

# 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 oficiliadad 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.