,403 school children studied in the CFN.<sup>23</sup> Of them, 57,427 were registered in the 244 state centers (63.52%), and 32,976 (36.48%) in sixty-seven subsidized private schools.<sup>24</sup> Per model, the number of students registered in the academic year 2007-2008 in the CFN was as follows:

- Model G (in Spanish): 50,686 students, representing 56% of the total.
- Model A (Spanish with Basque as a subject): 16,966 students, 19% of the total.
- Model D (in Basque with Spanish as a subject): 21,312 students, 24% of the total.
- Model B (40% in Basque and 60% in Spanish): 114 students, 0.12%.
- British model: 1,325 students, 1%.

Model D (in Basque) in the lower levels (three to six years old) attains a higher percentage than for older children, indicating that there is constant and sustained growth among the population choosing this model, despite administrative difficulties. As many as 43% of students choose a Basque mode in their teaching although in the second infant cycle and primary education (six to eleven years old) this exceeds 50%, specifically 54% and 52% respectively. Specifically, in the academic year 2008-2009, 56% of students chose model G (Spanish with no Basque), 43% chose models D and A ("in" Basque or "with" Basque) and 1% the British model. We should also take into account that students in the "non Basque-speaking" area cannot choose models D or B which obviously slows down growth in this model and in the development of Basque.

In accordance with pre-registration data<sup>25</sup> for CFN students in the academic year 2008-2009, models G (Spanish) and A (Spanish with subject in Basque) are losing ground to the models with English (British and TIL). 60% of the 6144 new students aged three years old who will start school in the CFN in September are signed up for models G or A, representing a drop of approximately 4% on the previous year (2007-2008). The drop is particularly noticeable in model G (exclusively in Spanish) which has dropped 10%, from 4097 students in 2007 to 3710 in 2008. It is clear that society in Navarre is opting for bilingual or trilingual models. Consequently, models D and B (partial or total education "in" Basque) are holding their ground with 30% of registrations, meaning one in every three students chooses an education entirely in Basque. Finally, as far as the British and the TIL is concerned, both models absorb 10% of the registrations, almost double last year's figures. However, the majority of the students (363) have chosen the new system (TIL) whilst the *British* model drops more than a point on the previous year and has just 241 registrations.

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23. 1424 more students than the previous academic year, representing an increase of 1.6%.

24. Private subsidized centers are mixed centers, private but with public financing and control.

25. The pre-registration period opened on 10<sup>th</sup> March 2008 and lasted until the 17<sup>th</sup> of the same month.

Model	Number of students	Percentage
Models G and A	3.710	60%
Models D and B	1.830	30%
British model	241	4%
TIL model	363	6%
Total	6.144	

Proportion of students per linguistic model. Pre-registration data for the academic year 2008-2009 for students aged three starting school in September, 2008.

Altogether, in 2008, more than 21,000 students are registered in models D and B in the CFN, of which around 3,000 (14.28%) go to private schools and more than 17,000 (85.17%) go to state schools. As far as higher levels are concerned, in June, 2008, 75% of Navarrese students took the *selectividad* university entrance exam in Spanish and 25% took it in Basque.<sup>26</sup>

In light of growing options in Basque and criticism from the European Commission, the Government of Navarre Education Minister, Carlos Pérez-Nievas, made a request on 3<sup>rd</sup> June, 2008, to the parliamentary groups from the Education Commission that after seeing the results of the sociolinguistic survey for autumn 2008 they should decide whether or not to modify Foral Law 18/1986 on “Basque language” in the CFN. In any case, Pérez Nievas is not in favor of eliminating linguistic zoning in the CFN, or expanding the mixed zone. The sociolinguistic commission which will determine the sociolinguistic study bases will be made up of Mikel Aramburu, Government Assessment and Research director, and three members of the Navarre Basque Council, Mikel Olazaran, Pablo Sotés and Asier Barandiaran.

As far as university education is concerned, the presence of Basque in the Public University of Navarre (UPNA) is scarce. Specifically, in accordance with a study on UPNA students’ linguistic profile, out of a total of 6833 students at this university in 2007, 4,295 (62.8%) declared that they had no knowledge of Basque, 840 (12.2%) said they knew a little Basque, and 1,884 (21.7%) said that they spoke fluent Basque. We should also point out that the number of Basque speakers in the UPNA in 1997 was 14.5%, so the percentage of Basque speakers has risen 7.2% in the last ten years.

Despite the fact that approximately 22% of students speak Basque and despite the fact that 84.56% of this group say that they want to study in the Basque language in the UPNA, this language continues to be practically excluded from university classrooms in the CFN. Specifically, in 2007, 192 subjects were taught in Basque (approximately 18% of the total) given by fifty professors, although there are plans to improve the offer in the Basque language over

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26. The university entrance exam ‘*selectividad*’ is the exam which gives students access to the university or in other words the last overall exam that a student takes in obligatory education.



the coming academic years and take on more teachers with skills in this language.

In order to deal with the increase in the demand for Basque at the UPNA, the Government Council for the University approved the Strategic Basque Plan on 13<sup>th</sup> March, 2007, with a budget of 120,000. As the Vice Rector for Planning and Prospectives for the UPNA, Juan Manuel Cabasés, explained, the aim of the Plan is to expand recruitment of associated professors and encourage the thirty-one teachers who can speak Basque but did not give classes in Basque in 2007 to do so in the future. In this way, they plan to add forty-seven more subjects in Basque for the academic year 2008-2009.

In any case, there are currently only two diplomas which can be partially studied in Basque in the UPNA (out of a total of twenty-two). This situation is very different from the achievements of the much better developed linguistic policy in the BAC for the University of the Basque Country/Euskal Herriko Unibertsitatea (UPV-EHU).

## **BASQUE AND SOCIAL MEDIA**

As opposed to what is law in the BAC, Navarre's Foral Law 18/1986 does not recognize the "right to receive information in Basque." It only says that

the public administrations will promote the progressive presence of Basque in the public and private social media. For this purpose, the Government of Navarre has the legal obligation to draw up plans for economic and material support so that the media uses Basque habitually and progressively. Relating to the field of social media, legislation is limited to planning promotion measures.<sup>27</sup>

The CFN is currently the only autonomous community in Spain with its own language which lacks public regional television and radio stations, despite the fact that their creation was planned in Foral Law 16/1985.

The adjudication of FM radio broadcasting frequencies has been particularly controversial in Navarre. On several occasions the *Euskalerría Irratia* station (the only one operating in Basque in the district of Iruñea/Pamplona) was refused its concession as a consequence of procedures presented as "arbitrary" by the parliament in Navarre.<sup>28</sup> Specifically, the political forces *Unión del Pueblo Navarro* (UPN), *Convergencia de Demócratas de Navarre* (CDN), and *Partido Socialista de Navarra* (PSN) rejected a motion by political party Nafarroa Bai (NaBai<sup>29</sup>) which

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27. In greater depth Biador, J., "El *euskara* en los medios de comunicación navarros durante el siglo XX: incidencia de la Ley del Vascuence en la información" *Revista Internacional de los Estudios Vascos* 46, 2, 2001, Pp. 647-659.

28. See conclusions from the Navarre Parliament research commission on this matter published in the Official Navarre Bulletin no. 34 dated 4<sup>th</sup> May 1999.

29. NaBai is currently the second political force in the CFN after UPN and it decidedly supports an integrating linguistic policy which respects linguistic rights of Basque and Spanish speakers.

attempted to concede a legalization licence to *Euskalerría Irratia* after the controversial concession of FM licences in 1998 which prioritized *Net-21*, over the radio broadcasts in Basque, and this firm later went bankrupt. NaBai's proposal was only supported by *Izquierda Unida* (IU) in the CFN Parliament, despite the fact that the Parliament in 2005 and the CFN Ombudsman questioned the previous administrative process to concede radio (FM) licences and advised that the process of awarding new licences should take into account *Euskalerría Irratia*.

The reading which can be made here is the need for more incisive legislation which awards legal guarantees to the principle of linguistic pluralism in the media. This legislation should guarantee the Navarrese citizens' rights to also receive information in Basque.

### **LEGAL DEVELOPMENT OF THE BASQUE LAW IN THE FORAL COMMUNITY OF NAVARRE (1997-2008)**

Since 1997 and fundamentally since 2000, the Government of Navarre started to regress in terms of policies for social standardization of the Basque language in the CFN. The UPN government's new linguistic policy was articulated through a restrictive and progressively limiting regulation of linguistic rights, laying down linguistic freedoms in impeditive terms and not in terms of social integration of languages as a way of guaranteeing linguistic pluralism. In barely ten years there have been no less than four Foral decrees, each more restrictive than the previous one, for the use of Basque.<sup>30</sup>

The most obvious step backwards occurred as the consequence of Foral Decree 372/2000, dated 11<sup>th</sup> December. Measures such as substituting existing bilingual road signs (Basque and Spanish) with new signs exclusively in Spanish, the disappearance of Basque in the institutional image of the administrations in the mixed zone (Foral or municipal) even for the Public University of Navarre located in the capital, the elimination of bilingual administrative circuits for Foral administration, limitations to assess the knowledge of Basque as a simple plus in civil service recruitment processes, all characterize the regulation and they are aspects which have repercussions on linguistic freedoms that the previous rulings guaranteed.

This ruling was cancelled by the Navarre Court of Appeal sentence dated 26<sup>th</sup> June 2002. On this occasion the court did not analyse the in-depth arguments from the appealing parties, but cancelled the ruling on a technicality (the lack of certain reports). Later, and after analyzing the perceptive reports, the Government of Navarre approved Foral Decree 29/2003, dated 10<sup>th</sup> February, which reproduced the previously cancelled articles textually. This established Spanish monolingualism in the "mixed" zone of Navarre. In other words, it now included

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30. Foral Decree 70/1994, dated 21<sup>st</sup> March; Foral decree 135/1994, dated 4<sup>th</sup> July; Foral Decree 372/2000, dated 11<sup>th</sup> December; Foral Decree 29/2003, dated 10<sup>th</sup> February.

the “mixed” zones into the “non Basque-speaking” area or it tried to turn the “mixed” zones into “non Basque-speaking” zones excluding the Basque language from all public fields. This ruling was also challenged and finally the Navarre Court of Appeal dictated a sentence on 20<sup>th</sup> May 2004,<sup>31</sup> declaring only four articles null. The sentence was appealed before the Spanish state Supreme Court and is currently pending resolution.

The organizational level has also suffered comings and goings derived from the change of tack in linguistic policy. Until 2000, there was a General Linguistic Policy Board dependent upon the Government of Navarre’s Department of Education. In 2000, the government eliminated the General Linguistic Policy Board and included its director in the Universities Board. Decree 29/2003 denied the General Board’s capacity to coordinate the activity of the different departments of the CFN government relating to the linguistic standardization policy. There is no longer a coordinating body. The decree’s logic is overwhelming: in Navarre there did not used to be a linguistic policy to promote Basque so it is therefore not necessary to have an administrative body to take charge of this.

Meanwhile, the Navarre Basque Council was created in 1996 as a collegiate body in charge of advising the Government of Navarre in terms of linguistic standardization. The body was made up of twenty members. As a consequence of the ruling against Basque put into practice by the government, in 2000 twelve out of twenty members resigned in protest against the UPN government’s attitude towards Basque.

The limiting guidelines of the Navarre linguistic policy have been demonstrated by the European Office of Regional or Minority Languages, through its resolution dated 3<sup>rd</sup> February 2001, which states:

At a time when one of the defining characteristics of Europe, linguistic diversity, has been reaffirmed in Nice by the European Union Member States by approving the European Charter of fundamental Rights, the autonomous government of Navarre is regressively reforming its own legislation on the Basque language, which is the language in danger in the Foral Community of Navarre. These decisions by the autonomous government of Navarre contradict the letter and spirit of the general conditions in matters relating to the linguistic policy in European institutions... consequently the Directors’ Committee from the European Office of Lesser Used Languages (EBLUL) denounced these reforms which would cause the extinction of bilingual signs and the use of the Basque language in numerous sectors of public administration in the mixed zone.

The Spanish state signed the European Charter for Regional or Minority Languages on 5<sup>th</sup> November 1992, and ratified it nine years later, 2<sup>nd</sup> February 2001. The European Charter for Regional or Minority Languages establishes that languages recognized as official in autonomy statutes such as Basque must be

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31. Different appeals were made against the Foral decree and there were several sentences, with identical content (among others, Sentence dated 16<sup>th</sup> December 2004).

protected and their use must be protected in territories where it is traditionally spoken such as the CFN. After appealing to the CFN to study the situation of Basque in this community, the Periodic Report on the Application of the European Charter for Regional or Minority Languages has harsh criticism for many of the measures adopted or not adopted by the Government of Navarre regarding Basque. In this way, the European Council Ministers committee approved a recommendation on 21<sup>st</sup> September 2005 requesting that the Spanish state should consider the possibility of applying some guarantees in the CFN “mixed” zone adapted to Part III of the European Charter for Regional or Minority Languages.

However, in the short term the report from the European Council has not received any kind of reply. In fact, three months after publication, 12<sup>th</sup> December 2005, the CFN Parliament approved an institutional declaration recognizing Basque “as the oldest language in Europe which forms part of international cultural heritage”, it needed firm support from the institutions, from local to European level, who should adapt a legislation which would guarantee its development as a contemporary language. However, immediately after approving this merely theoretical recognition, UPN, PSN and CDN<sup>32</sup> rejected a petition for Basque to be given the rank of official language in the European Union (UE). This is a previously unheard of case of a parliament denying its community’s vernacular language the mere voluntarily nature of becoming an official language of the EU.

In the light of this situation, criticism from EBLUL and the European Council multiplied. The European Council Ministers committee, on 21<sup>st</sup> September 2005, in its 928<sup>th</sup> session, made a serious criticism of Navarre’s authorities in relation to the linguistic policy in this community and the infringement of its citizens’ linguistic rights:

According to the report issued by the Expert Committee, the Navarrese administration only honors fifteen of its fifty-seven commitments. Two of the six recommendations of the Committee of Ministers refer specifically to the Navarrese administration.

For example, in the area of Education, the government of Navarre fails to fulfil its commitment to promoting teaching in or of the Basque language in primary education.

Regarding the regressive policies introduced by recent Navarrese legislation, the expert committee was able to discern the gist of these laws and policies from the large number of documents adduced by the Observatory of Linguistic Rights. However, because these are new, it will examine the effects of their implementation in a later study.

The committee of experts also observed that citizens using Basque suffer discrimination and suggests that applications made in Basque should be attended to punctually; the usual pattern is for paperwork in Basque to take longer to be processed.

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32. *Convergencia de Demócratas de Navarra* (CDN) is a conservative and regionalist party created in 1995. Currently CDN makes up government in a minority with UPN with tacit support from the *Partido Socialista de Navarra*.

Finally, the committee of experts drew attention to deficiencies in media resources, and specifically recommends that support be provided for private Basque-language radio and television broadcasters. It is noteworthy that the government does not propose to issue any radio licenses at all for Basque-language broadcasting in the Iruñea (Pamplona) area (i.e. Navarre's chief urban district).<sup>33</sup>

The evaluations and judgements from EBLUL and the European Council have finally born a little fruit over the last two years (2007 and 2008). On 23<sup>rd</sup> March, 2007, Foral Law 7/2007 was approved, to finance *Ikastolas* in the “non Basque-speaking” zone. Five months later, by virtue of Foral Decree 12/2007, dated 16<sup>th</sup> August, the departmental structure of the CFN Administration was set up and in accordance with the 6<sup>th</sup> article of this law it was established that Linguistic Policy fell within the authority of the Department of Education. One month later, on 10<sup>th</sup> September 2007, the Navarre Basque Institute/Euskararen Nafar Institutua (INV/ENI) was created by Foral Decree 183/2007 dated 10<sup>th</sup> September, which is an autonomous organism ascribed to the CFN Department of Education, with the aim of studying and assessing the development of the ruling on the official use of Basque in Navarre, as well as planning, promoting and managing resources for this language in the CFN<sup>34</sup>. By virtue of the decree to create the INV/ENI, the Government of Navarre considers appropriate that the INV/ENI, in a positive and integrating way, should provide human and economic resources for the recovery, promotion and development of Basque.

After the creation of the INV/ENI and on request from the European Council, which instilled through its Periodic Report on the Application of the European Charter on Regional and Minority Languages its desire to the Government of Navarre to collaborate with the BAC government in matters relating to linguistic policy, on 22<sup>nd</sup> February, 2008, the people with the highest responsibility for linguistic policy in the Basque Autonomous Community government and the government of Navarre (Miren Azkarate, Culture Minister in the BAC government, Carlos Pérez-Nievas, Education Minister in the CFN government, Patxi Bazarrrika, Deputy Minister for Linguistic Policy in the BAC and Xabier Azanza, Director of the INV/ENI) met. This was one small step but at least in the right direction.

On the other hand, and on the edge of the activity of the public powers of the CFN, on 19<sup>th</sup> May, 2008, the organizations Euskara Kultur Elkargoa (EKE) and Aurten Bai Fundazioa (ABF) signed a collaboration agreement so that the EKE would assume the representation of the European Office of Minority Languages (EBLUL) in Navarre which was assumed by ABF until that date, with headquarters in Amorebieta (BAC), as an organism did not exist or was not financed in the CFN with these authorities in Navarre. The aim of the agreement is therefore to strengthen and optimize the work of EBLUL in Navarre to help improve the situation of Basque in this community.

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33. “The Basque Language Needs More Support”, *Behatokia Newsletter*, N° 10, November 2005.

34. Official Navarre Bulletin, No 188, September 21<sup>st</sup>, 2007.

In summary, to date, the action of the CFN public powers has not assumed the objective of guaranteeing linguistic rights for citizens in Navarre; nor have they tried to eliminate the obstacles which make material equality difficult between the two languages which are spoken in Navarre; Spanish and Basque. It works from the fact that measures to promote Euskara discriminate against people who do not speak this language. This makes it impossible to overcome the situation of language inequality and any linguistic standardization is therefore blocked. This perspective of the Government of Navarre is legally incorrect as indicated in article 7.2 in the European Charter of Regional or Minority languages:

The adoption of special measures in favour of regional or minority languages aimed at promoting equality between the users of these languages and the rest of the population or which take due account of their specific conditions is not considered to be an act of discrimination against the users of more widely-used languages.

Standardization's reason for existence is precisely adopting measures which favor the knowledge and use of languages in unequal situations in order to create conditions of equality between languages in contact.<sup>35</sup>

### **SOCIOLINGUISTIC SITUATION OF BASQUE IN THE CFN (2008)**

Despite the limitations which Foral Law 18/1986 imposes, the sociolinguistic situation of Basque in the CFN has improved considerably in the last twenty-two years (1986-2008). We should highlight, however, that this progress is fundamentally due to the work of private collectives or parents' cooperatives which on many occasions have had to face up to and overcome limitations imposed by Foral Law 18/1986 with scarce resources. Particularly alarming is the situation in which zoning the population of Navarre has created in the "mixed" and "non Basque-speaking" areas, for collectives of citizens who want their children to study in Basque or who want to deal with the public administrations in this language. All schools which give classes in model D in the "non Basque-speaking" zone are cooperatives of parents, or in other words private initiatives.

The Foral Community of Navarre extends over a territory of 10,391 km<sup>2</sup> with a population in 2006 of 601,874 inhabitants. The most current general sociolinguistic data (from the sociolinguistic survey in 2001<sup>36</sup>) shows that 12.29% of the population over sixteen years old is perfectly bilingual which represents a total figure of approximately 48,300 persons (as opposed to 43.2% in the Basque Country Autonomous Community).<sup>37</sup> Another 5% of the population speaks or

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35. Urrutia, Iñigo, *Derechos lingüísticos y euskara en el sistema educativo*, Lete, Iruñea, 2005. P 600 and next.

36. The Basque Government Department of education plans to run a new sociolinguistic survey in autumn 2008.

37. European Council, *Second Periodic Report on the application of the European Charter of Regional and Minority Languages*, 2006. P. 20.

understands Basque, although with some difficulty. However, most Basque speakers are passive bilinguals, meaning that they speak Basque but it is not their first contact language. This is a common phenomenon for all minority languages, given that most of the press, radio and TV, social, cultural and economic activities in the community are provided in Spanish, so the possibilities of speaking in the vernacular are lower.

This data contrasts with data obtained by the survey run by the Government of Navarre in 2003, which states that 20.2% of the population of Navarre speaks Basque more or less correctly. Consequently, 78% of the population in Navarre over fifteen years old does not speak Basque, although the proportion of monolinguals has dropped over the past ten years, passing from 86% in 1991, to the aforementioned 78% in 2001.<sup>38</sup> The reduction of the percentage of this population is much higher in the under sixteen age group, given that approximately 60% of the school population in the CFN studies in model D (only in Basque) or in model B (Basque and Spanish) which obviously has considerably increased the percentage of bilingual population.

The distribution of the Basque-speaking population within Foral territory is extraordinarily unequal. The greatest density of bilingual population is concentrated in the northern zone or the “Basque-speaking” zone where 75% of the population is bilingual (60% bilingual and 7.5% passive bilinguals and 7.5% with knowledge of Basque). So then, in absolute numerical terms the highest number of people who declare that they are bilingual is concentrated in the mixed zone including the capital city Iruñea/Pamplona. This area concentrates 16,000 active bilinguals and 23,000 passive bilinguals, approximately 20% of the population in this zone. 37.2% of the Navarre’s population live the southern half (non Basque-speaking zone). Here the percentage of bilingual citizens is only 8%, although it is in this zone where the greatest percentage rates of progression in Basque are seen, despite the restrictive legislation. This demonstrates the social wish for progression for Basque from a large part of the population in this zone, which we alluded to at the start of this section.<sup>39</sup>

However, it is a cause for concern that with more than 67.5% of the population speaking Basque in the “Basque-speaking” area and 6.5% in the “non Basque-speaking” area, the current legislation is emphasizing this inequality by strengthening the use of the Basque language in the north and practically prohibiting it in the south, in this way generating two cultural and linguistic situations in a community with barely 600,000 people. All the data emphasizes this fact, from the percentage of speakers attending classes to perfect their Basque (14%

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38. European Council, *Second Periodic Report on the application of the European Charter of Regional and Minority Languages*, 2006. P. 36.

39. Navarre School Council “Report on the education system 2000-2001”, section 6.1 and table 81. In the non Basque-speaking area model A (only legalized bilingual model) has increased spectacularly rising from 3% to 25.8% in the last ten years. In the public school network practically 50% of 3 year old students take model A (542 students) and model G, entirely in Spanish (560 students).

in the “Basque-speaking” zone and 5.5% in the “non Basque-Speaking zone”) up to the percentage of students studying in model D (in Basque) which rises to 85.82% of the students in the “Basque speaking” zone whilst it barely reaches 2.3% in the “non Basque speaking” zone.<sup>40</sup>

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# The Basque Language in the French State

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*Cet article propose une lecture historique et sociologique de la place du basque en France. Ayant remarquablement résisté face au français jusqu'à la fin du XIXe siècle, la langue basque va connaître un lent déclin durant tout le XXe, au point où elle se trouve menacée de mort en ce début du XXIe siècle. Pourtant, c'est au moment où la mort de la langue basque en France est annoncée qu'une mobilisation sans précédent en sa faveur apparaît. Une hypothèse, en termes de recherche identitaire et d'affectivité linguistique dans un monde post-moderniste, est discutée quant à l'explication de ce succès.*

*Mots-Clé : Langue basque. Pays Basque français. Enseignement bilingue. Politique linguistique. Sociolinguistique. Culture basque.*

*Artikulu honek irakurketa historikoa eta soziologikoa egiten du Frantzian euskarak duen lekua-ri buruz. Frantsesaren bultzadari XIX. mendera arte eutsi ondoren, euskarak gainbehera jasan du XX. mende osoan zehar. Dena dela, euskara Frantzian azkenetan zegoela zirudienean, inoiz ikusi gabeko euskararen aldeko mugimendua sortu zen. Fenomeno azaltzeko erabilitako hipotesia, mundu postmodernistan identitatea bilatzeko beharrean eta hizkuntza-afektibitatean oinarritzen da.*

*Giltza-Hitzak: Euskara. Ipar Euskal Herrian. Hezkuntza elebiduna. Hizkuntza Politika. Soziolinguistika. Euskal kultura.*

*Este artículo presenta una lectura histórica y sociológica del lugar ocupado por la lengua vasca en Francia. Tras haber resistido airoso el empuje del francés hasta finales del siglo XIX, la lengua vasca experimenta un lento declive durante todo el siglo XX, hasta el punto de encontrarse amenazada de muerte en este inicio del siglo XXI. Sin embargo, cuando la lengua vasca en Francia parece estar a punto de dar su último suspiro, surge una movilización a su favor sin precedentes. Se plantea una hipótesis, en términos de búsqueda identitaria y de afectividad lingüística en un mundo postmodernista, como explicación de dicho fenómeno.*

*Palabras Clave: Lengua vasca. País Vasco francés. Educación bilingüe. Política lingüística. Sociolingüística. Cultura vasca.*

## HISTORY: LONG RESISTANCE FOLLOWED BY COLLAPSE

When the French Revolution broke out in 1789, almost all Basques in the provinces of Labourd, Basse-Navarre and Soule spoke Basque and only a minority expressed themselves correctly in French. Although we have no reliable statistics on the matter, all records we have found describe the Basque Country as being linguistically foreign to France and where it was essential to have translators to move in. This was not, however, a specifically Basque situation in France: historians tell us that at the end of the 18<sup>th</sup> century more than half the French still spoke a language other than French. Since the Villiers-Cotterêts order (1539) which made it obligatory to use French to pronounce and register acts of justice, French was certainly the official language of the Kingdom of France. However, outside its linguistic area, French was actually only spoken by people with administrative, political or advisory jobs.<sup>1</sup>

If French was imposed little by little as the language of power and knowledge during the 17<sup>th</sup> and 18<sup>th</sup> centuries, Breton, Corsican, Catalan, Basque, Occitan, Flemish, etc. remained the everyday languages. Understanding the nature and the dynamics of this co-existence for the two centuries which preceded the Revolution can explain how it sorted out languages other than French in only a few months and without great debate. French was actually affirmed little by little, first against Latin and then independently and without any law being imposed, as the language of knowledge and reason. In other words: French became the language of modernity and Enlightenment in France (and also beyond its borders). Retrospectively of course we can ask the question: why French and not, for example, Occitan which was very widespread over the French territory? Or even, more fundamentally, why *one* and not *several* languages for modernity in France as it was a plurilingual country?

The answer comes in three parts. French was firstly imposed for quantitative reasons. Of course the sum of the people who spoke another language apart from French just before the French Revolution was greater than all the French speakers put together. But, out of all these languages taken individually, French was the most spoken: the others were therefore *already* minority languages on national soil, although majority in their respective territories. Secondly, because it was the language of power and administration and because it had a written form for these purposes (following standardization efforts) which could not be matched in the other languages. Finally because Basque (although we could say the same thing for Corsican, Breton, etc.) was not the language chosen by the Basques themselves for their mathematics, physics or philosophy. Sciences, learning and knowledge were read, written and practiced on the whole in Latin

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1. On the demand of the Constituent Assembly (1789-1791), a linguistic survey was ordered in August 1790. Three years later in July 1793, Abbot Grégoire summarized it in a report which he entitled in the most explicit way *On the need and resources to annihilate patois and universalize the use of French*. We can read there that "six million Frenchmen, particularly in the country, cannot speak the national language; the same number are more or less incapable of holding a conversation and no more than three million speak it purely."

and then in French: there is evidence which overwhelmed the very rare Basque intellectuals during the 17<sup>th</sup> and 18<sup>th</sup> centuries. It should be recognized that they barely went out in protest to make Basque a language of modernity or knowledge.<sup>2</sup>

This last point is important to understand the dynamics of the status of the Basque language from the 17<sup>th</sup> century onwards: it was the Basques themselves who let their language go progressively as they left traditional society ways of life behind and entered modernity. Nothing, until the end of the 19<sup>th</sup> century, when obligatory schooling was introduced in French, really *made them* do it. Retrospectively, we could think that these Basques, entering squarely into modernity via French, would also have been able to live this modernity and translate it into Basque, making an enlightened Basque speaking core, avoiding future assimilation between Basque language and tradition. But that was not the case. The majority of them left the Basque Country definitively. And for the rare number who stayed or later returned the challenge was doubtlessly too difficult to take up: the 17<sup>th</sup> and 18<sup>th</sup> centuries passed by without *euskaldun* modernity (in Basque) seeing the light of day.

Identity in traditional Basque society is inherited unquestioned identity, a transcendent identity which for those who bear it can barely take issue. It appears to them as always having been given: by God, tradition, customs. This determination is, for example, highlighted even in individuals' names. This is not a civil society name, a first name and a surname indicating autonomous singularity, but instead shows the place where the individual lives, marking them as belonging to the community's spatial organization. To a certain extent, the person belongs to the place, the family house and assumes from it, a little like a habit, the statuses and roles associated with it. In exchange, one gets secure integration which permits him or her to guide one's life without too many identity crises. The march towards modernity progressively moved away from this determination. It permitted the individual to find one's own path. This does not mean that the modern individual's identity becomes the product of their pure will. On the contrary, their identity remains largely determined by their socio-cultural heritage. But from then on there was the possibility of distancing themselves from this inherited identity. Among other things, modernity offers individuals the chance to be able to look at themselves 'from the outside' to at least partially shape their own identity. It is in this sense that they become a *sujet*, -meaning- a person capable of perceiving and guiding not only their relations with the world but also their relationship with themselves.

Now, what is discovered by the individual in the 17<sup>th</sup> or 18<sup>th</sup> century Basque Country, that makes this step leading to a relative look at community organiza-

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2. Exactly the same thing happened in the Spanish Basque Country where nearly all men of learning and letters, without constraint, abandoned Basque for Spanish. In defense of these Basques who abandoned their language for science, learning and letters we should recognize that their thirst for knowledge and intellectual exchange could be quenched by hundreds of readings and correspondence in French whilst there was very little material in Basque.

tion and morale to adopt a more strategic vision of reality? *His inherited language is of no use to him at all in his contacts with universal thinking.* Basque remains the language of belonging to a rural and traditional community. However, French is the language leading to universal thought, of Enlightenment and Reason. If the modern Basque (the individual entering modernity) then abandons his language, it is not because he is incapable, due to his intrinsic linguistic characteristics, to transport universal learning and Reason, but because the immense majority of those who speak it stick with tradition whilst everyone involved in the Enlightenment in the Basque Country communicates in French.

The basic communities making up the traditional Basque Country would not or could not believe in modernity themselves. On the contrary, one of the main characteristics of the Basque Country was that they continued with the same traditions and community organization until very late on in their history. Modernity was not created in Basque villages: it was imported there. Now this modernity spoke French. The first Basque-French bilingualism was bilingualism of *Basque to French as an obligatory journey to modernity.* Entering the sphere of universal learning implied the mediation of French and so also at least partially abandoning Basque. *It was then and in contrast that Basque became a symbol of tradition, rural life and the past.*

The French Revolution would synthesize this trend by giving it a framework which was both ideological and legal. It would magnify French as the language to open up universal thought, Enlightenment and Reason, and reduce the other languages to nothing more than traces of the past, inept to transport the new values of the Republic. The Lanthenas report, dated December 18, 1792, lowered local idioms for example to “simple remains of the barbaric nature of past centuries” which “should be made to disappear as soon as possible”.<sup>3</sup> Declared “treacherous” and “coarse”, local languages were described in the Barrère report (presented on June 4, 1794) as “perpetuating the fanaticism and superstition” and “keeping people back in the dark ages, ignorance and prejudices.” The dichotomy which occurred little by little over the two preceding centuries (French language = language of Enlightenment and Reason compared with regional language = languages of traditions and superstitions) was struck dumb in a head on clash. This would be even more virulent as, faced with counter-revolutionary dangers, local languages appeared as obstacles to propagating the ideas of the Revolution. As Abbot Grégoire wrote in his report to the Convention (30<sup>th</sup> July 1793), it was a matter of “removing this diversity of coarse languages which extend the infancy of reason and the aging of prejudices.” For this purpose, the Convention adopted (on 21<sup>st</sup> October 1793) a law setting up state primary schools. A few days later, it was specified that teaching would only be given in French. On 27<sup>th</sup> January 1794 a decree was promulgated ordering the nomination of a French speaking primary teacher for each commune in the departments where the inhabitants did not speak French.

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3. A year earlier, the Talleyrand report (presented to the Constituent Assembly on 10<sup>th</sup>, 11<sup>th</sup> and 19<sup>th</sup> September 1791) specified that, as opposed to French, language of learning and teaching, “this crowd of corrupt dialects, last remains of the feudal systems, will be condemned to disappear: the force of things orders it.”

Despite this, the progression of French in the Basque Country remained slow. Administrators and academy inspectors regularly complained about this throughout the 19<sup>th</sup> century. It was particularly noted that, as opposed to what was stipulated by the January 1794 decree, school teachers in the Basque Country spoke rather superficial French most of the time and education was very often given in the Basque language. The overall result was that Basque was maintained as the clearly dominant language. So, Félix Pécaut, delegate to the general primary teaching inspection, observed in 1880 that in the Basque Country

three quarters of children who go to our schools are no more capable of speaking usual French than they are of understanding it; when we ask them questions or give them an explanation, it is tempting to believe we are among foreigners.

Absenteeism was high:

Just in the district of Mauléon, almost 3,000 out of 9,500 children aged six to thirteen years old do not appear in the registers; as for those who have been registered for school, most do not stay for more than five months.<sup>4</sup>

Pécaut's verdict is both realistic and defeatist:

We were flattering ourselves to think that by sending French speaking school teachers to the Basque Country we would impose the exclusive use of French in schools (...). But let us not fool ourselves: as Basque is not only the dominant but really the only language, we cannot do without it for teaching French.

This did not prevent, the same year, the inspector Louis Soulice from "demanding that school teachers completely abolish the use of the Basque language in class".<sup>5</sup>

The Law of 28<sup>th</sup> March 1882 (Jules Ferry) which instills obligatory teaching for children from six to thirteen got things moving: generations of young Basques would from then on unavoidably go through school where one of the clear aims was to gain a command of the French language. Coercive methods developed. The most widespread and at the same time the most shocking were doubtlessly the "symbol" (also called "sign punishment" or "anti punishment"). From the start of the day the teacher catching a child speaking Basque, gave him a symbol (a stick, a ball, a cloth, an iron ring). The aim was for this child to get rid of this symbol by giving it to another child who they in turn had caught speaking Basque. The last child to carry the symbol at the end of the day was punished often humiliatingly.<sup>6</sup> But the worse punishment for these children was to be educated with

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4. Félix Pécaut, *Rapport d'inspection générale sur l'académie de Bordeaux*, Bordeaux, Imprimerie nationale, 1880, p. 69.

5. Louis Soulice, *Notes pour servir à l'histoire de l'instruction primaire dans les Basses-Pyrénées*, Pau, Véonèse, 1881, p. 42.

6. This type of punishment went on until the 1950s!

ambivalent regard for their mother tongue. On the one hand, Basque was, for them, their everyday language, for their family, feelings and subjectivity, but on the other hand, this same language was constantly devalued by institutions, stigmatized at school and reduced to nothing more than the language of bumpkins and illiterates.

Only religion escaped this dichotomy. Basques were allowed to address God in their mother tongue: it would therefore not be devalued. Maybe it was not the language of learning, administration and social ascension, but it was the language which made sense, whilst the Catholic faith guided the spirits and community morals commanded social insertion. Until the end of the 19th century, almost all intellectual activity in the Basque Country was run by the clergy, with the exception of the town of Baiona, or Bayonne. In the country where the vast majority of the population lived, it was the clergy, speaking and writing Basque, who knew, guided and comforted. This intellectual monopoly and the prestige associated with it give us an insight into the resolutely favorable position of the clergy in terms of defending the Basque language against French. New and secular ideas and attitudes led by French actually represented a threat not only for religion but also for this monopoly. This explains the virulence and constancy of the self same clergy, for the two centuries following the Revolution, to demand that the catechism be taught in Basque.<sup>7</sup> This position largely explains the Basque language's resistance against French. But it would only comfort antagonism between French, modernity and universal reason on the one hand and, the Basque language, traditions and community morale on the other. This also explains the success of the expression *euskaldun-fededun* (Basque speaking and believer) which was, for a long time, the main self-identifying sign of the Basques.

Between the traditional community -attacked of course but still held together by its language and its religion- and modern society organized by the state, an intermediate figure then appeared that would be central throughout the 19th century and a large part of the 20th century: the notable. This figure continues to be part of traditional society and participates in the functioning of the community. The notables knew its practices, beliefs and ways of life from the inside. But at the same time they were squarely part of modern society and knew how to act in it. They understood the stakes and the rules, and did not feel foreign but an integral part of it. They were in fact modern but had not left their traditional country and rather than get on with the doubtlessly enormous task of changing the rules, they accepted to live two identities. This position was sometimes very uncomfortable but still offers a singular privilege in return: being an essential mediator, the undeniable go-between between the still traditional local community and the modern national society. There was then relative peace in society: via the notables, the state learned to accept the survival of local traditions reasonably well and the local communities accepted the modern state reasonably well. Basque notables talked to the local population in Basque whilst speaking perfect French

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7. This attitude is not specific to the Basques: the same goes for other regions, particularly in Brittany where Breton and Catholicism are also very closely linked.

with their national contacts. They were not only literal translators (often the case for certain administrative steps) but also inter-cultural translators: they adapted local demands to how the nation worked institutionally, while translating expectations in understandable terms for the traditional mentality. Having done this, they actually helped to perpetuate the break between traditional local community and modern national society.

If 1880 represented an important date in the history of the decline of the Basque language with the introduction of obligatory schooling in French, the First World War (1914-1918) would also deeply affect this history specifically in terms of Basques joining the French nation.<sup>8</sup> The idea of the French nation had certainly been widely spread throughout the Basque Country for more than a century, even if only through civil instruction at school, but for the majority of the Basque population it was still an abstract concept. Most Basques were for example completely incapable of drawing the geographic outline of France, of naming the main towns or saying how many people lived there. The feeling of belonging was not national but local, political loyalty was not as a citizen but as a member of the community. The First World War broke with this indifference towards the nation because, in the space of four years, several thousand young Basques would die for France. In the Basque Country (and also everywhere else in France) there is no village without a monument to those who died with tens or even hundreds of names written under the simple phrase: "died for France." From that moment on, France *can no longer* remain an abstract concept: it is the reason why their son, brother, father or husband is dead. Basques experienced their belonging to the body of the nation in dramatic fashion, loaded with a supreme value: sacrifice and loyalty to the dead. In this new economy of sense, not loving France would mean betraying those who died for her and would be seen as sacrilege. However, on the one hand, Basques continued on the whole, particularly in the country, to not really know what France was and to only speak French with difficulty. This explains the diffuse feeling that appeared then and which would last for several generations (until the 1960s): that of "not being French enough". This "lack" was demonstrated by an increasingly ambiguous attitude towards the Basque language. Euskara became a rather bothersome heritage which was still spoken of course but started not to be passed on to children anymore - in order to make them "good Frenchmen".

At the same time the mass of people from the country, the large majority of the Basque population, entered modernity directly, over the top of the notables and the clergy we could say. This entry into modernity was most seen in terms of understanding the inferiority status of Basque compared to French. Basque was not good for anything: here is the affirmation, hammered out for more than a century by the Republican State, particularly through National Education, which then appears as evidence in the eyes of the majority. Basque was just a relic from the past, anachronistic for modern society. Obviously, this awareness raising is the

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8. We should also add the imposition of obligatory military service, in March 1905, lasting two years for all Frenchmen.



corollary of a discovery of modernity under just one of its aspects: that of efficiency, instrumental rationality and profitability. The other aspect of modernity, that of the capacity of individuals to tear themselves away from determinations and weighty traditions to think of themselves as free subjects and autonomous protagonists (and therefore particularly capable of managing this bilingualism and the effects it brings), is brought to the fore, laminated by the need to adapt at any cost to what then appeared to be the course of history. In this sort of alienation to modernism, caricature of modernity, the *euskaldun* was not happy. He lived his language, the language of his childhood, of his emotions and his subjectivity as a suffering. He felt that there was a wealth there, an immense heritage passed down by his ancestors, but a heritage which was not useful for anything in the modern world, could not be minted as anything except to provoke mockery from those who did not speak it.

These were the 'between the wars' generations who lived the most traumatizing aspect of this linguistic suffering. Many of them chose not to teach their children Basque, for their own good and their future so that they did not feel humiliated like their parents had at school or with administrations because they did not speak proper French. But, but if parents did all they could to prevent suffering being passed down to their children, there was still a stigma for these children. Because, although they barely spoke or did not speak Basque at all, they grew up in an ambivalence which was just as traumatizing: their parents continued to express the essential part of their subjectivity in the Basque language (belonging to a community, intimacy, religion, relation with nature, etc.) and, at the same time, they were deeply ashamed by it. This ambivalence was experienced painfully by these children because it was synonymous to a life principle denied by reason. We find it hard to measure just how much damage was done by this negation in the Basque Country, doubtlessly because it was quashed or hidden. But the result is there; in less than a century the Basques massively abandoned their language to the point that it seems at risk of extinction.

This ripping apart is often presented as the forced product of a virulent Republican policy against minority languages in France. It is true that, thinking of it as a privileged tool of modernity and universal reason, the French state was not sentimental when defining its linguistic policy. In the Basque Country, this was translated by forced linguistic socialization of the population and Basques had to access French as fast as possible in order to *bridge language* to be able to cross what was thought of as the abyss separating tradition from modernity. Of course, this theoretically generous logic, linked to a change in society, is also doubled by a practical logic doubtlessly less noble, in any case more trivial and historic, constructing a nation-state and encouraged by the desire for homogenous communion for their citizens. But, in all, it should be recognized that it was the Basques themselves who, for reasons which have just been presented, left their language in favor of French. And this to such a point, that at the end of the 20<sup>th</sup> century, only one third of the population understood Basque and only 14 % used it on a daily basis.<sup>9</sup>

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9. Basque Government: *Sociolinguistic survey 1996*.

## LATE YET DYNAMIC MOBILIZATION: CHOOSING BASQUE

It was at this precise moment, when the bell was tolling for the Basque language, when its passive transmission was being exhausted and where its programmed death was supposed to remove so much linguistic suffering, that the Basques wanted, it seems to, to speak it, read it, learn it or teach it the most. What a paradox! We have never spoken it so little and yet wanted so much to do so! Whilst only 22.5% of the inhabitants of Iparralde, the French Basque Country are capable of speaking Basque (the lowest figure ever reached), 83% express an interest in the Basque language, 41.2% are for active promotion and 56% think that all children should learn Basque at school (23% against).<sup>10</sup> Only 17.6% have an unfavorable attitude toward Euskara.

Some people think that this is a reflex action in the face of death: we do not want things to die, particularly when they have been used to transport so much life. This reaction, which mixes conservational instincts, fear of the irreversible, and fear of losing some reservoirs of authenticity, is always defensive. Our gaze, full of nostalgia, then turns towards the past which barely needs magnifying. It is sad to see that arguments used in favor of defending minority languages in France are often similar to those aiming to preserve bears in the Pyrenees or baby seals in Canada. It is largely a matter of saving a part of heritage. There is a sort of condescendence which is so much more indecent that it is almost never followed up by action. It is moreover a matter of quickly forgetting the action of three or four previous generations that did nothing to prevent Basque from disappearing. The potential nostalgia which the disappearance of Basque represented for these generations was less hard to bear in their eyes than the misfortune that using it seemed to bring them. Of course, as the misfortune was no longer there (now everyone speaks French and Basque is no longer stigmatized), nostalgia seemed painful to live with for the following generation, so much so that the desire that it engendered came cheap. The explanation for choosing Basque should therefore be sought out elsewhere. It lies firstly in the undeniable dynamism of promoters of actions in favor of the Basque language, but also, and doubtlessly above all, *in the radical change of image of this language within the very Basque population*. From devalued, synonym of an old fashioned country bumpkin past, it has, within thirty years, become considered as a modern identity sign, fashionable and highly valued.

Mobilization around the Basque language started to become structured among a very active minority, from the 1970s. This essentially refers to actions led by militants of the Basque cause, meaning politically committed around the idea of institutional recognition of the Basque country. Although Basque nationalism formerly had its representatives in the French Basque country, this movement only really appeared at the start of the 1960s. Carried by the first genera-

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10. Basque Government: *Sociolinguistic survey 2006*. Another survey, done in 2004, gave this opinion answering the question, "If you have children, would you want them to learn Basque?" The answers were: "They already speak it": 19%; "Yes, I'd like them to learn it: 45 %"; "Don't care: 20 %"; "No, I don't want that: 12 %"; "No answer: 6 %". (Eusko Ikaskuntza, *Basque Identity and Cultures at the Start of the 21<sup>st</sup> Century*).

tion of Basque students returned to the country after studying, it is undeniably influenced by national liberation movements from countries colonized by France, as well as by Basque political refugees fleeing Franco's repression. The first *ikas-tola*, or Basque medium school, appeared in 1970: a school where instruction is all in Basque. Children who attended it were all children of political refugees or of activists. A year later, Basque language lessons for adults started to be organized. The first records from the 'new wave' of Basque songs were released and Basque language essays were published. It was a very small environment, strongly activist and repercussions in the population were low. But the image of the Basque language which these activists gave was completely new: they had weighted it with a protesting and anti-authority dimension in a total break with the backward-looking status it had had for more than two centuries. The Basque language was now a language of resistance, dissent and affirmation of oneself in a world of oppression, cultural alienation and negation of individual expressiveness to use vocabulary from the time. Belonging to a cultural minority was no longer considered to be a defect but quite the opposite as an opportunity in a culturally uniform world. This new eminently anti-authority vision of minority cultures harmonized with all the new social movements springing up all over Europe.

For more than ten years, almost all mobilizations around the Basque language would involve nationalist activists. They had undeniably been the craftsmen of the Basque cultural and linguistic renewal. But the favorable echo which had awakened the idea of promoting and learning the Basque language among the Basque Population was soon become more intense than anything Basque nationalism has to offer. This is fortunate for the Basque language because, over all these years, the nationalists have never actually managed to cross the threshold of 15% at the different elections. On the other hand, at the same time, the majority of the Basque population has moved from rather negative lack of interest in the Basque language to a more positive lack of interest and finally, an openly positive attitude. It is therefore not political motivation, particularly Basque nationalist, which is founding this reversal in trend. The essential part of the explanation lies rather in the break with the phenomenon which caused the decline of the Basque language: associating French with modernity. *If the historic idea of Basques entering modernity largely explains why they abandoned their language, it is the crisis in this self same modernity which in turn explains their new attention for their language.* Or, more exactly, it is the crisis of how this modernity has on the whole been lived in the Basque Country, namely modernism, which helps us to understand why they are choosing their Basque identity.

We can define modernism as the offensive ideology of modernity against traditional beliefs, community attachment and shared subjectivity in which they are pitted against reason, individual freedom, science and progress. Applied to our century, modernism should lead to the decline in local specificities as opposed to universal stakes, exceeding regional inertia by worldwide acceleration of flow, eliminating spatial inscription of social links by generalizing exchanges. Technical progress, development of communications and economic rationalization indicate the direction that societies should follow, moving them from the global nature of villages to the global village so dear to McLuhan.

This modernist view, along with a certain taste of evolutionism, was historically the basis for devaluing the Basque language and traditions. And, from the 1960s, it has also inspired the majority of interpretations of movements to defend minority cultures and demands of the type “live and work in the country” which appeared at the time, reducing them to nothing more than pure backward-looking reactions or nostalgia. These movements were apprehended as crisis behavior and the defensive replies of protagonists destabilized by progress. Local particularities went against the tide of the general evolution of our societies towards more rationality, universality and movement. And by not leaving another alternative to those who remained loyal to local cultures and traditions which closed it into a retrograde community feeling or the historical leap in nationalism, modernism has doubtlessly not produced what it expected.

But this assimilation from modernity to modernism, from reason to instrumental rationality and from feeling to irrationality is obsolete from now on. Our societies are now classified as ‘post modern’, in ‘second modernity’ or even ‘hyper-modern’. One of their characteristics was that, by exhaustion or doubt, they were incapable of offering sufficiently stable and central markers to their members to give a social sense to their existence. The current malaise is almost as serious as the attitude which presided over the passage of traditional communities to modern society: which, up to then, caused all sense to collapse. Yesterday, it was community morals, traditions, obligations linked to a system of interdependence. These markers were certainly constrained but also reassuring. Today, their replacements have had the same fate: ideologies no longer give hope, social utopias seem harmful or dangerous; science and technology are no longer automatically synonymous of progress. Our societies suffer from a sort of dereliction which leaves their members orphans in terms of sense and hope. This turns their worried gaze towards anything which can bring them a little serenity. This is therefore a dangerous situation: we know full well that it is in this type of social development that populist and fundamentalist movements develop, and an admittedly negligible but real part of Basque nationalism reveals this logic. But moving from concerns about a social vacuum to the defense and promotion of the Basque language as an identity marker luckily takes another route on the whole.

As opposed to what optimistic postmodernists think, the conscience of the random and the ephemeral belonging to our societies is not always exhilarating and amazing; it also creates vertigo and collapse cannot be ruled out. In a world where everything is scattered, broken up and accelerated, the individual at the start of the 21<sup>st</sup> century is hesitating. In their doubt, they are looking for a stable element to support them and construct themselves as a person. For the inhabitants of the Basque Country (whether they are ancestrally Basque or not) or the descendents of Basque immigrants of the diaspora, belonging to the Basque identity, for which the language is the main marker, *can* (and there is not automatism there) play this role of a stabilizing element. Of course, other identifying poles exist, but this identity works as original capital, available to everyone, non exclusive and quite easy to access. This identity returns to a free and voluntary choice. To the extent that it is minority and does not concern the economy, it is also supposed to incarnate a form of truth, authenticity and sensitivity. From this

point of view, reinvestment in terms of Basque identity can be read as a reaction to the information-based form of society that Jacques Attali is predicting, even if he does not want it to happen: a society where “man as the object, will be a nomad, with no address or stable family, carrying himself, in himself, everything making up his social value” and where “the ephemeral will be the rhythm of the law (and) narcissism the major source of desire.” The Basque identity which is being aspired to by those who wish to reinvest in it is, on the other hand, built against this ephemeral aspect and this nomadic life, against urgency, stress and zapping. Everywhere, a sort of universal equivalence can be verified, dictated by a functional pragmatism. Dictated by market laws, globalization is more often synonymous with identity standardization than opening up to otherness. Against this levelling, Basque identity appears on the other hand to be unique and incomparable. It returns to the sensitivity and not to efficacy, to belonging and not to restless wandering. Identity is then, depending on the case, thought of as a ‘refuge’, identity transcendence or spatial metaphor for stability. It is no longer simply synonymous with a community tradition or a nationalist aspiration, but also a mark of the desire to construct their own life by relying on their own culture and a collective memory without having to renounce universal reason and democratic principles.

In any case it is this idea of a marker, open and non exclusive identity which seems to guide the promoters of doubtlessly the most important mobilization ever undertaken for the Basque language: aiming to establish bilingualism at school. If the first *ikastolak* were, without exception, schools created by nationalist activists, the movement in favor of bilingual schools (then the *ikastolak* themselves) is carried along by parents who are concerned about offering their children the choice to speak Basque or not when they become adults. This movement started at the beginning of the 1980s. Faced with mobilization from certain parents (and perhaps with the intention of excusing themselves for not honoring the electoral promise made by François Mitterrand when he was running for the Presidency of the Republic to create a Basque Country department), an opening was made towards teaching no longer just *of* Basque but *in* Basque. On 1st July 1982 an official bulletin was issued by the French Republic including a circular on “Teaching regional cultures and languages in the public National Education service.” It contains the condition to “translate recognition by the government of the regional fact in all its dimensions, the wish to safeguard an essential element of national heritage and the desire to meet families’ demands in this area.” Among the instructions taken up by the infant and primary schools, we can note: “Finally the conditions will be studied in which experimental bilingual classes can be created taking into account experiments which have already been set up in certain regions and using the skills which they have revealed.” In April 1983, the first bilingual Basque-French classes were started within National Education. Since that date, the progression of opening classes has been continual.<sup>11</sup>

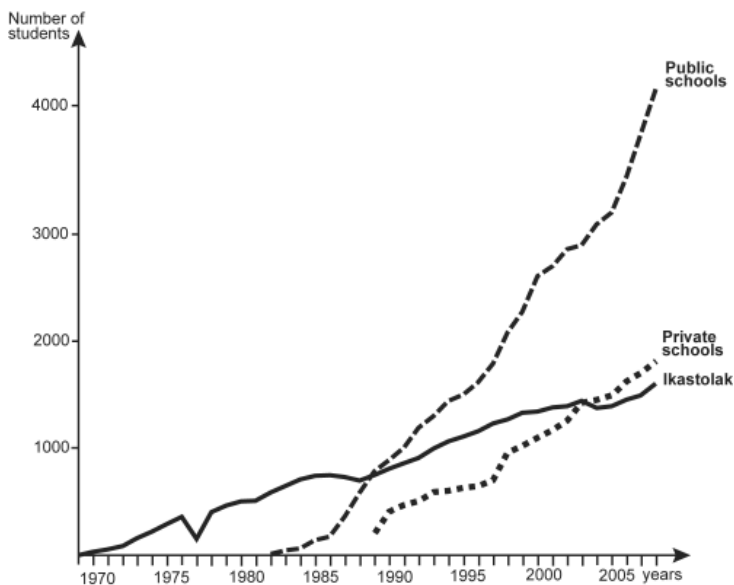
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11. In 1986, a bilingual stream, adopting the same principle as in the public system, was opened in private schools. Outside the *ikastolak*, all private schools in the French Basque Country give Catholic education.

When the option to choose this line is offered to parents, children are always enrolled voluntarily after an interview with the head teacher. The child can leave this stream at any time to return to the stream entirely in French. On the other hand, this cannot be done the other way round: children can only join at two, three or exceptionally four years old and no later, unless the children already speak Basque or have followed this stream in another school. Half the teaching time –fourteen hours– is given in French and the other half –another fourteen hours– in Basque. For children aged six to twelve, a class is organized as follows: all children take French, history and part of the artistic and physical activities in French with the same teacher. For maths, sciences, geography and the other half of the artistic and physical activities, the class splits into two: children in the entirely French stream stay with the same teacher and those following the bilingual stream change classroom to take classes in Basque with another teacher. For these subjects, the number of students in class is therefore less: all children in a bilingual class benefit from this organization, whether they follow the bilingual stream or not, from a smaller classroom size.

The success of this bilingual stream is constant as, in the space of twenty-five years, the number of students (ages three to twelve) schooled in this way in the public systems has risen from seventeen in 1983, to 4,280 students in 2008, and from forty-six in 1986, to 1,816 students in 2008 in the general private system. Meanwhile, teaching entirely in Basque with French as a subject in the *ikastolak* has also developed constantly, rising from nineteen students (aged three to twelve) in 1970, to 1629 students in 2008. In total there are therefore 7,725 students (out of a total of 25,138, so 30.7%) who currently receive at least 50% of their teaching in the Basque language.

### Evolution of bilingual pupils and pupils in immersion models in primary schools



Retrospectively, we can think about the linguistic trauma, the distress and humiliations that could have been avoided at the end of the 19<sup>th</sup> century and particularly during the entire first half of the 20<sup>th</sup> century if this possibility to learn in Basque and French simultaneously had been offered in Basque schools. As opposed to what many people fear, bilingualism does not lead to prejudiced children. The constantly higher marks on tests in maths *and in French* of bilingual students, both compared to their non bilingual classmates and the national averages might lead us to think the contrary.<sup>12</sup>

Adult classes have also grown constantly. The AEK association<sup>13</sup> was created in May 1980. It offers evening classes, intensive daytime courses for one or two months, providing six hours of teaching a day, and live-in full immersion courses for several weeks during summer or winter holidays. The number of students has risen from 540 in 1980, to 926 in 2008 at fourteen study centers. In parallel (figures from July 2007 to May 2008), AEK gives classes to 126 people in nineteen specific groups (town halls and administrations) and 210 people have taken intensive courses.

This mobilization in favor of the Basque language has finally been seen in the creation of the Public Basque Language Office (OPLB) in December 2004. Financed 30% by the state, 30% by the Aquitaine Region, 30% by the Pyrénées Atlantiques department and 10% by Basque communes, this structure aims to “design, define and implement a public and concerted linguistic policy in favor of the Basque language” as well as to “mobilize the financial resources required to successfully complete the actions proposed within the framework of its own activity program.” Its budget is currently two million Euros per year. Since its creation and within the framework of a participative approach, the OPLB mobilized numerous protagonists of linguistic action for several months and managed to adopt a linguistic policy project in December 2006. In parallel, and in partnership with the teaching institutions, this has led to pluri-annual planning of teaching of Basque and in Basque. It has been possible to implement this planning since September 2006. The OPLB, in partnership with local collectives, is also in the process of deploying a network of language technicians in order to assure, at the closest ground level, work to encourage the Basque language promotion department. Finally, a cooperation agreement was signed in February 2007 between the OPLB and the Basque Autonomous Community Government’s Counsellor of Culture.

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12. It would however be imprudent to deduce that the fact of being schooled in two different languages produces *ipso facto* better students. To reach such a conclusion, homogeneity would have to be assured for children’s socio-cultural environments. In fact, we can make the hypothesis that only parents who are sufficiently sure of their level and their cultural integration choose the bilingual stream for their children.

13. Alfabetatze Euskalduntze Koordinakundea: Coordination of Recovery of Basque Language and Literacy.

## STATISTICAL DATA

The first completely reliable data (collection techniques for data methodologically controlled with a very low percentage of errors) which we have on the use of the Basque language in the French Basque country is recent. Significantly, this does not emanate from French organisms or institutions, but from the Autonomous Basque Community Government itself.<sup>14</sup> This data shows us *the very worrying status of the Basque language at the end of the 20<sup>th</sup> century*. It was a dying language, having almost completely disappeared in the most urban areas of the Basque Country towns of Bayonne, Anglet and Biarritz. Only the most rural areas maintain significant knowledge of the Basque language.

So, and according to the data from the survey in 2006, out of 230,200 people over sixteen years old living in the French Basque Country, 51,800 (22.5%) are bilingual expressing themselves well in Basque and French; 19,800 (8.6%) are receptive bilinguals and understand Basque well but cannot speak it properly; and 158,000 (68.9%) do not understand or speak Basque at all.

### Overall evolution of linguistic skills (in percentages)

Linguistic skill	Population aged 16 and over		
	1996	2001	2006
Bilingual	26.4	24.8	22.5
Receptive bilinguals	9.3	11.7	8.6
<i>Total bilinguals</i>	35.7	36.5	31.1
Non Basque speakers	64.2	63.5	68.9
<b>Total</b>	<b>212,400</b>	<b>221,600</b>	<b>230,200</b>

Source: 4<sup>th</sup> Sociolinguistic survey, Basque Government, 2006

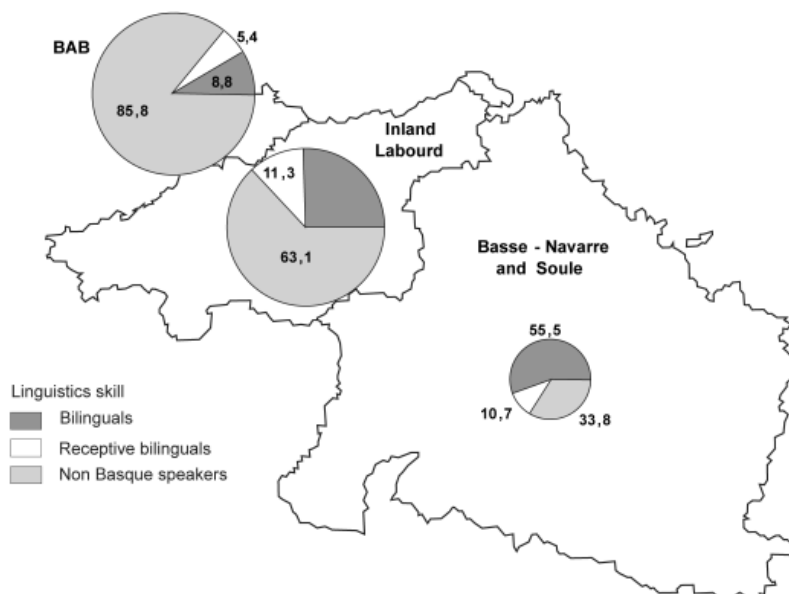
The distribution of linguistic skills by territory is very unequal.<sup>15</sup> So the provinces of Basse-Navarre and Soule, which are the least populated and demographically least dynamic sectors, have the higher percentage of bilinguals (55.5% or 18,200 people), whilst BAB, which is the most populated sector, has the lowest percentage (8.8% or 8,800 people). The rest of Labourd has 25.6% bilinguals, or 24,700 people.

14. This refers to linguistic surveys in 1991, 1996, 2001 and 2006. We had to wait until 2001 for an official French organism (INSEE) to associate with the Basque Government to lead this type of survey (and with the participation of the Public Basque language Office for the latest one).

15. The survey chose to distribute the population not by province but into three demographically typified sectors. The first corresponds to the towns of Bayonne, Anglet and Biarritz (BAB, strictly urban area), with 100,900 inhabitants; the second includes the rest of the province of Labourd (area with high demographic expansion), with 96,500 inhabitants; and the third represents the provinces of Basse-Navarre and Soule (rural area) with 32,800 inhabitants. The number of inhabitants corresponds to the over 16 group. The whole population of the French Basque Country stands at 277,400.



### Distribution of linguistic skills by territory (in percentages)



Source: 4th Sociolinguistic survey, Basque Government, 2006. The size of the circles is proportional to the population in each sector.

If we distribute linguistic skills by age, we see that the highest percentage of bilinguals occurs in the oldest group of sixty-five and older. The first two surveys of 1991 and 1996 show a constant reduction in bilinguals by age. There is strong evidence that if this type of survey was taken before, it would have shown the same phenomenon: a constant loss of knowledge of the Basque language among the youngest age ranges. However the surveys in 1991 and 1996 went beyond this statement. They actually revealed what everyone could see with different degrees of lucidity at the end of the 20<sup>th</sup> century: Basque had become a language of the elderly and the curves showed in no uncertain terms that the programmed end was nigh for the Basque language in the French Basque Country. The 2001 survey however showed us (doubtlessly for the first time in at least two centuries) a stabilization in the percentage of bilinguals among the youngest age group (sixteen to twenty-four years). The 2006 survey brought very significant news showing a *reversal of the trend*. The percentage of bilinguals sixteen to twenty-four years old is actually five points higher than the twenty-five to thirty-four group.<sup>16</sup> We must doubtlessly be seeing the first effects of the voluntary policy undertaken in schools in favor of bilingualism.

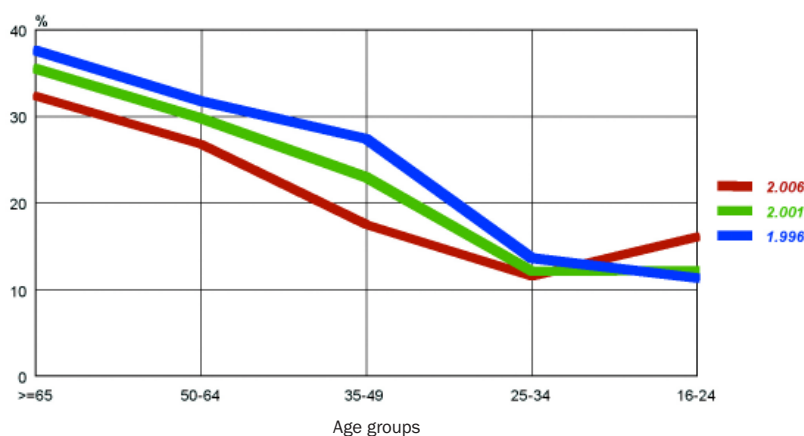
16. However, this reversal in trend is not uniform throughout the territory. This is verified very clearly in the urban sector (BAB) and in inland Labourd. But the drop in population of bilinguals according to age continues to be seen in the rural sector (Basse-Navarre and Soule) therefore this is precisely where the percentage of bilinguals is highest.

### Distribution of linguistic skills by age (in percentages)

Age groups	Population aged 16 and over		
	Bilingual	Receptive bilinguals	Non Basque speakers
≥ 65	32.4	8.1	59.5
50-64	26.8	5.9	67.4
35-49	17.5	10.1	72.4
25-34	11.6	10.4	77.9
16-24	16.1	9.6	74.2
<b>Total</b>	<b>22.5</b>	<b>8.6</b>	<b>68.9</b>

Source: 4th Sociolinguistic survey, Basque Government, 2006

### Evolution of percentages of bilinguals by age (and according to the last three surveys)

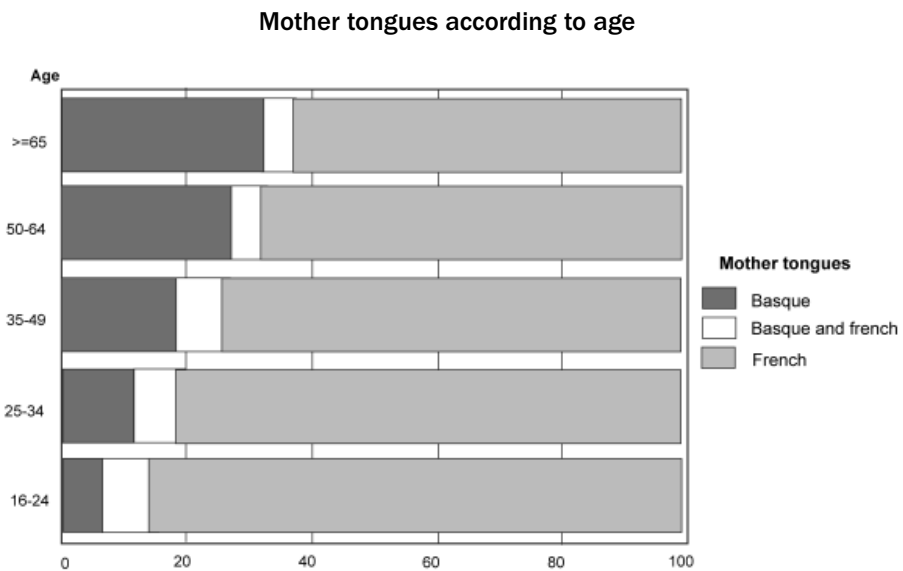


This recovery of the Basque language amongst the younger generation thanks to schooling must not allow us to forget that the essential part of knowledge of the Basque language has until now been transmitted by the family. Overall, Basque is the material language for 21.6% of the population. 6.1% have received Basque and French as mother tongue and 72.3% just French. Distributed according to geographic sectors, the figures are as follows:

Mother tongues	Population aged 16 and over			
	Total	BAB	Inland Labour	B.Navarre and Soule
Basque	<b>21.6</b>	8.8	23.3	56.2
Basque and French	<b>6.1</b>	2.6	8.4	9.9
French	<b>72.3</b>	88.5	68.3	34.0

Source: 4th Sociolinguistic survey, Basque Government, 2006

But the overall figure (21.6%) of people with Basque as their mother tongue is misleading. *This transmission is currently in the process of disappearing among the younger generations.* Among the sixteen to twenty-four age group, the proportion of people for whom Basque is the only mother tongue is actually barely 6.4% (7.7% in Basque and French). In the space of forty years, the proportion of people with French as their only mother tongue has risen from 62.5% to 85.9%.

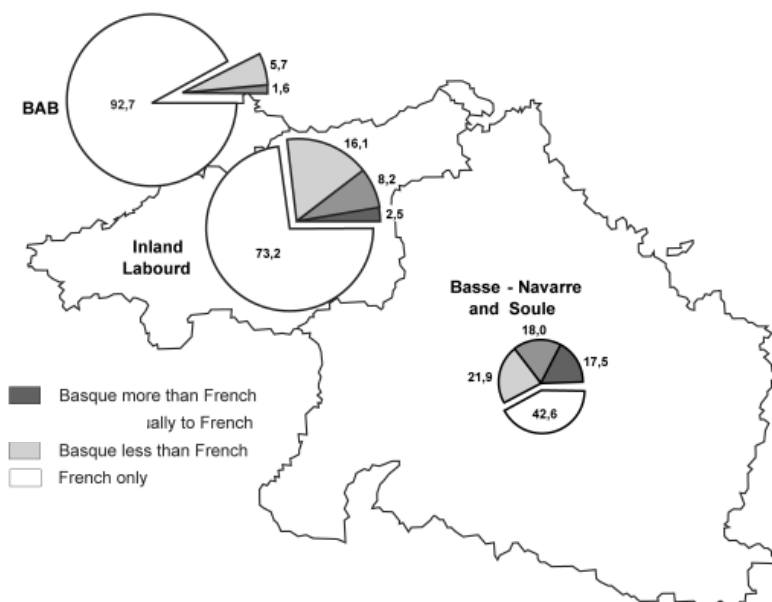


Source: 4th Sociolinguistic survey, Basque Government, 2006

If we look now not at the linguistic *skills* but at the *use* of the Basque language on a daily basis, the figures are even lower. 10.3% of inhabitants of the French Basque Country use Basque more than (3.6%) or equally to (6.7%) French in their daily communication. 12.3% use mainly French and sometimes Basque, and 77.4% never use Basque.<sup>17</sup> Geographic distribution is also unequal here.

17. It should therefore be noted that 7.4% of people who can speak Basque do not use it.

### Type of use of Basque by territory (in percentages)



Source: 4th Sociolinguistic survey, Basque Government, 2006. The size of the circles is proportional to the population in each sector.

## PERSPECTIVES

For UNESCO, a language is in serious danger if the percentage of young people speaking it is less than 30% of the reference population. This has been the case for the Basque language in the French Basque country for at least three decades, and the first sociolinguistic surveys in the 1990s predicted the end of the Basque language in a short space of time. But the last two surveys from 2001 and 2006 show that this handicap is perhaps about to be overcome, essentially thanks to the decision of a growing number of parents to send their children to a Basque school. And it is highly likely that in just a few years' time, more than half of children will be educated in a bilingual stream. The future of the Basque language will then be in the hands of these students when they become adults. If they decide to transmit the Basque language to their own children by speaking mainly to them in Basque, then the Basque language will not only be maintained but it could be developed. On the other hand, if only a minority of them chooses this new family transmission, Basque has every chance of becoming just a symbolic language. It will doubtlessly still be spoken, but as a pure testimony.

The essential part of the linguistic question in the French Basque Country is therefore sociological: *What place do the Basques themselves want to give to the*

*Basque language?* For the time being, the opinion of the majority of the population is in favor of learning Basque for young people and this opinion, it is important to emphasize, is translated into specific mobilization in favor of bilingualism at school and by an effective choice from a growing number of parents so that their children are taught in this stream. But, in daily practice, we have to recognize that the Basque language is used everyday by just a small minority. We must already ask the question about how future Basque speakers might use it. Thinking that Basque might one day replace French seems to be completely unrealistic. As it happens, following this type of line, from the point of view of defending the Basque language, seems to be counter productive as it risks frightening or putting off a part of the population which does not want to learn Basque or their children to be taught it but that has nothing against bilingualism developing. Abruptly advocating replacing French with Basque could lead to part of the population standing up against the Basque language whilst right now they are showing reasonably welcoming disinterest. The most elementary realism shows that French remains, and will remain, the dominant language, particularly when we know how important it is, institutionally, for France to defend French as the language of the Republic.<sup>18</sup> But nothing will prevent the Basques from using their language in situations, places, times or spontaneously, when it seems natural to them to speak in Basque and not in French.

It is therefore these places, times and circumstances that be must prioritized. There will be even more of them as the number of bilinguals, even passive bilinguals, increases. We know that there only has to be one or two non Basque speakers in a group of ten for everyone to else to switch to French. The understandable communicative aspect prevails over any other linguistic consideration. And it is precisely this phenomenon which explains the great difference we can see between the percentage of Basque speakers and the percentage of effective Basque users. The probability of conversations and activities being carried out in Basque will obviously increase with the percentage of bilinguals. But this probability itself is not synonymous of any automatism: even when all the members of a group are bilingual they still might not choose to speak in Basque. The tacit agreement between speakers to use one language over another depends on the more or less attractive image, how highly valued it is and how practical they see this language. In other words: the Basque language must represent something positive, subjectively necessary and instrumentally useful to be used.

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18. Lately, (21<sup>st</sup> May 2008), the French Parliament has made a statement on the government's proposal for regional languages to be recognized as "national heritage" in article 1 of the French constitution. This is a matter for the legislator of 'repairing' the overly perverse effects that the addition ("French is the language of the Republic") from 23<sup>rd</sup> June 1992 to article 2 of the constitution could produce (according to the legislator, this addition was not made against regional language but to defend French against English). One of these effects was to forbid the government from ratifying the European Charter for Regional or Minority languages. On 16<sup>th</sup> June, the French Academy reacted and made a unanimous statement against this recognition of regional languages because it "affects the identity of the nation." Following this, the Senate voted on 18<sup>st</sup> June against this amendment project. Finally, the recognition of regional languages as "national heritage" was voted and approved on July 21<sup>st</sup>. However, the recognition, will not be introduced in Article 1 or in Article 2 of the Constitution (where it would logically have its place), but... in Article 75-1 that deals with the territorial communities."

Subjectively, the choice of Basque points out the question of belonging, of identity, and the emotional part to which a language can return. For the time being, and after the reversal in the 1970s, Basque seems to be returning to something positive and attractive, as authentic in a superficial world, and as a vector for anchoring identity in an unstable world with perpetual changes. Authentic because of its intrinsic originality but also because adopting it only indicates marginal interest in the French Basque Country in any case. And an anchoring vector because Basque returns to a restricted community that the desire for continuity distinguishes. The notion of *anchorage* against and not in a sense of opposition but proximity that of *roots* indicates that this is a choice that anyone, whatever their origins, can make and not just someone with a birthright.

Instrumentally, Basque will only be chosen to the strict extent that it will be considered useful in public places. Shops, restaurants, places of work and leisure, of debate and worship must become bilingual for this instrumental dimension to be perceived. The efforts provided by the Public Basque Language Office (OPLB) to make public places, particularly town halls and health centers bilingual will bear fruit in a few years' time. But it is above all the voluntary nature of the most decided Basque speakers who by that time, and in parallel, can open up some spaces perceived as truly bilingual. They need to take up some real challenges in the search for balance: creating places where Basque speakers can express themselves spontaneously and without restrictions in their language without seeming, in the eyes of non Basque speakers, to be closed places or types of ghettos. The amateurish dimension of these places, where most of the speakers will doubtlessly be hesitant in their linguistic capacity, will doubtlessly help this opening: Basque language learners should be made welcome there and encouraged.<sup>19</sup> In all, they need to invent new spaces "for and with" and not "against and without."

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19. Welcome as opposed to what might happen in the (very rare) places where former speakers meet and exclude or laugh at people who have learned Basque (because it is too different to the language they inherited which they call "real Basque").

## Final Considerations

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Euskal Herria is a nation whose territory is divided between two states, the Spanish Monarchy's and the French Republic's. This fact, as in many other European nations (Catalonia, Ireland, Lapland, Moldova, Tyrol) included in these plurinational states, has obvious political, social, economic as well as cultural consequences.

Basque is a basic element of the Basque people's national personality. It is an instrument of communication and integration and social cohesion for citizens and the Basque Country's territories. Basque is a bond between all territories where it is their own language, forming a linguistic community on which the Basque national identity is based. It is the Basque Country's own language, an element that characterizes and makes our community special.

Basque has always been Euskal Herria's language. Nevertheless, from a legal perspective, the legal status of the Basque language is heterogeneous. Heterogeneity of situations and legal regimes that go from *Iparralde's*<sup>1</sup> lack of legal recognition, through the establishment of three linguistic zones in Navarre, with different systems in each, to its recognition as a shared and joint official language with Spanish in the Basque Autonomous Community.

As a consequence of this division, the Basque language, spoken by less than a million speakers, is subject to six different administrations, six different realities for a single language and a single people. Following is a reflection of the different political wills of the ruling politicians of said districts:

1. The Basque Autonomous Community (BAC). The citizens of the BAC enjoy the basic linguistic rights outlined by the European Charter for Regional or Minority Languages. In any case, it is essential to point out that the co-official character that the Basque language holds in the BAC is not comparable to the Spanish language's: within the Spanish state as a whole, citizens have the right and not the duty to know the Spanish language while they

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1. Name given to the Basque territories included in the French state after the Revolution of 1789 and which take in the previous Basque states of Lapurdi, Baxe Nafarroa and Zuberoa.

only enjoy the right to know the Basque language. Said another way, it is essential to know Spanish and only optional to know Basque, which converts all Basque language speakers into second-class citizens in their own country.

The double official status, which governs in the BAC, is of a formal legal nature, having to apply it in a context of unequal languages that can be explained by many factors. Equality of languages at a legal level between Basque and Spanish is affected by the true uneven position between them. By treating them as equal when the reality is that they are unequal, the danger is that the inequality can be perpetuated. The factors that could grant preference to the use of Basque in the BAC have not been developed with enough intensity, especially in the legal concept of “official language”. As in Catalonia, which has made use of the Catalan language a possibility in social and public spheres, without the detriment of the double official status of the languages and the linguistic rights tied to the concept of “linguistic officiality”. The sociolinguistic reality in the BAC is very different to Catalonia’s; nevertheless the preference to use the Basque language should be considered as a point of reference, it is essential to draft the mechanisms that make society’s greater linguistic integration possible, beginning with an education plan, and to activate that preference insofar as is possible (in those areas where the sociolinguistic reality permits it).

2. Foral Community of Navarre (CFN). The Basque language, declared (along with Spanish) an official language by Navarre is not actually official in the entire territory, but only in the “Basque-speaking zones” of the CFN. This division excessively limits the defining linguistic attributes of the territory. The co-official character of the Basque language is the same as it is in the BAC, which means that the linguistic rights of Basque speakers are equally limited. Unlike the BAC, the linguistic rights of CFN citizens are additionally reduced in accordance with the zone in which they reside. By virtue of the geographic area of the speakers, their linguistic rights will be protected, simply respected or refused. In fact, within the CFN, a community of approximately 600,000 inhabitants, the Basque language is subjected to three different linguistic realities:

- “Basque-speaking” zone. In the “Basque-speaking” zone, the citizens enjoy linguistic rights similar to BAC inhabitants, although with many limitations. For example, unlike the BAC, there is no television channel or radio station that covers all of Navarre. In general, we can say that, until now, the CFN authorities have not presented the zeal that the BAC authorities have in the promotion and protection of the Basque language in Navarre. As an example, we can say that the BAC’s government has subsidized and subsidizes many of the initiatives to promote Basque in the CFN, partially making up for the Government of Navarre’s apathy in this matter.



- “Mixed” zone. Linguistic rights of CFN citizens in the “mixed” zone are strongly curtailed, just as the First and Second Report presented by the Committee of Experts Council of Ministers of the Council of Europe.<sup>2</sup> In this sense, the rights of Basque-speakers in their relationships with public administrators are strongly limited. Pupil’s seats in public schools for education “in” Basque are very limited and year after year there is a large number of students who are denied their bilingual model selection because of a lack of available seats.
  - “Non Basque-speaking” zone. In CFN’s zone named “non-Basque-speaking”, the linguistic rights of citizens are simply not respected: the Basque language is simply excluded from the administration and the public education system. Basque does not exist from a political or legal point of view in the “non-Basque-speaking” zone.
3. French state. As in the CFN’s “non-Basque-speaking” zone, Basque, like the rest of the national languages in the French state, does not enjoy an official status. With the exception of the French language, no other language has its existence guaranteed in the French state, whose government has refused to sign the European Charter for Regional or Minority Languages. In 2008, the French Assembly proposed to make the various national languages of the state official, such as Basque, Breton, Catalan, Occitan and Corsican. Today, the public education system does not recognize the fundamental right of Basque citizens to receive their education entirely in the Basque language, but has made a mixed system possible; part of certain subjects are taught in Euskara, although very limited. The relationship with public administrations must obligatorily be carried out in French, marginalizing the use of Basque to circles apart from the public sphere.
  4. European Union. At a European level, Basque enjoys the status of a European Language but has been denied the character of an official community language, by which it has been excluded from the European Union’s administration. Basque-speaking European citizens also see their linguistic rights violated in this forum, though their rights are recognized through a system of document translation that must be financed and performed by the BAC administration.

To sum up we can say that only citizens from the BAC and, with many limitations, the citizens of the “Basque-speaking” zone of the CFN, today enjoy the linguistic rights that the European Charter for Regional or Minority Languages of the European Council prescribes. This fact has clearly marked a varied development of the language in the different areas we mentioned, which has a detrimental bearing on the language that is linked to the great internal inequality, which is the

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2. First report of the Committee of Experts in respect of Spain, Council of Ministers of the Council of Europe, CM (2005) 128, 22<sup>nd</sup> August, 2005.

result of the progressively unequal sociolinguistic situation in each of the six districts mentioned above.

The effects of these divisions on linguistic liberties of citizens are many and quite detrimental. The basic right to use a country's own language should be guaranteed by democratic imperative. That linguistic liberty cannot be understood in a geographically limited or subordinate fashion, but universally. The division of zones violates, by its own definition, said universality. The fact is that it is unexplainable that the European Council has approved a Charter of linguistic rights for the entire European Union and that there are such varied realities and on occasion contrasts throughout the Union. It seems even paradoxical that while compliance of the European Charter of Languages and other international instruments in defence of national minorities are demanded as a condition to become a member of the European Union by candidate states (eastern and Balkan), those same international instruments are not fulfilled in the case of member states (as in the case of the French state).

What is even more inexplicable is the fact that a language, the Basque language, is subjected to six different legal realities against what is stated by the very European Charter for Regional or Minority Languages of the Council of Europe. What is missing is a political will that is more decisive in order to overcome the current situation of inequality and discrimination, and a greater commitment from state and European authorities. Seemingly, the only valid explanation for this fact is the lack of political will, or even, a reactive and aggressive linguistic policy which continues to consider linguistic diversity a negative factor from the state's perspective.

The impact of zone division has negative results in the educational system, and as a consequence, in the process of transmitting the language and in the administrative sphere. It creates social unease, a feeling of political unease and serious cultural regression. If the current zone system is not overcome, the linguistic rights of Basque citizens will continue to be impeded, limiting the natural development of the country's own language, with the resulting risk of the disappearance of one of Europe's oldest languages - one of the continent's greatest cultural treasures and living remains of the European past.

## **EDUCATION**

Many factors have influenced the social situation of the Basque language, among them, the political persecution it suffered and the legal imposition of the use of French or Spanish that its speakers have suffered over several centuries. The construction of the French and Spanish states took place based on a legal and political standardization process. Linguistic diversity was considered a threatening factor for the so-called standardization process, organizing a linguistic policy of repression and marginalization of the peoples' own languages, among them Basque.

In this sense, the infringement of the Basque people's linguistic rights is an evident fact since the creation of the French state in 1789 and the Spanish state from 1839 to 1876. In the 20<sup>th</sup> century, during the thirty-nine years of General Francisco Franco's dictatorship (1936-1975), Basque was prohibited and excluded from all the state's public orders. Nevertheless, and despite the prohibition, the first clandestine *Ikastola*<sup>3</sup> opened its doors in 1955 under the direction of Elvira Zipitria<sup>4</sup> in Donostia-San Sebastián. This initiative was seconded by a multitude of parent groups who promoted *Ikastolas* in Bilbao (1957), Pamplona (1963), Vitoria (1966) and Bayonne (1969) in a cooperative fashion.

In 1969, another step was taken with the creation of the Gipuzkoako Ikastolen Elkarte (Federation of *Ikastolas* of Gipuzkoa), an organization created to unite the efforts of all existing *Ikastolas* (all illegal) that had to confront serious administrative problems and constant closings ordered by the authorities of the regime. In 1964, there were 596 students registered in the few illegal *Ikastolas* but their numbers grew rapidly, mainly from November 1975, after the dictator's death and the slow rise of democracy,

1964: 596 students.

1970: 8,255 students.

1980: 62,763 students.

1982: 66,541 students.

After General Franco's death on 22<sup>nd</sup> November 1975, *Ikastolas* went from being illegal to unregulated, since there were no regulations whatsoever that regulated their existence. After the approval of the Spanish state's constitution in 1978 and the basic regulations on the linguistic standardization in the BAC (Law 10/1982, dated 24<sup>th</sup> November, the use of Basque in standardized education) and in the CFN (regional law of the Basque language in Navarre), *Ikastolas* became legal centers for the first time.

Nevertheless, despite the evident advancements registered from the fall of the dictatorship up to the present day; despite the Spanish state's signature on the European Charter for Regional or Minority Languages of the European Council in 2001; despite article 8.2 of the European Charter on Languages, the commitment to authorize education "in" or "of" Basque can only be revitalized on the grounds of circumstances such as the number of people who demand it, but in no case because it is a "minority or regional language". Despite Basque being a co-official language in the northern area of the CFN since 1986 and despite article 27 of the Spanish constitution stating that citizens have the right to be educated in any of the official languages of their autonomous community, the CFN is divided into linguistic zones and Euskara is excluded from the public education

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3. "*Ikastola*" in Euskara means "school" or, more specifically, a place where Euskara is used as the language of instruction for courses.

4. Elvira Zipitria was a teacher at the *Ikastola* Koruko Andra Mari in Gipuzkoa in 1944.

system in the so-called “non-Basque-speaking” zone, in which 31.16% of the CFN’s students<sup>5</sup> are registered.

The three most serious effects on student rights of this zoning division include:

1. Infringement of the person’s fundamental rights by virtue of their place of residence in contradiction with the most elemental application of the principles and criteria of said rights.
2. Curbing the natural development of the language. This is especially visible in the irregular linguistic distribution in a community of speakers that is small (600,000 citizens). This way, the proportion of students per linguistic model and zone in the 2004-2005 school year in the CFN was and continues to be surprisingly unequal, due to the ghetto policies of the linguistic rights over the last 22 years (1986-2008):

Linguistic Zone	Model G <sup>6</sup>	Model A <sup>7</sup>	Model D <sup>8</sup>
“Basque-speaking” Zone	0.0%	14.18%	85.82%
“Mixed” Zone	52.9%	20.03%	27%
“Non-Basque-speaking” Zone	71.85%	25.85%	2.3% <sup>9</sup>

Apart from the violation of basic linguistic rights and the lack of rationality of said policy, the disproportion between zones and models is obvious and provokes a progressively larger and more alarming cultural and linguistic duality in a small community like Navarre. If we understand that bilingualism or even the teaching and use of three languages are synonymous of cultural richness and intellectual development, we must conclude that maintaining 71.85 % of school aged children without the possibility to access models D or B is unacceptable from an educational point of view.

3. Curbing the natural transmission of the language. If we compare the evolution of registration (always free and elective) of parents in different political districts (BAC and CFN) the effect of a linguistic policy that is respectful of citizens’ linguistic rights (BAC) and the other restrictive one (CFN) is evident:

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5. Data from the 2004-2005 school year. The annual change in the total number of students per linguistic zone is very limited.

6. Education exclusively in Spanish, without Basque as a subject.

7. Education exclusively in Spanish, with Basque as a subject (3 hours per week).

8. Education exclusively in Basque, with Spanish as a subject (4 hours per week).

9. Model D in the “non-Basque-speaking” zone is only offered in private centers, all are parent cooperatives.

Linguistic Model	BAC Percentage	CFN Percentage
In Spanish without the Basque subject	Model X <b>0.1%</b>	Model G <b>56%</b>
In Spanish with the Basque subject	Model A <b>19.9%</b>	Model A <b>19%</b>
Partly in Basque and Partly in Spanish	Model B <b>23%</b>	Model B <b>0.1%</b> <sup>10</sup>
In Basque with the Spanish subject	Model D <b>57%</b>	Model D <b>24%</b> <sup>11</sup>
In English and Spanish <sup>12</sup> (with optional Basque in the Model TIL)	Does not exist	Model TIL and British <sup>13</sup> <b>0,9%</b>

As can be seen, while 57% of students opted for a bilingual system (model D) in the BAC, in the CFN it did not reach half of that, 24%. On the other hand, in line with the Government of Navarre's policy line, the CFN has promoted Spanish monolingualism from the institutions (56% of students); the BAC's more democratic linguistic policy has empowered the majority of students with both languages (Spanish and Basque).

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10. Nonexistent in the "Basque-speaking" zone (because parents do not choose it) and excluded from the "non-Basque-speaking" zone's education system, practically nonexistent in the "mixed" zone, where the number of students registered in this model does not reach 200 (because parents generally opt for the model D which allows for greater linguistic ability in both Basque and Spanish).

11. The social consequences that can be taken from this situation are alarming, such as the fact that the percentage of immigrants that choose model D is only 1% in the CFN.

12. The British model has had several criticisms:

1. Said model arose from an agreement signed in 1996 between Spain's Ministry of Education and Science and the British Council School from the United Kingdom for the progressive introduction of bilingual schools. The agreement prescribes one out of every five professionals that teach at centers with the said model have to be English speaking natives or people who have lived over 5 years in an English speaking country. Said requirement is not followed in the CFN.
2. The implementation of said model had been done without the aid of the education community, without any previous studies or without preparing teaching staff that comply with the characteristics outlined above.
3. In view of the regressive policies that the CFN government maintained between 1997 and 2004, which was criticized repeatedly and severely by the EBLUL and the Council of Europe, it is valid to think that the Model British was created with the intention to detain the growth of Models B and D in the CFN, models which, we repeat, have maintained constant growth since their creation. A fact that has not been achieved since the students register in said model come from the monolingual model G, since the teaching of English on model D centers, both in the BAC and CFN have been recognized and have been awarded at a European level.

13. They are newly implemented linguistic models, which is one of the reasons for its low percentage. By virtue of the pre-registration data for the 2008-2009 school year, 10% of the students have chosen this model at the expense of model G, exclusively in Spanish, which has dropped 10%, and model A that has also dropped.

It is necessary to note that the difference between the two linguistic realities (BAC and CFN) is greater with the passing of time due to the progressive and decisive growth of the model D in the BAC and the CFN's limited growth. This way, in accordance with official data from pre-school in the BAC for the 2007-2008 school year, 68.8% of the children were registered in the model D, 24.7% in the model B while only 6.5% were in the model A. In the CFN, only 30% (less than half of that in the BAC) opted for model D. This is primarily due to two reasons:

1. Lack of willingness to promote Basque. The CFN Government has placed obstacles to opening the educational offer in Basque, especially between 1997 and 2004, years in which the conservative *Partido Popular* (PP) governed the central government which coincides partially with the years in which UPN had an absolute majority in Navarre.
2. Division of Zones. Despite the progressive increase in the number of students choosing model D since its implementation, 31% of the students in the CFN ("non-Basque-speaking" zone) continue to be excluded from the opportunity to choose models D and B.

As stated above, the unequal development of the same language in different places within Euskal Herria will give rise to its unequal distribution. Far from uniting efforts and promoting the development of languages (and contravening the European Charter for Regional or Minority Languages of the European Council and infringing linguistic rights), the authorities of the French state and the CFN are, for political reasons, denying their own citizens and future generations the knowledge, transmission and development of their own historic language.

In line with that stated above and as a conclusion, as far as the linguistic policy concerning educational material in the CFN, the Committee of Experts of the Council of Ministers of the Council of Europe stressed the following (in an extremely diplomatic manner) in its First Report on the situation of the Basque language in the CFN:

According to the statistics provided by the Government of Navarre, between the school-year 1990/1991 and the school-year 2002/2003, the proportion in which the various models have been used in the "non-Basque-speaking zone" at pre-school and primary school levels is as follows:

- Model G has decreased from 95% to 59.2%
- Model A has increased from 3.2% to 38.2%
- Model D (used in the legalized Ikastolas - private schools) increased from 1.8% to 2.6%.

356. The Committee of Experts considers that the increase of the number of pupils who receive at least teaching of Basque is a very encouraging sign. Insofar as this zone is considered by the current legislation of Navarre to be a territory in which Basque is not traditionally used, this development testifies to an impressive commitment on the part of the competent authorities.

357. However, the number of hours of teaching of Basque in public schools, following model A, in the “non-Basque-speaking zone” is not known to the Committee of Experts. It must be observed, in this regard, that this number must be appropriate to be compatible with the objective of the Charter, which is to protect and promote regional or minority languages and not just to provide some basic notions of them. The extent to which the conditions laid down by the relevant legislation make it possible to cater for the demand in the areas concerned in the zone at issue is also unknown to the Committee of Experts. It observes, in this regard, that the minimum numbers required, which go up to 25 for the non-compulsory part of secondary school, may appear at first sight very high for the areas of Southern Navarre where the Basque-speaking population is most dispersed. Indeed, the representatives of the speakers complained that the minimum numbers required sometimes hinder the possibilities to benefit from the teaching of Basque.

358. The development of the *Ikastolas*, which are private schools using a “full-immersion” model roughly corresponding to model D (with the difference that teaching of Castilian is introduced later than in the latter), seems to suggest that there is a demand for a more intensive teaching of Basque which public schools do not cater for. The Committee of Experts cannot ignore the existence of the said demand in a context where the amount of teaching of Basque provided by public schools following model A is unclear. The *Ikastolas* receive some public financial support from the Parliament of Navarre and the Government of Navarre itself has underlined this fact. This indicates that the latter considers supporting the *Ikastolas* as an additional way of complying with the Charter obligations. However, the Committee of Experts observes that there seems to exist serious problems with regard to the conditions in which the *Ikastolas* operate. In the first place, not all the *Ikastolas* are legally recognized, which according to what has been reported to the Committee of Experts raises a very serious problem for the regular recognition of the education of the pupils concerned. In the second place, the infrastructures used by the *Ikastolas* suffer from serious maintenance problems owing to the insufficient funding allocated by the Parliament of Navarre. In the third place, the limited funding does not suffice to support families whose income is very modest, especially in the rural areas of the “non-Basque-speaking zone”.<sup>14</sup>

As we stated before, given that the French state has not signed the European Charter for Regional or Minority Languages of the European Council, it is not politically obligated to take any initiative to promote Basque in education or any other sphere. Consequently, Basque in *Iparralde* is in marked decline. Up to this moment nothing has been done by the administration to avoid it, but rather all the opposite.

## **ADMINISTRATION**

With respect to the public administration, the situation is very similar to what we can observe in the educational sphere. Development and promotion in the

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14. First report of the Committee of Experts in respect of Spain, Council of Ministers of the Council of Europe, CM (2005) 128, 22<sup>nd</sup> August, 2005.

BAC, curbing and denial of rights in the CFN (“Basque-speaking” and “Mixed” zones) and finally, absolute denial of speakers rights in the CFN (“non-Basque-speaking” zone) and the French state.

Within the Spanish state’s framework, Law 30/1992 dated 26<sup>th</sup> November, of the Law on Public Administration and Common Administrative Procedure prescribes, in article 36, the obligation for documents to be processed by the state’s central administration to be written in Spanish (without the explicit prohibition of their being written in other languages). Said in another manner, civil servants from the BAC and the CFN must act, firstly, and legally, in Spanish, and must use Basque only if and when those interested use the language. In this case, and depending on the linguistic ability of the civil servant, the documents will be translated for the civil servant. If there are several individuals interested and any demand that the documents be written in Spanish, the administrative procedure will be carried out in Spanish, although the documents in question must respect their individual rights. In fact, this is a significant limitation to the linguistic rights of Basque speakers when they interact with the Spanish state administration, in both the BAC and the CFN. Outside of said communities, in the entire state, the Basque speaker does not have the right to communicate in his/her own language before public administrations, not even with a translator (except in a legal sphere, if he/she does not correctly understand the Spanish language, as required by the right to effective protection of the court).

With respect to the BAC, in addition to Law 6/1989, dated 6<sup>th</sup> June, of the Basque Public Administration and Decree 86/1997, dated 15<sup>th</sup> April, by which the use of Euskara in BAC public administrations is regulated, the BAC Parliament drove the Basque Public Administration Linguistic Normalization Plan of 2003. Likewise, Law 6/2003, dated 22<sup>nd</sup> December, of the Statute of Consumers and Users was approved in 2003, which specifies the rights of consumers and users in title 2, chapter 7. Above this legislation there exist Decrees 30/1998, dated 24<sup>th</sup> February, on the standardization process of the *Ertzaintza* or Basque autonomous police, and Decree 67/2003, dated 18 March, on the standardization of the use of Basque in *Osakidetza*/Basque Health Services. It is also necessary to add, despite said effort, that in practice there are difficulties when communicating in Basque with public administration employees in the BAC due to the lack of civil servants’ linguistic qualifications. They have not been required to learn the language once hired.

With respect to the CFN, the situation is contradictory if we compare it with the effort carried out in the BAC over the last thirty years. It is very difficult to establish a standardized relationship in Basque with public administrations in the CFN’s “mixed” zone and simply impossible in the local administration based in the non-Basque-speaking zone, given that the use of Basque is not protected by law. There is an evident lack of will to boost the Basque language (no parallel decree to that of BAC exists that regulates the use of Basque in the Foral Police (Foral Community of Navarre’s police force) or *Osasunbidea*/Navarre Health Services. Many irregularities exist in practice, some that have been detected by the Linguistic Rights Observatory, by the European Bureau for the Lesser Used Lan-



guages (EBLUL), by the Committee of Experts of the Council of Ministers of the Council of Europe in its two Reports on the situation of the Basque language in the CFN or by the Superior Court of Justice of Navarre, to which can be referred.

The 1997-2004 period that we referred to previously sadly stands out in Navarre. Specifically in 2000 when the CFN Government approved, with the support of the UPN and PSN parties, the Foral Decree 372/2000, dated 11<sup>th</sup> December, which regulated the Basque language use in Public Administrations in Navarre, notoriously restrictive of linguistic liberties, which limited and restricted the linguistic regulations previously in force in the CFN, effectively decreasing citizens' basic linguistic rights in the "mixed" zone which the previous CFN regulations guaranteed. On 26<sup>th</sup> June 2002, the Superior Court of Justice of Navarre (SCJN) declared Decree 372/2000 null and void. In fact, the Contentious-Administrative Division of the SCJN nullified said regulation, in several rulings on 26<sup>th</sup> June 2002, for being "deemed void by operation of law". Another of the rulings from that same date declared the "Action plan to apply the regulation on the use of Basque in the Basque-speaking zone", on the 5<sup>th</sup> February 2001, be nullified. It demanded that forms, documents, and landmark and public sign-writing be exclusively in Spanish, even in the "Basque-speaking" zone of the CFN where Basque is the co-official language. The Government of Navarre's regulatory policy was condemned by authorities in Europe and Navarre. Nevertheless, despite its annulment by a ruling from the Courts of Navarre, the Government approved the subsequent Foral Decree 29/2003, dated 10<sup>th</sup> February on the use of Basque in public administrations in Navarre which repeats the one previously nullified, being equally unfavorable for Basque. New appeals were placed before the Courts, which are currently being analyzed by the Superior Court of Justice of Navarre.

All of these initiatives, aimed at eliminating the root of institutional bilingualism and the fundamental linguistic rights of citizens, prompted the intervention of the European Bureau for the Lesser Used Languages (EBLUL) and the very Committee of Experts Council of Ministers of the Council of Europe.<sup>15</sup> Just as Bojar Brezigar, president of the EBULUL, stated, the CFN, with its legislative regression on the protection of linguistic rights of a native community, constitutes Europe's counter-model, in his own words, "the first substantial regression of policies for regional minority languages in EU Member States".<sup>16</sup>

In fact, there have been many irregularities in the CFN administration with respect to citizens' linguistic rights in Navarre, especially during the 1997-2004 period.

The Observatory of Linguistic Rights received 146 complaints in 2002 from citizens about public entities in Navarre: 101 complaints directed at the Govern-

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15. First report of the Committee of Experts in respect of Spain, Council of Ministers of the Council of Europe, CM (2005) 128, 22<sup>nd</sup> August, 2005.

16. Brezigar, Bojar, Report on the linguistic situation in the CFN, European Bureau for Lesser Used Languages, 15<sup>th</sup> December 2001. See, [www.eurolang.net](http://www.eurolang.net).

ment of Navarre and public entities dependent on the Government and 45 complaints directed at independent local entities and organizations. The majority of the citizen complaints have to do with the restrictive linguistic policy that the Government of Navarre began to develop since Foral Decree 372/2000 dated 11<sup>th</sup> December came into force, which regulates the use of Basque in Navarre's Public Administrations. Forms exclusively in Spanish, public information exclusively in Spanish, signage, city and street signalling exclusively in Spanish... which is to say, complaints related with basic institutional bilingualism practices.

Taking into account that on the 26<sup>th</sup> of June 2002, the Superior Court of Justice of Navarre declared void by operation of law said decree 372/2000, the Observatory understands that the violation of linguistic rights complaints are also a violation of the existing regulations in Navarre which, once decree 372/2000 is voided, it is the Foral Law 18/1986, dated 15<sup>th</sup> December, on the Basque language and Foral Decree 135/1994, dated 4<sup>th</sup> July, which regulate the use of Basque in Navarre's Public Administrations.<sup>17</sup>

As far as linguistic policies concerning the Basque language in public administrations of the CFN, the Committee of Experts of the Council of Ministers of the Council of Europe stressed the following in its First Report on the situation of the Basque language in the CFN:

119. The Basque language (Euskara) in Navarre. As for the "mixed zone", users have a right to address the administration in Basque. The Committee of Experts has however received no information pointing to a clear policy of encouragement of the use of Basque in the official sphere and in public life and some elements actually suggest a decline in the use of Basque in this sphere in the "mixed zone". Thus bilingual road signs in Pamplona/Iruña no longer exist and the Committee of Experts received complaints, during the "on-the-spot" visit, according to which fewer and fewer applications are actually submitted in Basque.<sup>18</sup>

Any language other than French is completely excluded from the French state's administration.

## **MEDIA**

With respect to broadcasting media in minority languages, no obvious means of broadcasting in Basque existed during the General Francisco Franco dictatorship (1936-1975). Only some radio stations like Radio Popular of Loiola and Radio Popular of San Sebastián, owned by the Jesuits, assigned airtime the Basque language in an "unregulated" or even illegal manner. In 1976, coordinated by José Ramón Beloki, these stations organized a radio marathon called

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17. "The institutional reduction of Basque in Navarre", *Monographic Report 2*, Hizkuntz Eskubi-deen behatokia/Linguistic Rights Observatory, Pamplona, 2003.

18. First report of the Committee of Experts in respect of Spain, Council of Ministers of the Council of Europe, CM (2005) 128, 22<sup>nd</sup> August, 2005.

“24 Ordu Euskaraz” (24 Hours in Basque) as a protest. Nevertheless, the BAC would have to wait until the approval of its Autonomous Statute to create Basque language radios and televisions.

*Euskal Irrati Telebista*, or Basque Radio and Television (EITB), was created through Law 5/1982 and subsequent Decree 157/1982. Basque Television (ETB), began broadcasting in 1983, exclusively in Euskara. In 1986, it was decided to start a channel entirely in Spanish, named ETB-2. The radio stations, Radio Euskadi/Euskadi Irratia retook the radio name that broadcasted from Venezuela during the dictatorship. Emulating ETB's bilingual system, Euskadi Irratia has broadcasted entirely in Basque since its creation and Radio Euskadi completely in Spanish.

Since its creation, the BAC parliament approved Decree 338/2003, dated 29<sup>th</sup> December, which regulates financing to promote BAC's audiovisual production<sup>19</sup> which has financed projects from 2004 to 2006 with a total 8,235,000€ for those years. In 2005, the BAC Government awarded *Berria*, the only newspaper at a national level that is published entirely in Basque, a direct subsidy of 1,400,000€.

Currently, the start up of local Digital Terrestrial Television has brought with it the coordination of a system of broadcasting quotas in Basque for the BAC. In any case, the practice of linguistic guarantee of pluralism (with respect to Basque) in state media coverage (both public and private) is also absent.

The effort by successive BAC governments contrast with the lack of promotional policies in this field by governments from the CFN, which have not promoted the creation of Basque broadcasting media at all. Even more, the Government of Navarre has repeatedly denied to provide a license to broadcast *Euskalerrria Irratia*, the only Basque broadcaster in the Pamplona region, which, despite this, broadcasts in an unregulated fashion. To conclude and in keeping with the Reports by the Committee of Experts Council of Ministers of the Council of Europe, the CFN's successive governments have limited themselves to not putting obstacles to the reception of channels or stations that broadcast in Basque in the CFN.<sup>20</sup> Citizens who want to access news in Basque within the CFN must do it through ETB1, *Euskadi Irratia* or the illegal *Euskalerrria Irratia*. Apart from this, there exist local private broadcasters in several valleys in Navarre that broadcast entirely in Basque and only inhabitants in said valleys can receive the transmissions.

## **CROSS-BORDER COLLABORATION**

An aspect that the Council of Europe acknowledges to be very important is cross-border collaboration, especially in the case of Basque, Lapp, Catalan,

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19. Official Gazette of the Basque Country Num. 112, 15<sup>th</sup> June, 2005.

20. First report of the Committee of Experts in respect of Spain, Council of Ministers of the Council of Europe, CM (2005) 128, 22<sup>nd</sup> August, 2005.

Tyrolese and Irish, in which a nation has been divided into two or more states. Like in the rest of the fields we have dealt with (public administrations and education), the effort carried out by the governments and institutions of the BAC does not run parallel with the CFN's or the French state's.

As far as the BAC is concerned, the full session of the Basque Parliament ratified the General Plan to Promote Basque approved the 18<sup>th</sup> July, 1998, by the BAC government by virtue that it would commit itself to promote the Basque language in Iparralde and the CFN. One year later, on the 22<sup>nd</sup> December 2000, a linguistic collaboration agreement was signed between the French state, the Regional Council of Aquitaine, the General Council of the Pyrénées-Atlantiques, the Anglet-Biarritz District and the Council Elect of the Basque Country with the aim to promote a common linguistic policy to promote Basque in Iparralde. Said agreement was again approved in 2003 (Bayonne Protocol) and in 2004 (creation of the Basque Language Public Office).

In virtue of these and other agreements, the BAC has subsidized a multitude of programs to promote Basque in Iparralde, providing more funds than the French Government itself. To be exact, the aid to develop Basque promotional activities in Iparralde add-up to: 211,658€ in 2003; 242,153€ in 2004 and 303,829€ in 2005. In addition, it is necessary to cite the Basque promotional aids, *Euskalgintza*, from 2003 to today: 63,278€ in 2003; 30,426€ in 2004 and 49,254€ in 2005. Finally, the BAC has also approved aid to the media in order to diffuse Euskara in *Iparralde*: 131,425€ in 2003, 117,645€ in 2004 and 92,221€ in 2005.

Jointly, with the promotion and backing of the use of Basque in audiovisual means, bibliographic production in Basque has multiplied. If during the years of the Basque language's prohibition and persecution (1936-1975) a total of 1,733 books were published in Basque, many from exile, and at a rhythm of 43.3 books annually, during the eighteen years of democracy between 1976 and 1994, the production of books in Basque shot up to 12,525, 695.8 books annually. This is one more indication of the impact that a repressive linguistic policy can have on a language.

The aids provided by the CFN to date to promote the Basque language in Iparralde and in the BAC are non-existent. In comparison, the BAC has aided entities and groups financially to promote Basque in the CFN. When the CFN's public institutions and Government have not supported the development and transmission of the Basque language in Navarre, it is almost absurd to think they can subsidize programs, although they are cooperation programs, in the BAC and Iparralde. However, we repeat, we are working with historic data, an especially dark past between 1997-2004. We sincerely hope that the timid process of regression in linguistic rights initiated by the CFN in 2005 may bear fruit and that we may see the elimination of the zoning of the person in Navarre as a thing of the past and a commitment to promoting the vernacular language of Navarre's citizens.

In general, today, approximately 45% of the Basque population speaks Basque. By territories, approximately 45% of BAC citizens are Basque-speakers (with different language levels and use), 20% of CFN citizens and 31,1% in Iparralde. However, the geographic distribution is greatly unequal, the presence of the Basque language being much superior in rural areas. In addition, it is worth noting that depending on the linguistic policy applied in each territory (or linguistic zone in the case of CFN), the evolution of the number of speakers is very diverse. In fact, if the largest proportion of Basque speakers is found in Iparralde, this is dropping at an alarming rate since they are fundamentally people over sixty-five that speak the language. All this in view of the passiveness of French authorities who, in opposition, spend enormous amounts of money to promote French outside of the Republic's borders (Francophonie) with the aim of promoting the French language as an international language besides English.

With respect to the CFN, as we have been able to see, development in the "Basque-speaking" zone is amazingly higher than the "non-Basque-speaking" zone, an area where if the zoning is not eliminated, will continue to honor said name.

As for the BAC, the general evolution of the percentage of the bilingual and monolingual population over sixteen in the last twenty years is the following:

	1981	2001
<b>Bilinguals</b>	431,136 21.9%	639,296 32.2%
<b>Passive bilinguals</b>	240,426 12.2%	361,006 18.2%
<b>Monolinguals</b>	1,297,476 65.9%	984,656 49.6%
<b>Total</b>	1,969,038	1,984,958 <sup>21</sup>

As we can see, despite all the difficulties that the recuperation of a language entails, the proportion of passive and active bilinguals has increased 16.3% in twenty years. A figure that is far from the withdrawal the Basque language is undergoing in the French state or the slow progress in the CFN. It is necessary to also take into account that these figures only consider the population over sixteen and that the population under sixteen is registering in Basque models or models with Basque more and more, so that the prospect for the future is positive, although the knowledge of a language does not guarantee its use. This precisely constitutes one of the fundamental challenges for the Basque language in the future.

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21. Council of Europe, *Second Periodic Report on the application of the European Charter of Regional and Minority Languages*, 2006. P. 21.

## **LOOKING TOWARDS THE FUTURE**

The road travelled has been long, full of difficulties and there is still a long way to travel to standardize the use of Euskara. From the perspective of a future society that is plural and which moves toward a greater linguistic integration, the master lines of a linguistic policy that provides the Basque language the sufficient guarantees for its development must be outlined.

A harmonized linguistic policy for all the Basque-speaking territories would be important for the development of Basque. Further than the occasional collaborations between those responsible for the linguistic policies from different territories, we need to propose the creation of a common organization whose object should be to establish the master lines of the future global linguistic policy related to Basque, in accordance with the sociolinguistic diversity of the territories where they should be applied.

The teaching field must move towards a model that guarantees all students within the Basque-speaking territories the right to Basque instruction and of its effective knowledge, without affecting the learning of the state's official language and one or more foreign languages. The proposal should move towards a more integrated model, even going beyond the current linguistic separation system (linguistic models), which makes it possible for a future society to be more or less plural, but at the same time more linguistically integrated, in such a way that the knowledge/lack of knowledge of a country's own language is no longer a linguistic barrier.

In public administration, the guarantee of personal freedom to use the official language of choice should be compatible with the country's co-official language, Basque. Taking into account the different sociolinguistic realities of the Basque-speaking territories, the legitimate and democratic right of all citizens to use the country's languages should always be guaranteed, and the correlative right to be answered in the Basque language in all the territories. Likewise, we would have to move towards a legal development of the concept of our own language, in line with that which has been initiated in other territories, such as Catalonia, whose application could be carried out immediately in the territories with the greatest density of Basque-speakers and into the remainder progressively.

In social means of communication, both the right to receive information in Basque and the right to inform in Basque must be guaranteed. Informative pluralism -a principle of democratic regimes- promotes the guarantee to receive information from the media broadcasting for the country in its own language. To guarantee that right cannot be understood to be the exclusive job of public media, since that would assume an excessively limited view of informative pluralism. To demand a Basque broadcast quota from private media which broadcasts for territories where Basque is the mother tongue could be understood to be proportionate and suitable to the legal consideration of the Basque language.

On the other hand, with regard to newspapers, the 2003 court order to close (as a preventative measure) the only Basque-language newspaper, "*Euskaldunon Egunkaria*", is understood to be a disproportionate measure that affects the basic pillars of democracy, in addition to the guarantee of Basque-speakers' linguistic rights. Taking into account that the legal proceedings have yet to be held in 2008, continuing the closure ordered under preventative measures. Being the only newspaper published in Basque and in which all political opinions were accommodated, the legal prohibition and closing of the newspaper is understood to be an error, where political reasons are the only explanation. The presumption of innocence, the subjective character of responsibility and the degree of the preventative measures that affect basic fundamental rights like the liberty of expression have not acted in favor of the Basque language, but rather against.

The road that Basque must open in the French state and in the European Union is also difficult. The "Linguarium", literally "the gag", was the fine that some public representatives had to pay in certain major cities for speaking too much. "Linguarium dabo" was the formula used, that is, "I must pay for talking". This should be applied to the French Minister of Foreign Affairs, Michel Barnier, who stressed that he would never accept the official recognition of Basque, Catalan or Galician, in addition to Breton and Occitan as European Union languages.

Certainly many consequences can come from the cultural, linguistic, economic and fundamentally political exclusion in which the French state has taken great interest in the discussions surrounding the future European constitution:

- Not all European citizens will have equal rights and duties until all European languages enjoy identical legal status.
- Not all European languages will be considered as such in the Union. Some will be European languages, because they are not possible to deny; others will be community and official languages. In addition, citizens who express themselves in said languages will be of different civil, political and cultural categories and nature.
- The economic or administrative justification of it means the relinquishing of a human right for organizational reasons, something that those who have always violated the rights of people and citizens have done. Michel Barnier possesses a budget from the French state for the cultural program named "Francophonie" to develop French as an international language. While they politically deny minority languages under the grotesque excuse of budgetary costs and minority languages are excluded culturally, year after year millions of euros are invested to pay for a brainless conflict with the English language with which it intends to revitalize French as a language of international communication. Alternatively, as in Navarre, there is a budget, of millions, to remove bilingual signs and replace them with the corresponding monolingual signs.

- A policy which is only comprehensible in the power struggle between large states, in this case in its struggle for cultural and idiomatic preponderance of the continent, by which the Union will continue being what it has been until now, an asymmetrical conglomeration of conflicting states. It will never become a true Union, because the states are the true deadweight of a united Europe which is culturally plural and truly of its citizens.
- In this same sense, a European language like Basque will continue to be artificially separated into to different states, three varied administrations, three different names and at least six administrative conditions opposed to each other. Basque will continue to be the official language of the Basque Autonomous Community, it will continue to suffer by being divided into zones and therefore subject to three administrative realities in the CFN, a linguistic community that barely reaches 600,000 speakers and where it is called “vascuence” (Basque language in Spanish); it will continue to exist in France, where it officially continues being a “patois”<sup>22</sup> with all that carries both politically and culturally and finally it will be an unofficial language, therefore it will not have a legal status at a European level.

The construction of a state or a political union, whatever its nature is, to distort and blur cultural reality, historically has never changed but has perpetuated situations of latent injustices, which are the best breeding ground for social and political instability and cultural poverty. The administrations of the French and Spanish states and of the European Union, and their de facto leadership and the writing of rules and regulations that discriminate against a sector of the population in accordance with the language by which they live their lives is an example of the cultural injustice and political unyielding of those responsible for said administrations.

While the states strive to build Europe from the destruction and disfiguration of its most basic cultural reality, Basques, Catalans, Bretons, Scots, Welsh, Tyroleans and Flemish continue to be stripped of cultural rights in their own land and excluded from the organizations of political representation which are owed. Cultural expression is excluded from the legal order by that so-called justice of the union states, and Europe and the states that make it up will suffer the consequences from the fundamental rights violations and a serious democratic deficit. If the state’s constitution or a community regulation is so blind that it does not give the Basque language and the rest of the minority languages of Europe of the political statute that is legitimately theirs, it will not be supported by the majority of the Basque people. If a constitution intentionally blurs the concept that a people and a language belong to us historically, culturally and linguistically, it denies the most elemental cultural and linguistic rights to our people and, all in all, it does not consider Basque as a language. This denies it its

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22. Derogatory term by which national languages have legally and traditionally been known in the French state (with the obvious exception of French).



European character and consequently, denies Basque citizens the right to be a nation and to establish a people.

Despite that, and although Basque, Catalan or Galician are not recognized, just like our languages, we will continue to be Europeans, but like our languages, we will not be full citizens. In addition, there will continue to be first and second-class citizens because of the language we use to express ourselves.

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## **The Legal Status of the Basque Language Today: One Language, Three Administrations, Seven Different Geographies and a Diaspora**

Gloria Totoricagüena, Iñigo Urrutia, eds.

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# Analytic Summary

**Bastarache, Michel** (Heenan Blaikie LLP, Metcalfe, 55, suite 300. K1P 6L5 Ottawa. Canada): **The Experience of Canada in Dealing with the Adoption of Legislation and the Administration of Justice in Two Official Languages at the Federal Level** (Orig. en)

In: *The Legal Status of the Basque Language Today: One Language, Three Administrations, Seven Different Geographies and a Diaspora*, 1-265

Abstract: Language rights created immense political controversy before and after Confederation. Limited guarantees for English and French appear in the Constitution of 1867 however, the regime proved unsatisfactory. All major constitutional controversies since then have centered around language rights. The federal official languages act in 1968 was followed by provincial legislation on languages. The Supreme Court of Canada became the main actor in the debate and resistance from the provinces led to a further interventionist role for the Court.

Key Words: Canada. Minority Language Rights. Constitution Act 1867. Charter of Rights 1982. Judicial Role.

**Totoricagüena, Gloria** (Pentsamendua: Basque Global Initiatives. 918 N. 18 th. Boise, Idaho 83703): **The Basque Language Abroad: Homeland and Diaspora Initiatives for Euskara** (Orig. en)

In: *The Legal Status of the Basque Language Today: One Language, Three Administrations, Seven Different Geographies and a Diaspora*, 1-265

Abstract: In diaspora communities, maintaining the language of a homeland can be tied to expectations of ethnic authenticity and legitimacy. Though speaking Basque is lauded by fellow immigrants and latter generations, Basque diaspora identity is more tied to ancestry than any other factor. Fieldwork questionnaires demonstrate that “Being Basque” does not depend on being able to speak Basque. Basque Government programs and funding have greatly affected the availability of Basque language maintenance possibilities.

Key Words: Basque. Diaspora. Language maintenance. Ethnicity. Euskal etxeak. Multilingualism.

**Pons Parera, Eva** (University of Barcelona. Faculty of Law. Constitutional Law and Political Science. Av. Diagonal, 684. Edificio llerdense. 08034 Barcelona): **International Legislation and the Basque Language** (Orig. en)

In: *The Legal Status of the Basque Language Today: One Language, Three Administrations, Seven Different Geographies and a Diaspora*, 1-265

Abstract: This article studies the contribution of international organisms to the preservation and promotion of Basque. Starting with an analysis of the characteristics and scope of international regulation, three protection paradigms are applied to Basque: human rights, minorities and linguistic diversity. Finally, an assessment is made of the potentialities and limitations of international legislation.

Key Words: International Law. Human Rights. Linguistic minorities. Linguistic diversity. Council of Europe.

**Milian-Massana, Antoni** (Universitat Autònoma de Barcelona. Law Faculty. Edifici B. 08193 Bellaterra): **Recognition of the Basque Language in EU Law: A Pending Issue?** (Orig. en)

In: *The Legal Status of the Basque Language Today: One Language, Three Administrations, Seven Different Geographies and a Diaspora*, 1-265

Abstract: This paper provides an analysis of the European Union’s linguistic legislation and of the effects of the Union’s policy on the position of non-state languages. The European Union’s construction process has followed a transfer of power from the Member States (and the Regions with legislative powers) to the EU institutions, which have their own legislative, administrative and judicial powers. The EU’s impact on the situation of the languages is two-fold and regards the operability of integral plurilingualism applied with an excluding nature as regards non-state languages, and the exercising of the community freedoms of circulation and movement which disfavors non-state languages.

Key Words: European language law. Minority languages. Linguistic policies. EU language requisites.

**Lasagabaster, Iñaki** (Univ. of Basque Country, UPV/EHU. Faculty of Economics and Business Sciences. Constitutional Law and Philosophy of Law. Lehendakari Agirre, 83. 48015 Bilbo): **The Legal Status of Euskara in the French and Spanish Constitutional Systems** (Orig. en)

In: *The Legal Status of the Basque Language Today: One Language, Three Administrations, Seven Different Geographies and a Diaspora, 1-265*

Abstract: The article examines the juridical regime of Basque in the Spanish and French Constitutions, in order to subsequently analyse the content of the governmental structures of each political administration in the seven territories. With reference to Navarra, mention is made of the restrictive form of recognising the *officialness* of Basque adapted, as well as the limiting policy of the use of the Basque. In the French Basque Country, the juridical impossibility of achieving *officialness* is commented on as well as the recent recognition of regional languages as part of the French heritage.

Key Words: Basque language. *Officialness*. Constitution. Statute.

**Cobarrubias, Juan** (Seton Hall University. Educational Leadership Management and Policy. 400 South Orange Avenue. JH # 443. South Orange 07079. New Jersey): **History of the "Normalization" of Basque in the Public Administration Sphere** (Orig. en)

In: *The Legal Status of the Basque Language Today: One Language, Three Administrations, Seven Different Geographies and a Diaspora, 1-265*

Abstract: This essay provides a clarification of the concept of normalization and distinguishes Linguistic Normalization from Political Normalization. It describes the history of language planning efforts in the Basque Autonomous Community within the context of the current Spanish Constitution. It provides a sociolinguistic account of the political history of Basque Foral tradition and Foral Culture which enhance our understanding of the current dialog on issues of Political Normalization.

Key Words: Linguistic normalization. Political normalization. Language planning. Functional model of language planning. Fueros. Foral law. Foral culture. Functional spread.

**Urrutia, Iñigo** (Univ. of Basque Country, UPV/EHU. Faculty of Economics and Business Studies. Department of Constitutional and Administrative Law and Philosophy of Law. Lehendakari Agirre, 83. 48015 Bilbo); **Irujo, Xabier** (Univ. of Nevada. Center for Basque Studies. 89557-0012 Reno): **The Basque Language in the Basque Autonomous Community (BAC)** (Orig. en)

In: *The Legal Status of the Basque Language Today: One Language, Three Administrations, Seven Different Geographies and a Diaspora*, 1-265

Abstract: This work analyzes the legal framework of the Basque language in the Autonomous Community of the Basque Country. First of all, it analyzes the official status of the Basque and Spanish languages in view of the jurisprudence of the Spanish Constitutional Court affected that has the scope and margins of the dual official status of languages in the Basque Autonomous Community. After that, it extends on the legal regime of languages in some social sectors (Public Bodies, Education system, media, the commercial use of languages, ...). Regarding the experience of the last 30 years of language policy, this work also tries to identify the weaknesses of the dual official status of languages, and contains some reflections about the early future challenges.

Key Words: Basque Country. Language rights. Basque language. Language status. Language normalization. Language planning. Statute of Basque Autonomous Community. Basque language Act.

**Irujo, Xabier** (Univ. of Nevada. Center for Basque Studies. 89557-0012 Reno); **Urrutia, Iñigo** (Univ. of Basque Country, UPV/EHU. Faculty of Economics and Business Studies. Department of Constitutional and Administrative Law and Philosophy of Law. Lehendakari Agirre, 83. 48015 Bilbo): **Basque in the Foral Community of Navarre (CFN)** (Orig. en)

In: *The Legal Status of the Basque Language Today: One Language, Three Administrations, Seven Different Geographies and a Diaspora*, 1-265

Abstract: The status of the Basque language in Navarre is characterized by the enforcement of a system of linguistic zones that modulates citizens' linguistic rights depending on where geographically they wish to exercise such rights. In this chapter, the authors describe the legal situation of the Basque language and analyze the development of the linguistic policy in Navarre over the last few years, characterized as it is by its progressively restricted treatment with respect to its own language, which has brought about rebukes from European instances.

Key Words: Language Rights in Navarre. Basque language. Legal status of languages. Basque in Public Bodies. Education. Media.

**Jauréguiberry, Francis** (Université de Pau. Avenue de l'Université. F-64000 Pau): **The Basque Language in the French State** (Orig. en)

In: *The Legal Status of the Basque Language Today: One Language, Three Administrations, Seven Different Geographies and a Diaspora*, 1-265

Abstract: This article presents an historical and sociological interpretation of the place the Basque language holds in France. After resisting the drive of the French language with flying colors until the end of 19th century, the Basque language experienced a slow decline throughout the 20th century, to the point where it was threatened with extinction at the beginning of the 21st century. However, when the Basque language in France appeared to be about to take its last breath, an unprecedented mobilization in its favor appeared. A hypothesis is considered, in terms of a search for identity and linguistic emotion in a postmodernist world, as an explanation of this phenomenon.

Key Words: Basque language. French Basque Country. Bilingual education. Linguistic policy. Sociolinguistics. Basque culture.