

**Regional languages in the constitutions of Spain, France and the United Kingdom**  
**with special emphasis on the case of Northern Ireland**

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## Table of Contents

Executive Summary/Abstract.....	iv
Introduction .....	1
Chapter 1. Spain: State of Autonomies and Constitutional Recognition of Regional Languages. .....	4
1.1. Historical background: 1931 Constitution and Statutes of Autonomy of Catalonia (1932) and Basque Country (1936). ....	4
1.2. The role of language(s) in the 1978 Constitution negotiations. ....	6
1.3. Constitutional regulation of the Spanish linguistic regime: Article 3 of the 1978 Constitution. ....	7
1.4. Sub-constitutional development: Statutes of Autonomy of Catalonia and Basque Country. ....	9
1.5. Further legislative development: Royal Decrees on Bilingualism and Autonomic Laws on Linguistic Normalization. ....	12
1.5. The role of the Constitutional Court: Decision 31/2010 of 28 June 2010. ....	14
1.7. European Charter and current linguistic rights in Catalonia and the Basque Country. ....	16
Conclusion.....	18
Chapter 2. France: Unitary State and Constitutional Silence on Regional Languages. ....	19
1.1. Historical background: The rise of French as an official language. ....	19
1.2. Constitutional regulation of French Language: Article 2 of Constitution. ....	20
1.3. Further legislative development: “Toubon Law” or Law n. 94-665 of 4 August 1994 relating to usage of the French language. ....	21
1.4. Unity and indivisibility <i>versus</i> multilingualism in France. ....	23
1.5. The role of the <i>Conseil Constitutionnel</i> in regard to regional languages: Corsica Decision and European Charter for Regional or Minority Languages Decision. ....	24
1.5.1. Conseil Constitutionnel, Decision no. 91-290 DC, 9 May 1991: Corsica Decision .....	24
1.5.2. Decision 99-412 DC of 15 June 1999: European Charter for Regional or Minority Languages Decision. ....	25
1.6. Achieving formal recognition of regional languages: Constitutional law no. 2008-724 of 23 July 2008 on the modernisation of the institutions of the 5th Republic. ....	28
1.7. Is formal recognition of regional languages enough? Latest challenges. ....	31
Conclusion.....	33
Chapter 3. United Kingdom and Northern Ireland: Asymmetrical Statutory Recognition of Regional Languages. ....	34
3.1. Historical background: territorial model of the United Kingdom and devolution of powers. ....	34
3.2. Official language and recognition of regional/minority languages. ....	35

3.3. United Kingdom and the European Charter for Regional or Minority Languages.....	37
3.4. The case of Northern Ireland: Belfast Agreement or Good Friday Agreement (1998).	38
3.5. Unsuccessful implementation of the Belfast Agreement: St. Andrews Agreement (2006) and the Irish Language Act. ....	41
3.6. Political deadlock in Northern Ireland over Irish Language Act. ....	42
3.7. Polarization in the Northern Irish National Assembly: free-standing Irish Language Act vs. Culture Act.....	44
Conclusion.....	47
Brief comparative conclusions .....	49
Bibliography.....	50

## **Executive Summary/Abstract**

This dissertation seeks to compare the regulation of regional languages in three European jurisdictions: Spain, France and the United Kingdom, with special emphasis in the case of the Irish Language Act in Northern Ireland. All three countries are multilingual States, but each of them adopts a different approach when it comes to regulation, recognition, promotion and/or protection of their regional languages.

*Key words:* language; regional languages; constitutions; equality; Spain; France; United Kingdom; Irish Language Act.

## Introduction

Language plays such a crucial social and political role in defining the national identity of a country that most of the constitutions include provisions on language. They traditionally establish the official or national language. However, new constitutions – particularly from Eastern European countries – also tend to grant constitutional recognition and protection to minority languages.

According to Eduardo D. Faingold, there are two general approaches that can be adopting when constructing the constitution of a nation: the “hands-on” approach and the “hands-off” approach.<sup>1</sup> The author describes a “hands-off” approach is represented by a nation that does not establish any official or national language, nor does approve language provisions that specify language rights or obligations. By contrast, Faingold says that in a “hands-on” approach, the nation establishes one or more as official languages and/or one or more as national languages; or it passes language legislation specifying language rights for certain languages.

In Europe, virtually all the countries are multilingual states where several languages are traditionally spoken. However, each country adopts a different approach to the regulation of those regional languages. The purpose of this dissertation is to analyze some of these different approaches looking at Spain, France and the United Kingdom.

The selection of these jurisdictions is based on the fact that all three countries have differences and similarities. For example, all three countries have different organizational and territorial models. Spain can be considered a regional state. France is a unitary state with some level of administrative decentralization. The United Kingdom is made up of four nations which

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<sup>1</sup> Faingold, E. “Language rights and language justice in the constitutions of the world.” *Language Problems & Language Planning* 28:1 (2004), 11–24

are devolved administrations. Moreover, they all have traditionally faced some kind of nationalist or secessionist movements: Catalonia and Basque Country in Spain; Corsica in France; and Northern Ireland and Scotland in the United Kingdom. Finally, they are all three multilingual states with several regional languages. It is important to point out that this dissertation will only refer to regional languages as understood by the Council of Europe.

The first chapter provides a description of the Spanish approach to regional languages. It describes the role of regional languages in the negotiations of the 1978 Constitution, as well as the further constitutional and legislative development carried out by the Autonomous Communities.<sup>2</sup> In particular, Chapter 1 examines the language legislation in Catalonia and the Basque Country. Finally, it also takes a look at the role of the Constitutional Court in regard to regional languages and the impact of the European Charter for Minority or Regional Languages on Spain's language policies.

The second chapter is devoted to France. It reviews the importance that French language played in the creation of the French modern State. Indeed, the predominance of France as defining element of the *identité nationale* have left aside the regulation and promotion of regional languages. The *Conseil Constitutionnel* has constantly enforced the principles of unity, indivisibility and equality in order to close the doors to regional languages.<sup>3</sup> In the recent years, Article 75-1 has provided a minimum level of formal recognition for regional languages.<sup>4</sup> However, Corsican nationalists appears unlikely to settle for just formal acknowledgement.

The third chapter analyzes the United Kingdom which presents an asymmetrical regulation of regional languages. The distinctive contribution of this dissertation comes with reviewing the current case of Northern Ireland. The power-sharing system of Northern Ireland

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<sup>2</sup> Statutes of Autonomy, Royal Decrees on Bilingualism, and Autonomic Laws on Linguistic Normalization.

<sup>3</sup> Especially through the Corsican Decision (1991) and the European Charter for Minority or Regional Languages Decision (1999).

<sup>4</sup> Article 75-1 has been introduced in the Constitution by constitutional amendment in 2008.

has been for more than a year now because of the lack of consensus between the political parties in passing the Irish Language Act. The Northern Irish case highlights the important role that language plays in the constitutional design of country. In turn, it shows how important it is for a constitutional lawyer to have knowledge about the different approaches to regional languages that States may adopt in order to accommodate their communities.

## **Chapter 1. Spain: State of Autonomies and Constitutional Recognition of Regional Languages.**

### **1.1. Historical background: 1931 Constitution and Statutes of Autonomy of Catalonia (1932) and Basque Country (1936).**

The Spanish Constitution of 1931, which established the Second Republic, was the first constitution which granted constitutional recognition to the official language of the State. In particular, Article 4 provided:

Castilian is the official language of the Republic. All Spaniards have the duty to know it and the right to use it; in spite of the rights that State laws may recognize related to the languages of the provinces or regions. Except where otherwise provided in special laws, nobody will be required to have knowledge nor to use any regional language.

This constitutional provision enacted Castilian as the only official language of the State. However, in order to accommodate the autonomic nationalisms that were taking hold at that time, language legislation was further developed through Statutes of Autonomy, especially for Catalonia and the Basque Country.

In 1932, the parliamentary negotiations started at the national parliament to approve the Statute of Autonomy for Catalonia (also called “*Estatut de Núria*”). Language and education were two crucial issues for the Catalan nationalists during the parliamentary debate.<sup>5</sup> The official character of the Catalan language, as well as a functioning system of education in Catalan, must be reflected in the final Statute. The final approved Statute defined Catalonia as an “autonomous region”<sup>6</sup> and Catalan as a co-official language along with Castilian.<sup>7</sup> A similar process took place in the Basque Country. However, in this case the process for approving a Statute of Autonomy was more complex and much longer: negotiations started in 1931 and the

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<sup>5</sup> Tornafoch Yuste, X. *Los debates del Estatuto de Autonomía de Cataluña en las Cortes Republicanas (Mayo-Agosto 1932). El idioma catalán y el sistema escolar*. Historia Actual Online (HAO), 35-42. 2004.

<sup>6</sup> Article 1 of Statute of Autonomy of Catalonia (1932).

<sup>7</sup> Article 2 of Statute of Autonomy of Catalonia (1932).



Statute was finally approved in 1936. But the result was quite similar: the Basque Statute defined the Basque Country as an autonomous region and Euskera as a co-official language.<sup>8</sup>

However, the Statutes of Autonomy's effects did not last long. Because with the victory of Dictator Franco in 1939, all self-governing institutions were removed; and the Basque and Catalan languages prohibited. Several legal and repressive measures were taken against the use of these languages in order to punish their support to the Republic and create a monolingual Spanish nation. Legal recognition of the co-official character of Catalan and Euskera were abolished; officers who did use any language other than Spanish were dismissed; registration of names was only permitted for Spanish names; schools who taught those languages were shut down; textbooks in other language than Spanish were forbidden; theater plays in these languages were also forbidden, etc.<sup>9</sup>

These extremely repressive measures took place until the decade of the 1970s, when Franco's regime started to come to an end and opened its borders. Spain wanted to promote the touristic industry and to become part of the international treaties. Therefore, some artistic creations in Catalan and Euskera, such as books and theater plays, started to be tolerated still under the fascist regime. However the use of these languages in the public sphere – particularly in the education field – was completely prohibited.<sup>10</sup> In fact, during the late 1970s, some laws were approved in order to include regional languages in the educational curriculum of the bilingual regions. However, the main turning point only came with the approval of the 1978 Constitution and, especially, the new Statutes of Autonomy.

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<sup>8</sup> Article 1 of Statute of Autonomy of Basque Country (1936).

<sup>9</sup> Milian Massana, A. *Regulación Constitucional del Multilingüismo*. Revista española de derecho constitucional, Año nº 4, Nº 10, págs. 123-156. 1984.

<sup>10</sup> *Ibid.*

## **1.2. The role of language(s) in the 1978 Constitution negotiations.**

In the 1970s, after such a dictatorial and traumatic period, claims for the legal recognition and protection of Catalan and Euskera became stronger. Recognizing these languages and restoring self-government in Catalonia and the Basque Country was an imperative in a society emerging from conflict. It was a real imperative in order to move away from Franco's repressive regime and create a functioning democracy. Otherwise the risk of not accommodating all the groups could lead to an undesirable disintegration of the State.

The 1978 Constitution involves big novelty in the Spanish constitutional history because it sets the beginning of a democracy. However, there are some precedent constitutional aspects that remain. The new Constitution includes the major changes towards a more tolerant linguistic regime which were already taking place during the last years of the dictatorship. Moreover, the 1978 Constitution is inspired in the linguistic and territorial model of the 1931 Republican Constitution.

The Preamble of the 1978 Constitution already proclaims the determination to “protect all Spanish nationals and communities of Spain in their exercise of human rights, their cultures, traditions, languages and institutions.” Moreover, Article 3 of 1978 Constitution explicitly regulated the constitutional recognition of language(s). During the parliamentary negotiations for the approval of the 1978 Constitution, the content of Article 3 was broadly discussed by all the nationalist parties. One of the main issues was the duty or obligation to have knowledge of languages. The parliamentary group “Catalan Minority” proposed a constitutional amendment,<sup>11</sup> in which “in addition to the establishment of all the national languages as official in their territories; it referred to the Castilian language as the official language of the State institutions, without prejudice to the establishment of exclusive official character of any other

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<sup>11</sup> Propuesta de enmienda a la Constitución de 1978 número 105.

language other than Castilian within an autonomous territory by the Statutes of Autonomy.”<sup>12</sup> The “Catalan Minority” also proposed another amendment,<sup>13</sup> which established “the duty to have knowledge of all national languages in their respective territories.”<sup>14</sup> This latter amendment was broadly supported by all the other nationalist groups, as well as some deputies from the Socialist Party of Catalonia and Unified Socialist Party of Catalonia. In regard to the duty to have knowledge of the languages, the Basque Nationalist Party proposed a neutral constitutional provision in which there was no duty to have knowledge of any of the languages of the State (including Castilian).<sup>15</sup> Nevertheless, all these constitutional amendments were rejected by the Mixed Constitutional Commission and the Spanish Congress.

### **1.3. Constitutional regulation of the Spanish linguistic regime: Article 3 of the 1978 Constitution.**

Article 3 of the 1978 Constitution establishes a multilingual State, as follows from these three clauses:

1. Castilian is the official Spanish language of the State. All Spaniards have the duty to know it and the right to use it.
2. The other Spanish languages shall also be official in the respective Self-governing Communities in accordance with their Statutes.
3. The wealth of the different linguistic forms of Spain is a cultural heritage which shall be especially respected and protected.

Thus, Article 3 grants constitutional recognition and protection to all national languages spoken within the Spanish territory. It is interesting to point out that Clause 1 of Article 3 remained as worded in Article 4 of 1931 Constitution: “Castilian is the official language of the Republic.

<sup>12</sup> Delgado-Iribarren García-Campero, M. *Constitución Española. Sinopsis Artículo 3*. 2005. Available online on: <http://www.congreso.es/consti/constitucion/indice/sinopsis/sinopsis.jsp?art=3&tipo=2>

<sup>13</sup> Propuesta de enmienda a la Constitución de 1978 número 106.

<sup>14</sup> Delgado-Iribarren García-Campero, M. *Constitución Española. Sinopsis Artículo 3*. 2005. Available online on: <http://www.congreso.es/consti/constitucion/indice/sinopsis/sinopsis.jsp?art=3&tipo=2>

<sup>15</sup> *Ibid.*

All Spaniards have the *duty* to know it and the *right* to use it [...].” From the reading of this provision derive two main ideas. On the one hand, Spanish citizens have the right to use the Castilian language, but they also have an extra duty which is knowing it. This explicit duty or obligation of the citizens to know Spanish makes this provision an unusual constitutional provision in comparative law.<sup>16</sup> Usually, this duty is implicitly derived from the official character attributed to a language by the Constitution. Probably the framers of the 1978 Constitution thought that attributing official character to Castilian was not enough. By establishing the explicit ‘duty’ to know Castilian, they wanted to ensure that all Spaniards speak the official language, in spite of their residency and any further legislation by the Autonomous Communities.

On the other hand, Clause 1 of Article 3 establishes that Castilian is the official language of Spain. This is closely linked to the Clause 2 of Article 3, which establishes a “conditional co-officially” of the regional language in their respective territories, “in accordance with their Statutes”. This reading of Article 3 shows that the learning and use of regional languages is seen as a *right* of the citizens. It is up to the Autonomous Communities to regulate the effective official character, as well as the general protection and use of their regional languages.

Finally, Article 148 of the Spanish Constitution lists the powers that the autonomous communities may be able to assume. Among these powers, Paragraph 17 of Clause 1 refers to “[t]he promotion of culture, research, and if appropriate, the teaching of the Autonomous Community’s language.”

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<sup>16</sup> Milian Massana, A. *Regulación Constitucional del Multilingüismo*. Revista española de derecho constitucional, Año nº 4, Nº 10, págs. 123-156. 1984.

#### **1.4. Sub-constitutional development: Statutes of Autonomy of Catalonia and Basque Country.**

The Spanish Constitution, in Paragraph 2 of Article 3, gave “[t]he other Spanish languages” the possibility of achieving effective character of “official” languages within their territories through their respective Statutes of Autonomy. In other words, this constitutional provision set up the basic legal framework for the regulation of regional languages; which would be concretized in the Statutes of Autonomy of each bilingual region (such as Catalonia and the Basque Country).<sup>17</sup> The Statutes of Autonomy bear much importance in the constitutional system due to their dual nature: on the one hand, they established the institutions and competences of the Autonomous Community; and on the other hand they are part of the national legal order since they must be adopted by organic laws – which require an absolute majority of votes.<sup>18</sup>

If we take a look at the original Statutes of Autonomy of Catalonia and the Basque Country, we realize they share some regulatory aspects. Catalan and Euskera are defined as the “own language” as well as the official language of their territories, along with Spanish. Moreover, the Statutes of Autonomy also recognize the right of all their citizens to use their “own language” and not to be discriminated on the ground of language.<sup>19</sup>

In particular, the Statute of Autonomy of the Basque Country refers to the language issue uniquely in two provisions: Article 6 which regulates all the aspects explained above; and Article 35 which establishes the knowledge of the Basque law and Basque language as

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<sup>17</sup> There are many other bilingual regions in Spain, such as the Balearic Islands, Navarra, Valencia or Galicia. However, due to the limited extension and purpose of this paper, it will examine only Catalonia and the Basque Country.

<sup>18</sup> Further information about the place of Statutes of Autonomy in the Spanish constitutional system, available at: <http://www.congreso.es/consti/constitucion/indice/sinopsis/sinopsis.jsp?art=147&tipo=2>

<sup>19</sup> Article 3 of Statute of Autonomy of Catalonia (1979) and Article 6 of Statute of Autonomy of Basque Country (1979).

preferential merit for the appointment of magistrates, judges and registrars<sup>20</sup> to the High Court of Justice of the Basque Country.

Similarly, the 1979 Statute of Autonomy of Catalonia regulated those common aspects about the language in Article 3; while Article 23 refers to the appointment of magistrates, judges and registrars. Curiously, the latter provision does not regulate the Catalan language as a preferential merit, but only the knowledge of Catalan law. The language merit was only included with the amendment of the Catalan Statute of Autonomy in 2006. Now, Articles 101 and 102 establish the possibility to carry out the competitive examinations in either language; but the knowledge of Catalan law and Catalan language are now a *requirement* to become judicial staff magistrates, judges and prosecutors. It also applies to registrars and public notaries.<sup>21</sup> These new requirements derive from the need of fulfilling the linguistic rights that have been granted to the Catalan citizens in the public and justice administration.

The Statute of Autonomy of Catalonia went through an intense and controversial amendment in 2006.<sup>22</sup> In particular, it granted Catalonia more linguistic rights. Somehow, it gave statutory value to the principles and rights that had been being included in diverse laws.<sup>23</sup> It can be said that the new Statute of Autonomy substantially differs from the old one. In general, the statutory amendment extended the linguistic rights from the public field to the private field

None of the original Statutes of Autonomy established the duty of knowing their own regional languages. Thus, the only language that all Spanish citizens must know is Spanish – the official language of the State – according to the Constitution.<sup>24</sup> However, this changes with

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<sup>20</sup> In Spain there are different categories of judges. An ordinary judge can become a magistrate by merits throughout his/her career as a judge or by passing specific examinations.

<sup>21</sup> Article 147 of the Statute of Autonomy of Catalonia (2006).

<sup>22</sup> The amendment of the Statute of Autonomy of Catalonia was agreed between the Catalan government and the national government. It was approved by the Catalan parliament, the national Parliament and in popular referendum.

<sup>23</sup> These laws will be discussed in the next section.

<sup>24</sup> Article 3.1 of the Spanish Constitution (1978).

the new Article 6 of the Statute of Autonomy of Catalonia which replaces the old Article 3. Paragraph 1 of Article 6 establishes that “Catalan is the language of normal and preferential use in Public Administration bodies and in the public media of Catalonia and it is also the language of normal use for teaching and learning in the education system.” Moreover, Paragraph 2 of Article 2 goes further than establishing the official character of Catalan within the territory; and it also establishes the right and *duty* of the citizens to know and use both languages, Catalan and Spanish. In addition, it also establishes the obligation and commitment of Catalonia to establish the measures necessary to accomplish these rights and duties. This is reinforced by Article 50 which refers to the “development and promotion of the Catalan language.”

While in the first Statute of Autonomy of Catalonia only one provision – Article 3 – referred explicitly to the issue of language, in the new Statute of Autonomy, there is a whole Chapter III dedicated solely to regulate “Linguistic Rights and Duties.” Within this Chapter, Article 32 establishes the principle of non-discrimination on the grounds of language. Article 33 refers to the linguistic rights of the citizens before the public administration and it establishes the right to linguistic option in the courts and in any other public administration instance. This right to linguistic option is also applicable for users and consumers, according to Article 34. Finally, Article 35 recognizes the right to university and non-university education in Catalan.

In addition to Chapter III of the Statute of Autonomy, there are more provisions that refer to the issue of language within the statutory text. For example, Article 143 establishes the exclusive power of the Catalan government to regulate its own language and all its aspects. Finally, Article 146 refers to the “promotion of linguistic and cultural pluralism of Catalonia” within the mass media.

### 1.5. Further legislative development: Royal Decrees on Bilingualism and Autonomic Laws on Linguistic Normalization.

Just after the approval of the 1978 Constitution, the so-called “royal decrees on bilingualism” were adopted by the Autonomous Communities of Catalonia and the Basque Country.<sup>25</sup> These laws can be seen as a big step towards the introduction of regional languages within the education system. In fact, the royal decrees on bilingualism established the learning of the regional language as a compulsory subject, including at least three hours of such subject a week in their preschools, primary schools and basic professional trainings’ timetables; for all the students residing in bilingual Autonomous Communities, regardless of their mother tongue.<sup>26</sup>

Some years later, the Laws on Linguistic Normalization were passed by the Autonomic Parliaments of Catalonia and the Basque Country. The concept of *linguistic normalization* can be defined as follows: “[t]he normalization of a language is the set of measures and changes that take place in order to make the use of a certain territorial language normal in all the usual fields and functions of a developed and cultivated language, after a period of domination of a non-own language in the same territory, normally of more international nature.”<sup>27</sup>

In the Basque Country, the autonomic parliament passed the “Basic Law 10/1982, of 24 November, for the Normalization of the Use of Euskera.”<sup>28</sup> The Catalan Parliament passed the “Law 7/1983, of 18 April, for the linguistic normalization in Catalonia,”<sup>29</sup> which was

<sup>25</sup> Real Decreto 2092, de 23 junio de 1978, para el catalán en Cataluña, Boletín Oficial del Estado, núm. 210, 2/9/1978, Madrid; Real Decreto 1049, de 22 de abril de 1979, para el euskera en el País Vasco, Boletín Oficial del Estado, núm. 112, 10/5/1979, Madrid.

<sup>26</sup> Carlos Herreras, José. Políticas de normalización lingüística en la España democrática. P. CIVIL; F. CREMOUX. XVI Congreso de la Asociación Internacional de Hispanistas, “Nuevos caminos del hispanismo”, Jul 2007, Paris, France. Iberoamericana, Actas del XVI Congreso de la Asociación Internacional de Hispanistas. Nuevos caminos del hispanismo, pp.185-198, 2010.

<sup>27</sup> Strubell, Miquel. *La normalización lingüística en el sistema escolar de Catalunya y el entorno social*, Revista de educación, Núm. 268, p. 31-48 (1981).

<sup>28</sup> Gobierno Vasco, “Ley 10/1982, de 24 de noviembre, básica de normalización del uso del Euskera,” Boletín Oficial del País Vasco, núm. 160, 16/12/1982, Vitoria.

<sup>29</sup> Generalitat de Catalunya, “Ley 7/1983, de 18 de abril, de normalización lingüística en Cataluña,” Diari Oficial de la Generalitat, núm. 322, 22/4/1983, Barcelona.



replaced by the “Law 1/1998, of 7 January, on Policy Language.”<sup>30</sup> Basically, these laws further developed the Statutes of Autonomy’s provisions on language. In other words, they establish the basic guidelines for the policy language of these regions. Their main goal is to promote and disseminate the use of their regional languages in all major fields, such as public administration, education, and media.

In general, the Basque law on linguistic normalization gives the citizens of this autonomous community certain linguistic rights. The right to use both of the official languages for communication with the public administration<sup>31</sup> and the judicial administration.<sup>32</sup> The right to be educated in both official languages.<sup>33</sup> The right to be informed preferably in Euskera by the media.<sup>34</sup> In general, the right to develop any professional, working, political or syndical activities in Euskera.<sup>35</sup>

The previous Catalan law on linguistic normalization signed in 1983 had a really similar content – almost identical – to that of the Basque law.<sup>36</sup> I think the main difference between the two legal texts is the memoranda contained in the preambles of the laws. While the Basque law merely refers to the Euskera and its normalization as “fundamental part of the cultural heritage of the Basque people,”<sup>37</sup> the Catalan law states that “[t]he restoration of Catalan to its rightful place as the own language of Catalonia is an essential right and a duty of the Catalan

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<sup>30</sup> Generalitat de Catalunya, “Ley 1/1998, de 7 de enero, de Política Lingüística,” *Diari Oficial de la Generalitat*, núm. 2.553, 9/01/1998, Barcelona.

<sup>31</sup> Article 6, Chapter I, Title II, Basic Law 10/1982, of 24 November, for the Normalization of the Use of Euskera

<sup>32</sup> Article 9, Chapter I, Title II, Basic Law 10/1982, of 24 November, for the Normalization of the Use of Euskera.

<sup>33</sup> Article 15, Chapter II, Title II, Basic Law 10/1982, of 24 November, for the Normalization of the Use of Euskera.

<sup>34</sup> Articles 22 and 23, Chapter III, Title II, Basic Law 10/1982, of 24 November, for the Normalization of the Use of Euskera.

<sup>35</sup> Article 26, Chapter IV, Title II, Basic Law 10/1982, of 24 November, for the Normalization of the Use of Euskera.

<sup>36</sup> Articles 8 and 9 regulate the right to use any of the official languages for communications with the public administration and justice administration. Article 14 regulates the right to be educated in both official languages. Articles 21-23 regulate the right to be informed in Catalan. Article 25 regulates the right to develop any kind of activity in Catalan.

<sup>37</sup> Preamble of the Basic Law 10/1982, of 24 November, for the Normalization of the Use of Euskera.

people.”<sup>38</sup> Moreover, the Preamble describes the current position of Catalan as “precarious situation” due to numerous historical events related to political oppression and demographic factors that have led to a small presence of Catalan in the public sphere, education and media.

The present Catalan law on linguistic normalization<sup>39</sup> differs substantially from the law it replaces. It goes some steps further in the promotion and dissemination of the Catalan language. It is much less language rights-oriented. It improves the status and position of the Catalan in the public, and even in the private sphere. It describes it as “language of normal and preferential use” and “working language” within the territory.<sup>40</sup>

### **1.5. The role of the Constitutional Court: Decision 31/2010 of 28 June 2010.**

The Statutes of Autonomy and numerous Autonomic laws are the main instruments in developing the protection and promotion of regional languages. The Spanish Constitutional Court, as guarantor of the Constitution, has played and continues playing an important role in interpreting these instruments and delimiting the framework.

The most important decision affecting regional language policy has been the ruling of the Spanish Constitutional Court of 2010.<sup>41</sup> The controversial outcome annulled numerous provisions of the Statute of Autonomy of 2006. The Constitutional Court decided on language policy of Catalan, even though it was not a conflictual issue within Catalonia at that moment. In particular, the Constitutional Court examined the constitutionality of Article 6 of the Statute of Autonomy, which established:

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<sup>38</sup> Preamble of the Law 7/1983, of 18 April, for the linguistic normalization in Catalonia

<sup>39</sup> Generalitat de Catalunya, “Ley 1/1998, de 7 de enero, de Política Lingüística,” *Diari Oficial de la Generalitat*, núm. 2.553, 9/01/1998, Barcelona.

<sup>40</sup> Article 2, Preliminar Chapter, Law 1/1998, of 7 January, on Policy Language.

<sup>41</sup> Tribunal Constitucional. Pleno. Sentencia 31/2010, de 28 de junio de 2010. «BOE» núm. 172, de 16 de julio de 2010, páginas 1 a 491.

1. Catalonia's own language is Catalan. Thus, Catalan is the language of normal and preferential use in public administration bodies and in the public media of Catalonia, and it is also the language of normal use for teaching and learning in the education system.

2. Catalan is the official language of Catalonia. Castilian is also official, since it is the official language of the State of Spain. Everyone has the right to use the two official languages, and the citizens of Catalonia have the right and also the duty to know them. Public authorities of Catalonia shall establish the measures necessary to facilitate the exercise of these rights and fulfilment of this duty. In accordance with Article 32, discrimination on the ground of using either language is forbidden.

In regard to Paragraph 1 of Article 6, the Constitutional Court approved the notion of Catalan language as the language of “normal use” in the public administration bodies and public media of Catalonia, as well as in the education system. Because its “normal use” refers to a reality: Catalan is the language traditionally used in Catalonia. In fact, that is the same reason why it has been declared as official language within Catalonia.<sup>42</sup> However, the Constitutional Court found the notion of Catalan language as the “preferential” language of the public authorities and media of Catalonia in contradiction with the Constitution. Because it implies giving priority to Catalan over Castilian, being detrimental to the balance between both languages.

According to the Constitutional Court, “[t]he declaration of Catalan as the own language of Catalonia cannot justify the imposition of the use of Catalan as preferential over Castilian – which is also an official language within the Autonomous Community – in public administration bodies and public media of Catalonia, without prejudice to the measures which the legislator may take in the field of language policy aimed at correcting historical situations of imbalance of one of the official languages over the other [...]”<sup>43</sup> However, it is important to point out that the notion of Catalan as the “preferential” language for public authorities and

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<sup>42</sup> Fundamento Jurídico 14 a) de la Sentencia 31/2010, de 28 de junio de 2010.

<sup>43</sup> *Ibid.*

public media was already incorporated since the entry into force of the Catalan Law 1/1998, of 7 January, on Policy Language.<sup>44</sup>

Finally, the Constitutional Court of Spain gave an interpretation of the “duty to know Catalan” declared in Paragraph 2 of Article 6. The Court rejects the interpretation that the duty to know Catalan amounts to the general duty to know Spanish.<sup>45</sup> The duty to know Spanish does not derive from its status of official language, but from its explicit constitutional regulation; and thus, it applies to all citizens regardless of their residency. Therefore, the duty to know Catalan must be understood as a different kind of duty: an “enforceable and individualized duty” or “a duty which is not generally enforceable.”<sup>46</sup> In other words, the duty to know Catalan is an individual duty for specific individuals – staff members and officials – who work in the field of education and public administration. Because they are obliged to ensure the “right to linguistic option”: any citizen has the right to use Catalan in their relations with Catalan public authorities.

### **1.7. European Charter and current linguistic rights in Catalonia and the Basque Country.**

Spain signed the European Charter for Regional or Minority Languages on 5 November 1992 and ratified it on 9 April 2001. The Charter entered into force on 1 August 2001. In the case of Spain, Part III of the Charter applies to the co-official languages in the Autonomous Communities: Catalan and Aranese in Catalonia, Catalan in the Balearic Islands, Basque in the Basque Country, Basque in Navarre, Galician in Galicia and Valencian in Valencia.

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<sup>44</sup> See above.

<sup>45</sup> In the STC 82/1986, of 26 of June, the Constitutional Court solved a constitutional complaint against some provisions of the Basque Law 10/2012 for the Normalization of the Use of Euskera. The Constitutional Court defined the concept of “official language” and “the duty to know Castilian.” In fact, the constitutional obligation of knowing Castilian is what distinguishes it from the co-official languages, which do not present such an obligation.

<sup>46</sup> Fundamento Jurídico 14 b) de la Sentencia 31/2010, de 28 de junio de 2010.

Nevertheless, unlike other countries such as the United Kingdom, recognition, promotion and protection of regional languages in Spain has not been pushed by international or European legal instruments. In other words, the ratification of the European Charter for Regional or Minority Languages has not had a big impact on the protection and promotion of regional languages. Because, as we have seen, the protection and promotion of regional languages were an imperative to create a workable democracy while writing the draft of the 1978 Constitution. Thus, numerous legal instruments, such as the Constitution, Statutes of Autonomy and further Autonomic legislative texts, have been developed in order to ensure the creation of a multilingual system in Spain. Further, in Spain minority language rights have also been pushed by private litigations – particularly in Navarre.<sup>47</sup> Indeed, the ordinary courts have played a preeminent role in defining language policy.

In fact, the Committee of Experts on the application of the Charter in Spain has recently concluded that “[t]he languages that are protected under Part III of the Charter enjoy strong support in general from the regional and local authorities. Although some problems still persist, most undertakings under the Charter are fulfilled.”<sup>48</sup> Those problems or difficulties have to do with the use of regional languages in public services. On the one hand, there is a lack of staff who know the regional languages, particularly in judicial administration and health care. On the other hand, the introduction of a trilingual education system decreases the hours of regional language teaching.<sup>49</sup>

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<sup>47</sup> Arzoz, X. “Legal Mobilisation at the Subnational Level: The Case of Language Rights in the Spanish Autonomous Community of Navarre.” *Rights and Courts in Pursuit of Social Change. Legal Mobilisation in the Multi-Level European System*. Ed. Dia Anagnostou. Hart Publishing, 2014.

<sup>48</sup> Council of Europe. Application of the Charter in Spain. 4th monitoring cycle 2016. Report of the Committee of Experts on the Charter (adopted on 20 March 2015). 20 January 2016.

<sup>49</sup> *Ibid.*

## Conclusion

Spain is decentralized and multilingual State where regional languages are official within their respective territories. After the hostile and repressive approach of the dictatorship to regional languages, the language issue played a prominent role in the negotiations of the 1978 Constitution. All citizens, without any discrimination, should be able to speak their own language in their public and private life. The multilingual legal system was further developed and reinforced by the Statutes of Autonomy of bilingual regions and sub-national legislation, particularly in Catalonia and the Basque Country.

Thus, the linguistic model of Spain is particularly favourable for regional languages. They are granted a high level of protection in comparison with other countries of the European Union. The ratification of the European Charter for Minority or Regional languages did not have a relevant impact on language policies in Spain. Regional languages' speakers enjoy individual linguistic rights enforceable before the Spanish courts.

The Constitutional Court, as guarantor of the Constitution, was at the centre of the most sensitive and controversial decision regarding autonomy and language in Catalonia since 1978. Indeed, this decision is often considered the beginning of the current secessionist movement in Catalonia. However, language – which often is highly politicized – does not play a relevant role in the current Catalan political crisis.

## Chapter 2. France: Unitary State and Constitutional Silence on Regional Languages.

### 1.1. Historical background: The rise of French as an official language.

France has traditionally been – and it still remains – a more centralized and unitary State than Spain. In fact, the highly unitary character of France is closely linked with the rise of French as the sole official language. In other words, French language and unitary character of the State feed mutually. The use of regional languages started declining in the Late Middle Ages, with the progressive annexation of different territories to the realm. In 1539, with the *Ordonnance de Villers-Cotterêts*, Francis I made French replace Latin as the official language for all legal administrative matters – including dispensation of justice in French.<sup>50</sup>

Language played an even more crucial role in creating the French nation or the modern State. There was a divided debate about language policy during the French revolution. On the one hand, the Girondins favored a policy of multilingualism.<sup>51</sup> In order for the French Revolution to succeed, the French population must have access to the principles of the Revolution. Thus, translating the texts and manifestos into local languages was an imperative need. On the other hand, the Jacobins supported extreme centralization and the imposition of French.<sup>52</sup> Indeed, Anne Judge explicitly says that “national linguistic unification became one of the main ideals and aims of the new Republic: democratization through a common language.”<sup>53</sup> In order for the Revolution to success, forces of reaction and counterrevolution must

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<sup>50</sup> Judge, Anne, *Linguistic Policies and the Survival of Regional Languages in France and Britain*. Palgrave Studies in Minority Languages and Communities. Basingstoke: Palgrave Macmillan, 2007.

<sup>51</sup> *Ibid.*

<sup>52</sup> Judge, Anne, *Linguistic Policies and the Survival of Regional Languages in France and Britain*. Palgrave Studies in Minority Languages and Communities. Basingstoke: Palgrave Macmillan, 2007.

<sup>53</sup> *Ibid.*

be weaken by the promotion of a united and indivisible State composed by all the habitants of France. They all must share the French republican values and speak French.<sup>54</sup>

In fact, the use of the French language became compulsory in all the public spheres, especially in the educational system.<sup>55</sup> The Falloux Laws of 1850 and 1851 established that all education had to be in French – provision which is still in place today.<sup>56</sup> Indeed, “French became – and remains – one of the most important symbols of the new nation-state defined as an indivisible community within a defined territory, sharing a common cultural heritage, common economic interests, a common attitude towards religion and a common language.”<sup>57</sup>

## **1.2. Constitutional regulation of French Language: Article 2 of Constitution.**

The French Constitution of 1958 established a unitary regime of State organized on a decentralized administrative basis. The Regions, the Departments and the Municipalities are the three sub-levels of government existing in France. However, they do not have legislative powers – such as the Autonomous Communities in Spain – but rather administrative powers. Indeed, some oversea territories and departments of France have more powers than mainland regions.

Unlike the case of Spain, language did not play any special role during the constitutional negotiations of the 1958 French Constitution. In fact, originally the French Constitution did not include any provision regulating the official or national language of the Republic. Such a provision had not been considered necessary for centuries. Only in 1992, a constitutional amendment made French the official language of the Republic by adding a new clause to

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<sup>54</sup> Choudhry, Sujit. *Constitutional design for divided societies: integration or accommodation?* Oxford: Oxford University Press, 2008.

<sup>55</sup> *Ibid.*

<sup>56</sup> Judge, Anne, *Linguistic Policies and the Survival of Regional Languages in France and Britain*. Palgrave Studies in Minority Languages and Communities. Basingstoke: Palgrave Macmillan, 2007.

<sup>57</sup> *Ibid.*



Article 2 of the Constitution: “The language of the Republic shall be French.”<sup>58</sup> The *loi constitutionnelle* n. 92-554 of 25 June 1992 modified Article 2 of the Constitution on the one hand, and Articles 88.1 to 88.4 to allow for the ratification of the Maastricht Treaty, on the other.

It might seem quite unusual to establish French as the official language through a constitutional amendment aimed at ratifying the Maastricht Treaty. However, at the time of the signature of the Maastricht Treaty, its ratification was seen as a threat to national identity and “some people in France feared the imposition of English as a working language within the EU.”<sup>59</sup> Thus, establishing French as the official language of the Republic “was no longer symbolic of the fight against the regional languages, but against the domination of English in Europe.”<sup>60</sup>

### **1.3. Further legislative development: “Toubon Law” or Law n. 94-665 of 4 August 1994 relating to usage of the French language<sup>61</sup>**

The 1992 constitutional amendment which introduced the official status of French in Article 2 was used as legal basis for passing the so called “Toubon law.” “The loi Toubon was passed, officially to protect the French consumers and indirectly the French language, by making its use compulsory in a number of contexts such as retail, business transactions and science and technology.”<sup>62</sup> Indeed, Article 1 of the Toubon law explicitly emphasizes the important role that French language plays within the French society:

As the language of the Republic under the Constitution, the French language is a fundamental element of the personality and the heritage of France.

<sup>58</sup> Loi constitutionnelle n° 92-554 du 25 juin 1992 ajoutant à la Constitution un titre: “Des Communautés européennes et de l’Union européenne”. JORF n°147 du 26 juin 1992 page 8406.

<sup>59</sup> Judge, Anne, *Linguistic Policies and the Survival of Regional Languages in France and Britain*. Palgrave Studies in Minority Languages and Communities. Basingstoke: Palgrave Macmillan, 2007.

<sup>60</sup> *Ibid.*

<sup>61</sup> Loi n. 94-665 du 4 août 1994 relative à l’emploi de la langue française.

<sup>62</sup> Judge, Anne, *Linguistic Policies and the Survival of Regional Languages in France and Britain*. Palgrave Studies in Minority Languages and Communities. Basingstoke: Palgrave Macmillan, 2007.

It is the language of education, work, trade and public services.

It is the privileged link between the States constituting Francophone community.

Thus, the use of French language becomes mandatory in public contracts, schools, governmental publications, advertisements and media, etc. Furthermore, violating the Toubon law automatically entails penalties, the severity of which depends on the magnitude of the contravention.<sup>63</sup>

It is important to point out that the Toubon law was mainly designed to protect French against English instead of against regional languages. There was a general fear in France of the use of English words being spread within different fields, such as: media, technology, business, etc. In fact, Article 21 of the Toubon law states that “[t]he provisions of this law apply without prejudice to the laws and regulations relating to the regional languages of France and do not preclude their use.”

The Toubon law came into force, but only after some modifications following the Decision no 94-345 of 29 July 1994 of the *Conseil Constitutionnel*. It found some provisions of the proposed law in violation of Article 11 of the Declaration of the Rights of Man and the Citizen.<sup>64</sup> “While the legislator could impose official terminology on public servants, it was decided that the general public must be allowed to express themselves as they please. In addition, the Conseil ruled that the granting of government subsidies to researches could not be linked to the choice of language of their publications.”<sup>65</sup>

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<sup>63</sup> Vanston, C. “In Search of the Mot Juste: The Toubon Law and the European Union.” *Boston College International and Comparative Law Review*. Volume 22. Issue 1. Article 7. 1999.

<sup>64</sup> It regulates freedom of thought and expression.

<sup>65</sup> Oakes, L. “Language and National Identity: Comparing France and Sweden.” (Impact: Studies in Language and Society. 13.) Amsterdam: John Benjamins, 2001

#### 1.4. Unity and indivisibility *versus* multilingualism in France.

The French constitutional principles of unity and indivisibility of the Republic do not give a faithful representation of the existing plurilingualism in France. The number of regional and minority languages across France is so great that classifying them become a really difficult task. There are traditional regional languages, non-territorial languages, languages from the oversea territories and departments, etc.

In 1999, the Bernard Cerquiglini's Report on "*Les Langues de la France*" ("The Languages of France") pointed out around 73 regional languages – including overseas departments and territories' languages.<sup>66</sup> However, the European Charter for Regional or Minority Languages finally applies only to seven minority language groups residing in metropolitan France – excluding thus non-territorial languages related to immigration groups.

Figure 1 shows these seven regional languages distributed all over the French territory: Basque in the French Pays Basque; Breton in Brittany; Catalan in French Catalonia; Corsican in Corsica; Dutch (Western Flemish and standard Dutch) in French Flanders; German (dialects of German and standard German, regional language of Alsace-Moselle) mainly in Alsace-Lorraine; and Occitan in Occitanie.

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<sup>66</sup> Cerquiglini, B. "*Les Langues de la France*." Rapport au Ministre de l'Education Nationale, de la Recherche et de la Technologie, et à la Ministre de la Culture et de la Communication. Avril 1999.



Figure 1: *Carte des Langues de France.*

Source: Giordan, H. Septembre 2008.

### 1.5. The role of the *Conseil Constitutionnel* in regard to regional languages: Corsica Decision and European Charter for Regional or Minority Languages Decision.

The French constitutional principles of unity, indivisibility and equality do not allow for a proper legal recognition of regional languages. As the two following decisions reveal, the French Conseil Constitutionnel has played an important role in enforcing these principles.

#### 1.5.1. *Conseil Constitutionnel, Decision no. 91-290 DC, 9 May 1991: Corsica Decision*

It is seen as one of the main and most important decisions of the *Conseil Constitutionnel* because it highlights the approach and enforcement by the *Conseil Constitutionnel* of the French principle of unity and indivisibility, and somehow, the principle of equality as well.

The *Conseil Constitutionnel* examines the constitutionality of numerous provisions of the Act on the statute of the territorial unit of Corsica. Initially it looks at Section 1 of the Act that refers to “Corsican people.” By recognizing the existence of Corsican people the Act is challenging the principles of unity and indivisibility of the Republic. Because it splits the French people and the Constitution only recognizes the French people. Moreover, recognizing the “Corsican people” contravenes also the principle of equality because people cannot be differentiated by origin, race, or religion.

In regard to language, Section 53 of the Act provides for Corsican language and culture teaching to be included in the curriculum of schools in Corsica. According to the *Conseil Constitutionnel*, this teaching does not violate any principle of constitutional status. In particular, it is not in contradiction with the principle of equality because it is not compulsory. If the teaching of Corsican had been compulsory for people residing in Corsica; it would have set a difference between these and the people residing in other territories of France. That difference would constitute a breach of the principle of equality.

#### *1.5.2. Decision 99-412 DC of 15 June 1999: European Charter for Regional or Minority Languages Decision.*

Spain and the United Kingdom signed and ratified the European Charter for Regional or Minority Languages. By contrast, France signed the European Charter on 7 May 1999 but its ratification has been pending ever since. After France signed the Charter, the President of the Republic asked the Constitutional Council to examine again the compatibility of the Charter with the Constitution. The question was whether the ratification of the Charter must be preceded by amendment of the Constitution.

This decision of the Constitutional Council has become the cornerstone of the French approach to regional languages. It is based on Article 1 of the Constitution, according to which

France is an indivisible, secular, democratic, and social Republic in which all citizens are guaranteed equality without distinction of origin, race, or religion; and Article 2, which states that French is the language of the Republic, reconciled with Article 11 of the Declaration of Human and Civic Rights of 1789.

On the one hand, according to the Council, in the light of Article 1, the French people is one and no collective rights can be recognized to any group with a certain and characteristic origin, culture, language or belief. Some provisions of the European Charter for Regional or Minority Languages – primarily the Preamble and Part II – do confer specific rights on groups of speakers of regional or minority languages. Thus, the Charter undermines the constitutional principles of indivisibility of the Republic, equality before the law and the unicity of the French people set out in Article 1 of the Constitution.

On the other hand, in the light of Article 2, French is the language of the Republic and thus all public-law corporations and private-law entities supplying a public service are obliged to use French. Moreover, the relations of private individuals and the government or public authorities must be held using French. Taking this into account, the Council considers that the Charter's provisions are also contrary to Article 2 of the Constitution since they recognize the use of languages other than French not only in the private life but also in the public sphere (judicial and administrative authorities) and public services.

The Council declared the Charter anti-constitutional because its Preamble and Part II provide specific rights to groups of speaker of regional or minority languages and recognize the right to use these languages not only in private but also in public life. Thus, a constitutional amendment is needed in order to ratify the Charter. By contrast, the Council did not consider the articles of Part III of the Charter in contrast with the Constitution. In fact, it says that the thirty-nine specific measures chosen by France from Part III of the Charter are not contrary to

the Constitution since most of them recognize practices already implemented in France to promote regional languages.

Thus, France does not see a problem with promoting regional languages in the territorial units; but the problem comes when the recognition of those languages entitles their speakers with certain rights against the rest of the citizens of France. The key aspect of it is the ‘public life’ and the use of language in this public life. In fact, all the other undertaking are not considered to be in contrast with the Constitution. France can take some measures to promote the use of regional language on an informal level, but the use of French in supplying public services is a cornerstone of the French nation that cannot be threaten by any foreign treaty. In conclusion, the long battle to ratify the European Charter for Regional or Minority Languages shows how deeply rooted the constitutional principles of indivisibility, unicity and equality are in the French national system.

However, it seems that these principles are not that deeply rooted in the French society. In fact the non-ratification of the European Charter for Regional or Minority Languages is a result of a lack of political which does not strictly represent the real public opinion. In 1999, the *Institut français d’opinion publique* carried out a population survey with the following question: “Are, personally, in favour or against the official recognition of regional languages?” Most respondents declared themselves in favour of granting an official recognition to regional languages.<sup>67</sup>

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<sup>67</sup> Institut français d’opinion publique. “Les Français et les langues regionals.” Ifop pour Dimanche Ouest France. Available online at: [http://www.ifop.com/media/poll/3058-1-study\\_file.pdf](http://www.ifop.com/media/poll/3058-1-study_file.pdf)

	Rappel 25-26 Juin 1999 (%)	Ensemble 10-12 Juin 2015 (%)
Total Favorable	<b>78</b>	<b>72</b>
Tout à fait favorable.....	24	18
Plutôt favorable.....	54	54
Total Opposé	<b>19</b>	<b>28</b>
Plutôt oppose.....	13	22
Tout à fait opposé.....	6	6
- Ne se prononcent pas.....	3	-
TOTAL	100	<b>100</b>

Figure 2. Public opinion about the official recognition of regional languages.

Source: Institut français d'opinion publique. June 2015.

Similar results are taken from the same survey carried out in June of 2015. The nationalist and political conflicts in Spain regarding Catalonia may have had led to a slight decrease of number of respondents in favour of the regional languages' recognition. However, the formal recognition of regional languages is still largely supported by French citizens.

### **1.6. Achieving formal recognition of regional languages: Constitutional law no. 2008-724 of 23 July 2008 on the modernisation of the institutions of the 5th Republic.<sup>68</sup>**

Unlike the Spanish Constitution, the French Constitution of 1958 did not originally include any provision relating to regional languages. In the constitutional negotiations, the existence of regional languages in France was totally ignored since the unity and indivisibility were the inspiring principles of the constitutional text. Thus, for many years in France, regional languages had been excluded from the public debate.

<sup>68</sup> Loi constitutionnelle n° 2008-724 du 23 juillet 2008 de modernisation des institutions de la Ve République. JORF n°0171 du 24 juillet 2008 page 11890



However, this long tradition of rejecting the existence of regional languages in France came to an end. In 2008 regional languages of France were eventually granted with formal recognition by the constitutional law on the modernisation of the institutions of the 5<sup>th</sup> Republic. It introduced Article 75-1 into the Constitution, which now declares: “Regional languages are part of France’s heritage.”

This big step did not just come out of the blue. Article 75-1 was the result of a long and controversial debate between numerous actors participated. Nicolas Sarkozy became one of the key players in such debate. He declared himself in favor of giving some kind of recognition to regional languages as part of France’s cultural heritage in order to avoid in turn giving such a power – closely linked to the national sovereignty of France – to an international or European instance.<sup>69</sup> During his election campaign, Candidate Sarkozy publicly stated: “If I am elected, I will not be in favor of ratifying the European Charter on Regional Languages; I do not want that tomorrow a European judge with different background on minorities’ issues, decides that a regional language must be considered as language of the Republic at the same level as French.”<sup>70</sup>

Therefore, the constitutional recognition of regional languages’ was rather linked to the French position of non-ratification of the European Charter for Regional or Minority Languages, than to the idea of effectively moving towards a multilingual State. In other words, the introduction of regional languages’ formal recognition comes up as an alternative or a way out in order not to ratify the European Charter for Regional or Minority Languages. It must not be seen as a legal step towards the creation of a multilingual State.

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<sup>69</sup> Giordan, H. “Les langues régionales dans la Constitution: un pas en avant très ambigu.” *Diasporiques*. N°3 nouvelle série. Septembre 2008.

<sup>70</sup> *Ibid.*

Finally, the National Assembly profited the constitutional amendments related to Lisbon Treaty's ratification and institutional reform in order to introduce the recognition of regional languages in the French Constitution – without indicating any specific regional languages.<sup>71</sup> The introduction of Article 75-1 was preceded by a long discussion in regard to where to locate this provision in the constitution. A first proposal had to do with including the recognition of regional languages as part of France's heritage within Article 2 of the Constitution. However, the proposal was not approved by the Senate on the ground that French language is a key element in defining France's national identity and regional languages cannot amount to French language. In this sense, locating regional languages in Article 2 would have given the impression that they also are defining elements of France's national identity.<sup>72</sup> Finally, the deputies decided to locate regional language's recognition in Title XII of the Constitution on Territorial Communities. This approach would see regional languages as a heritage localized in certain parts of the French territory; instead of seeing them as elements influencing the identity of the entire nation.<sup>73</sup>

Although the introduction of Article 75-1 has given some legal visibility to the existence of regional languages in France; its practical consequences on the use of regional languages remains questionable. Since the beginning, the President of the Law Commission declared: “[t]he provision adopted by the National Assembly does not diminishes the position of French in our public sphere, a position that has been firm since the *Villers-Cotterêts* de 1539, which imposed its use in parliaments and courts. The Law Commission therefore has considered that the scope of regional languages' recognition should not be overstated.”<sup>74</sup>

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<sup>71</sup> Giordan, H. “Les langues régionales dans la Constitution: un pas en avant très ambigu.” *Diasporiques*. N°3 nouvelle série. Septembre 2008.

<sup>72</sup> *Ibid.*

<sup>73</sup> Giordan, H. “Les langues régionales dans la Constitution: un pas en avant très ambigu.” *Diasporiques*. N°3 nouvelle série. Septembre 2008.

<sup>74</sup> *Ibid.*

Thus, Article 75-1 has been granted with really limited effects. The same approach has recently been enforced by the *Conseil Constitutionnel* in its Decision n° 2011-130 QPC of 20 May 2011. This decision somehow recalls to the Corsica Decision. Several associations supporting the teaching of regional languages in Alsace and Lorraine challenged the conformity of Article L. 312-10 of the Education Code with the Constitution. This provision states as it follows:

The regional languages and cultures belong to the heritage of France, their teaching is favored primarily in the regions where they are used. This teaching can be provided throughout all the schooling years in accordance with the terms established by an agreement between the State and the local authorities of the regions where these language are used.

Reading this provision of the Education Code, teaching of regional language turns to be just a ‘faculty’ to be agreed between the States and the territorial units concerned and not an obligation. Thus, the applicants argued that Article L. 312-10 “does not guarantee efficient and effective protection of the teaching of regional languages”<sup>75</sup> and it is therefore contrary to Article 75-1 of the Constitution.

However, the *Conseil Constitutionnel* rejected this reasoning and declared Article L. 312-10 in accordance with the Constitution. Because Article 75-1 of the Constitution “does not create a right or freedom guaranteed by the Constitution” and therefore there is no legal basis for a QPC. The *Conseil Constitutionnel* concluded “that the contested provisions are not contrary to any right or freedom guaranteed by the Constitution.”<sup>76</sup>

### **1.7. Is formal recognition of regional languages enough? Latest challenges.**

The recognition of regional languages seems not to be enough, since it has very limited effects on the protection and promotion of regional languages. For example, it does not allow for an

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<sup>75</sup> Paragraph 2 of Decision n° 2011-130 QPC of 20 May 2011.

<sup>76</sup> Paragraph 4 of Decision n° 2011-130 QPC of 20 May 2011.

effective teaching and use of regional languages. In fact, the issue of minority languages continues to be a coming and going topic in the political and social arena.

In January 2014, the National Assembly adopted a constitutional amendment in order to add Article 53-3 to the Constitution,<sup>77</sup> which would allow for the ratification of the European Charter for Regional or Minority Languages. However, the proposal was buried by a majority of the Senate, arguing that it threatened the unity of the French nation.

Unlike Nicolas Sarkozy, Emmanuel Macron declared himself in favor of ratifying the European Charter for Regional or Minority Languages since the beginning of his electoral campaign in 2017. However, after being elected, he has taken no steps towards the ratification of the European Charter. The recent victory of the nationalists in Corsica may force the government to effectively rethink about the decentralization and language policy.

In fact, during his last visit to Corsica, President Macron has declared his intentions to mention Corsica in the constitution in order to slightly reinforce its autonomy.<sup>78</sup> In regard to language, Macron has used the arguments of unity, indivisibility and equality to embrace bilingualism and reject co-officiality of Corsican – and regional languages in general. According to him, co-officiality creates a barrier and divides the sovereignty of the French people. It could be used to give job positions to some people and not to others, just on the basis of speaking Corsican – permitting discrimination against other French citizens. By contrast, bilingualism is not a negative thing. The fact that a person is able to speak a regional language is a positive thing and adds value to the cultural background of that person and to the cultural heritage of France in general.

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<sup>77</sup> Projet de loi constitutionnelle autorisant la ratification de la Charte européenne des langues régionales ou minoritaires (2014).

<sup>78</sup> Transcription du discours du Président de la République Emmanuel Macron en Corse à Bastia. Available online at: <http://www.elysee.fr/declarations/article/transcription-du-discours-du-president-de-la-republique-emmanuel-macron-en-corse-a-bastia/>

In conclusion, despite all the formal changes towards the recognition of regional languages, there are some aspects or elements of constitutional law in France that remain the same since the Middle Ages. Political and judicial authorities seem to agree on the approach of openly supporting the use of regional languages but at the same time avoiding to grant individual rights to the speakers of these languages on the basis of constitutional principles such as unity, indivisibility and equality.

## Conclusion

The rise of French as the only official language of the nation is closely linked to the highly centralized character of France. Due to the spread of English within the European Union, France incorporated into the Constitution French as the official language of the nation. Further legislative measures have been taken in order to make the use of French compulsory in the public sphere.

France is a multilingual state, at least seven “regional languages” are spoken within the French borders. However, France has always been reluctant to grant legal recognition and protection to regional languages. The only step taken by the government of France has been the introduction of Article 75-1 of the Constitution. However, this constitutional provision does not impose a duty on the state to protect and promote regional languages, nor grants regional languages’ speakers with individual linguistic rights. Because such a provision would breach constitutional principles such as unity, indivisibility and equality.

In conclusion, France remains as the only country from Western Europe with such a negative approach to the recognition of regional languages. Emmanuel Macron seemed to be more open to the regulation of regional languages during his electoral campaign last year. However, he has recently confirmed the French approach to the equality principle and exclusive use of French language as unifying element of *l’identité nationale*.

## **Chapter 3. United Kingdom and Northern Ireland: Asymmetrical Statutory Recognition of Regional Languages.**

### **3.1. Historical background: territorial model of the United Kingdom and devolution of powers.**

The United Kingdom is a unitary State made up of four nations with different cultural and historical backgrounds – England, Wales, Scotland and Northern Ireland. The latter three are devolved administrations, what implies that they have their own elected parliament and government since the devolution process in 1998.

Devolution is a process of decentralization from the central government to the different governments of the devolved nations. The system of devolution was asymmetric from its beginning to this day. In 1997, referendums held were held in Scotland and Wales. The majority of voters expressed themselves in favor of the creation of a Scottish Parliament and a National Assembly for Wales. In Northern Ireland the process of devolution was a bit more complicated due to the existing violent context at that time. Finally, the Belfast Agreement or Good Friday Agreement was supported by voters in a referendum in 1998 and it created the National Assembly of Northern Ireland.

The next step in the devolution process was the approval of three devolution Acts by the Parliament: the Scotland Act 1998; the Northern Ireland Act 1998; and the Government of Wales Act 1998. These Acts defined the three devolved administrations, granting them with powers previously held at Westminster<sup>79</sup> However, the devolution system remains

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<sup>79</sup>United Kingdom Government. “Guidance. Devolution of powers to Scotland, Wales and Northern Ireland. Explaining the background to devolution and how the legislatures and administrations of Scotland, Wales and Northern Ireland work.” 18 February 2013. Available online at: <https://www.gov.uk/guidance/devolution-of-powers-to-scotland-wales-and-northern-ireland>

asymmetrical since the three devolved administrations enjoy different levels of legislative, administrative and budgetary autonomy.

Thus, the United Kingdom, like Spain, is a unitary and highly decentralized State; while France remains a centralized State – regardless its administrative decentralization. Nevertheless, in the case of Spain the distribution of power between the central government and the regions is formally established in the constitution. By contrast, the Parliament of the United Kingdom remains sovereign and it has the power to modify the devolution Acts or to legislate on any devolved matter. However, according to the United Kingdom government, the tendency is not to legislate on any of those matters without the consent of the devolved legislature.<sup>80</sup>

### **3.2. Official language and recognition of regional/minority languages.**

Since the United Kingdom does not have a written constitution, the regulation of language greatly differs from that of Spain and France. The United Kingdom does not have a constitutional or legal provision establishing the official language of the country. In fact, English is the *de facto* official language – not *de iure* – of the United Kingdom, since it is the major language.<sup>81</sup> In history, English naturally became the main language of the United Kingdom through usage and utility rather than imposition or coercion. The UK policy and practice regarding its regional languages has rather been marked by indifference.

Linguistic diversity is a characteristic that has defined the United Kingdom from the very beginning. Indeed, numerous regional languages are spoken across the United Kingdom: Welsh in Wales, Gaelic and Scots in Scotland, Irish and Ulster Scots in Northern Ireland, Cornish in Cornwall (England), and Manx Gaelic in Isle Man. Nevertheless, the recognition of

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<sup>80</sup> United Kingdom Government. “Guidance. Devolution of powers to Scotland, Wales and Northern Ireland. Explaining the background to devolution and how the legislatures and administrations of Scotland, Wales and Northern Ireland work.” 18 February 2013. Available online at: <https://www.gov.uk/guidance/devolution-of-powers-to-scotland-wales-and-northern-ireland>

<sup>81</sup> Northern Ireland Human Rights Commission. “Minority languages rights. The Irish language and Ulster Scots.” Northern Ireland Human Rights Commission. June 2010.

multilingualism has been very slow – and still incomplete – at a legal level; “with the result that British legislative activity with respect to minority languages has too frequently been ad hoc, and driven by events and political pressure rather than principle.”<sup>82</sup> In fact, it was only in the late 20<sup>th</sup> century when the political situation arising from the devolution process led to the recognition of minority or regional languages. Creating an asymmetrical system of recognition of regional languages where the legal status of each language in the United Kingdom is different.<sup>83</sup> Indeed, Welsh language is by far the most protected and promoted regional language among the United Kingdom.

The Welsh Language Act 1993 was the main legal instrument in terms of recognition and promotion of Welsh language in Wales. On the one hand, the Welsh Language Act 1993 granted Welsh language with equal status of English, especially in regard to its usage in delivering public services. On the other hand, the Act created the Welsh Language Board aimed at promoting and facilitating the use of the Welsh language.<sup>84</sup> In 2011, the Welsh Language (Wales) Measure 2011 updated the existing legal framework for the use of the Welsh language. It included a provision explicitly declaring the official status of the Welsh language – along with English – and created the office of Welsh Language Commissioner which largely replaced the Welsh Language Board.<sup>85</sup>

In Scotland, the Gaelic Language (Scotland) Act 2005 was adopted with the purpose of “securing the status of the Gaelic language as an official language of Scotland commanding equal respect to the English language.”<sup>86</sup> The Act also included a national Gaelic language plan

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<sup>82</sup> Dunbar, R. “Language Legislation and Language Rights in the United Kingdom.” *European Yearbook of Minority Issues Online*, Volume 2, Issue 1, pp. 95-126. 2002.

<sup>83</sup> Curiously, England does not have an official language, regardless of being the biggest nation among those composing the United Kingdom.

<sup>84</sup> McDonagh, Luke T. “Linguistic diversity in the UK and Ireland - does the meaning of equality get lost in translation?” In: Healy, Geraldine and Kirton, Gill and Noon, Mike, (eds.) *Equality, inequalities and diversity contemporary: challenges and strategies. Management, Work and Organisations*. Palgrave Macmillan. 2010.

<sup>85</sup> Welsh Language (Wales) Measure 2011.

<sup>86</sup> Gaelic Language (Scotland) Act 2005.



and it established the *Bòrd na Gàidhlig* – a executive non-departmental public body of the Scottish Government that works to promote Gaelic.<sup>87</sup> Finally, the case of Northern Ireland will be discussed in greater depth in Subsection 3.4 of this chapter.

### **3.3. United Kingdom and the European Charter for Regional or Minority Languages.**

The United Kingdom signed the European Charter for Regional or Minority Languages on 2 March 2000, and ratified it on 27 March 2001. It entered into force on 1 July 2001. The regional or minority languages originally covered under the Charter in the United Kingdom are Welsh, Scottish Gaelic, Irish, Scots, and Ulster Scots. Welsh, Scottish Gaelic and Irish have been granted protection under Part III of the Charter; while Scots and Ulster Scots have been granted protection under Part II of the Charter. In 2002 and 2003, the United Kingdom specified Cornish and Manx Gaelic under Part II of the Charter.

According to Dunbar, the implications of the ratification of the Charter for the United Kingdom have only been limited by now because the United Kingdom has ratified only those provisions which would not constitute any challenge to the already existing legal framework.<sup>88</sup> Thus, the ratification has not led to any significant new initiatives regarding protection or promotion of any regional language. However, Dunbar reflects on the designation of Irish in Northern Ireland for the purposes of Part III. In his view, it may be seen as an important potential step forward because it permits the Council of Europe to put pressure on the United Kingdom in order to pass legislation for the protection of the Irish language in Northern Ireland<sup>89</sup> According to the Council of Europe, the devolved administrations are responsible for regional and minority languages policies, but the United Kingdom Government has the final

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<sup>87</sup> More information available at the official website: <http://www.gaidhlig.scot/bord/about-us/>

<sup>88</sup> Dunbar, R. "Language Legislation and Language Rights in the United Kingdom." *European Yearbook of Minority Issues Online*, Volume 2, Issue 1, pp. 95-126. 2002.

<sup>89</sup> *Ibid.*

responsibility under international law for the implementation of the Charter.<sup>90</sup> In fact, in its last monitoring cycle, the Committee of Experts has urged “the authorities to provide an appropriate legislative base for the protection and promotion of Irish in Northern Ireland.”<sup>91</sup>

### **3.4. The case of Northern Ireland: Belfast Agreement or Good Friday Agreement (1998).**

The Belfast Agreement was signed on 10 April 1998. On 22 May 1998, referendums were held in both Northern Ireland and the Republic of Ireland.<sup>92</sup> With a ‘yes’ vote of 71.12% in Northern Ireland and 94.39% in the Republic of Ireland, the Belfast Agreement was approved.<sup>93</sup> It was the first real step towards the process of peace between the British Government and Irish people.

The Belfast Agreement was made by eight political parties – the Ulster Unionist Party, the Social Democratic and Labour Party, Sinn Féin, the Alliance Party, the Progressive Unionist Party, the Northern Ireland Women’s Coalition, the Ulster Democratic Party and Labour – and the United Kingdom and Irish governments.<sup>94</sup> Indeed, the Agreement comprises two interrelated documents: a multi-party agreement by those right political parties of Northern Ireland (the Multi-Party Agreement); and an international agreement between the British and Irish governments (the British-Irish Agreement). Still, the two governments played the preeminent role in negotiating the terms of the agreement which was later somehow imposed on the political parties.<sup>95</sup>

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<sup>90</sup> Council of Europe. “Application of the Charter for Regional or Minority Languages in the United Kingdom.” 4<sup>th</sup> monitoring cycle. 15 January 2014.

<sup>91</sup> Committee of Experts. “Report of the Committee of Experts on the Charter.” Application of the Charter for Regional or Minority Languages in the United Kingdom. 4<sup>th</sup> monitoring cycle. Council of Europe. 15 January 2014.

<sup>92</sup> In Northern Ireland, voters were asked to ratify the deal. In the Republic of Ireland, voters were asked to approve a constitutional amendment to the Irish Constitution.

<sup>93</sup> Official results available at: <http://www.ark.ac.uk/elections/fref98.htm>

<sup>94</sup> Morgan, A. “The Belfast Agreement: A Practical Legal Analysis.” Belfast Press, 2000.

<sup>95</sup> *Ibid.*

The structure of the Belfast Agreement consists of eleven different sections: 1) Declaration of Support; 2) Constitutional Issues; 3) Strand One: Democratic Institutions in Northern Ireland; 4) Strand Two: North/South Ministerial Council; 5) Strand Three: British-Irish Council and British-Irish Intergovernmental Conference; 6) Rights, Safeguards and Equality of Opportunity; 7) Decommissioning; 8) Security; 9) Policing and Justice; 10) Prisoners; and 11) Validation, Implementation and Review.

In general, the Belfast Agreement is inspired by principles declared in the Declaration of Support, such as “partnership, *equality* and mutual respect”<sup>96</sup> and “absolute commitment to exclusively democratic and peaceful means of resolving differences on political issues.”<sup>97</sup> These principles led to the creation of a power-sharing form of government in Northern Ireland, in order to ensure key decisions are taken on a cross-community basis.<sup>98</sup> The Belfast Agreement created the Northern Ireland Assembly<sup>99</sup> and other democratic institutions, but it also established some safeguards to create a stable and inclusive exercise of power. As we will see in the next section of the dissertation, the power-sharing system is right now blocked by the negotiation of the Irish Language Act.

In addition, the Belfast Agreement contains some key elements in regard to language. Under the Section for Rights, Safeguards and Equality of Opportunity, the Agreement refers to social and cultural issues. In particular, linguistic rights are discussed in Clauses 3 and 4, which state as follows:

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<sup>96</sup> Declaration of Support of the Belfast Agreement (1998).

<sup>97</sup> Declaration of Support of the Belfast Agreement (1998).

<sup>98</sup> Strand One: Democratic Institutions. Safeguards. Clause 5, (d) (i) and (ii). “[k]ey decisions are taken on a cross-community basis:

(i) either parallel consent, i.e. majority of those members present and voting, including a majority of the unionist and nationalist designations present and voting;

(ii) or a weighted majority (60%) of members present and voting, including at least 40% of each of the nationalist and unionist designations present and voting.”

<sup>99</sup> After the approval of the Belfast Agreement, Northern Ireland elections were held for the first time on 25 June 1998. On 1 July 1998, the First Minister and Deputy First Minister were elected.

3. All participants recognize the importance of respect, understanding and tolerance in relation to **linguistic diversity**, including in Northern Ireland, the Irish language, Ulster-Scots and the languages of the various ethnic communities, all of which are part of the cultural wealth of the island of Ireland.

4. In the context of active consideration currently being given to the UK signing the Council of Europe Charter for Regional or Minority Languages, the British Government will in particular in relation to the **Irish language**, *where appropriate and where people so desire it*:

- take resolute action to promote the language;
- facilitate and encourage the use of the language in speech and writing in public and private life where there is appropriate demand;
- seek to remove, where possible, restrictions which would discourage or work against the maintenance or development of the language;
- make provision for liaising with the Irish language community, representing their views to public authorities and investigating complaints;
- place a statutory duty on the Department of Education to encourage and facilitate Irish medium education in line with current provision for integrated education;
- explore urgently with the relevant British authorities, and in co-operation with the Irish broadcasting authorities, the scope for achieving more widespread availability of *Teilifis na Gaeilge* in Northern Ireland;
- seek more effective ways to encourage and provide financial support for Irish language film and television production in Northern Ireland; and
- encourage the parties to secure agreement that this commitment will be sustained by a new Assembly in a way which takes account of the *desires and sensitivities of the community*.

Therefore, the Belfast Agreement formally recognizes the respect and protection of minority languages as an important element in the process of peace in Northern Ireland. However, it does not establish Irish nor Ulster-Scots as official languages of Northern Ireland. Moreover, the Agreement directly refers to the Charter for Regional or Minority Languages and lists a number of measures to be developed in order to protect only Irish in Northern Ireland. The provision uses characteristic language of the European Charter such as “where appropriate” and “where people so desire.”<sup>100</sup> It also refers to other abstract concepts such as “desires and sensitivities of the community.” This kind of language shows the difficulties of negotiating cultural issues in a conflicting community with different perceptions of identity.<sup>101</sup>

<sup>100</sup> Article 7(1) of the Charter – regulating objectives and principles – refers to “according to the situation of each language;” and Subparagraph (g) refers to the provision of facilities for non-speakers “if they so desire.”

<sup>101</sup> It is important to remember that the Northern Irish presents numerous cleavages such as religion, language, nationality, etc.

In conclusion, the commitment of the United Kingdom with Irish language derives from two instruments: the European Charter for Regional or Minority Languages and the Belfast Agreement. Nevertheless, the measures included in these instruments, seeking the promotion of Irish in the public and private sphere, are too broad and abstract. In fact, the European Charter and the Belfast Agreement have not solved the identity problems existing in Northern Ireland.

### **3.5. Unsuccessful implementation of the Belfast Agreement: St. Andrews Agreement (2006) and the Irish Language Act.**

The implementation of the Belfast Agreement was not largely successful. Further, “it is clear that language issues became a source of increased tension between the nationalist and unionist parties in the post-conflict stage.”<sup>102</sup> Indeed, in 2006, the governments of Ireland and the United Kingdom along with Northern Irish political parties, signed a new agreement: the St. Andrews Agreement.

This new Agreement discussed language rights, among other issues. In particular, Section 28D establishes strategies or statutory duties for the Northern Irish executive refers to strategies for the Irish language and Ulster Scots language:

(1) The Executive Committee shall adopt a strategy setting out how it proposes to enhance and protect the development of the Irish language.

(2) The Executive Committee shall adopt a strategy setting out how it proposes to enhance and develop the Ulster Scots language, heritage and culture.

Moreover, the St. Andrews Agreement explicitly promotes the adoption of the Irish Language Act, while only some kind of formal development for Ulster Scots language:<sup>103</sup>

The Government will introduce an **Irish Language Act** reflecting on the experience of Wales and Ireland and work with the incoming Executive to enhance and protect the development of the Irish language.

<sup>102</sup> McEvoy, J. “Managing culture in post-conflict societies.” *Contemporary Social Science*. 2011. 6:1, 55-71,

<sup>103</sup> Annex B of St. Andrews Agreement (2006).

The Government firmly believes in the need to enhance and **develop the Ulster Scots language**, heritage and culture and will support the incoming Executive in taking this forward.

All these commitments are still awaiting implementation. Since March 2007, there have been numerous attempts to adopt the Irish Language Act. However, it is a key decision that requires cross-party support in the Northern Irish Assembly, which is not currently forthcoming.

### **3.6. Political deadlock in Northern Ireland over Irish Language Act.**

The revival of Irish in Northern Ireland has brought some political tensions with it. Irish is a language highly politicized in Northern Ireland, since it is seen as element defining of the Irish identity. Thus, in the recent years, the adoption of the Irish Language Act has become one of the most important points of conflict between political parties. Indeed, in the political arena, the left-wing nationalist party Sinn Féin attempted to introduce the Irish Language Act in the National Assembly in 2015, but it did not gain the necessary support to become a law.

The polarization between nationalists and unionists led to the collapse of the power-sharing system in January 2017 when the Deputy First Minister Martin McGuinness resigned. The failure to adopt the Irish Language Act was listed as one of the reasons for his resignation.<sup>104</sup> Consequently, elections were held on 2 March 2017 and the Irish Language Act became a key point of that election campaign. The Irish Language Act was – and still remains – the main point blocking the formation of a new Executive in Northern Ireland.

On 3 March 2017, the day just after the elections, the High Court of Northern Ireland declared that the Executive Committee had failed to adopt a strategy setting out how it proposes to enhance and protect the development of the Irish language.<sup>105</sup> The applicant – the language

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<sup>104</sup> Burke C. “Explainer: What is the Irish Language Act and why is it causing political deadlock in Northern Ireland?” 14 February 2018. Available online at: <http://www.thejournal.ie/irish-language-act-explainer-3851417-Feb2018/>

<sup>105</sup> Justice Maguire. High Court of Northern Ireland. [2017] NIQB 27. *Conradh Na Gaeilge's Application and In the Matter of a Failure by the Executive Committee of the Northern Ireland Assembly to Comply with its Duty Pursuant to Section 28D of the Northern Ireland Act 1998*. 3 March 2017.

organization Conradh Na Gaeilge – claimed that the Executive Committee had failed to comply with its legal duty under Section 28D(1) of the Northern Ireland Act 1998 – introduced by the St. Andrews Agreement – to adopt a strategy for the development and promotion of the Irish language. The respondent – the Executive office – alleged that there had been numerous moves towards the adoption of such a strategy but they have all failed to achieve the necessary level of support.

In the Court’s view, Section 28(d) of the Northern Ireland Act imposes a legal duty on the Executive Committee to adopt a strategy for the promotion and protection of Irish language. Nearly 10 years have passed since – a more than reasonable period of time – and the Executive Committee has not performed its obligation. Moreover, “the obligation is an obligation of outcome not means. The required outcome is adoption.”<sup>106</sup> The fact that there have been taken steps forwards the adoption of the strategy “does not excuse the non-performance of the obligation.”<sup>107</sup> Thus, the Court concludes that “the Executive Committee has failed, in breach of its statutory duty under 28D (1) of the Northern Ireland Act 1998, to adopt a strategy setting out how it proposes to enhance and protect the development of the Irish language.”<sup>108</sup>

Still, the High Court of Northern Ireland’s decision did not have any effect on the Executive Committee. Political parties were not able to achieve a consensus about the Irish Language Act in order to restore a functioning power-sharing government in Northern Ireland. The evident political incompetence of politicians to agree along with Brexit implications<sup>109</sup>

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<sup>106</sup> Justice Maguire. High Court of Northern Ireland. [2017] NIQB 27. Conradh Na Gaeilge's Application and In the Matter of a Failure by the Executive Committee of the Northern Ireland Assembly to Comply with its Duty Pursuant to Section 28D of the Northern Ireland Act 1998. 3 March 2017.

<sup>107</sup> *Ibid.*

<sup>108</sup> *Ibid.*

<sup>109</sup> The voters in Northern Ireland voted against leaving the European Union. Sinn Féin has welcomed the EU’s draft treaty because it plans to eliminate the need for a hard border with the Republic of Ireland. By contrast, the DUP has rejected the EU’s draft treaty because it threatens the constitutional integrity of the United Kingdom.

resulted in social disagreement: thousands of people attended a rally in Belfast in May 2017 calling for the introduction of an Irish Language Act.<sup>110</sup>

### **3.7. Polarization in the Northern Irish National Assembly: free-standing Irish Language Act vs. Culture Act.**

Neither judicial authorities nor civil society have been able to put an end to the political deadlock deriving from the Irish Language Act in Northern Ireland. Because the National Assembly is too polarized in regard to the issue about language. On the one hand, the left-wing nationalist party Sinn Féin largely supports the adoption of the Irish Language Act.<sup>111</sup> On the other hand, the right-wing unionist party DUP (Democratic Unionist Party) strongly refuses the introduction of the Irish Language Act.

The supporters of the Irish Language Act argue that the government of the United Kingdom legally committed to its adoption mainly in the St. Andrews Agreement in 2006, but also with the ratification of the European Charter for Regional or Minority Languages.<sup>112</sup> Irish language activists consider that the Irish Language Act is necessary for the effective protection of Irish in Northern Ireland. Moreover, supporters of the Irish Language Act consider that all the other territories have language legislation to protect their regional languages: Welsh Act in Wales and Gaelic Act in Scotland.<sup>113</sup> Thus, Sinn Féin has established the adoption of the Irish Language act as an essential prerequisite for re-entering government with the Democratic Unionist Party (DUP) and restore the power-sharing system in Northern Ireland.

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<sup>110</sup> Ferguson, A. "Thousands call for Irish Language Act during Belfast rally." The Irish Times. 20 May 2017. Available online at: <https://www.irishtimes.com/news/ireland/irish-news/thousands-call-for-irish-language-act-during-belfast-rally-1.3090740>

<sup>111</sup> It is not only Sinn Féin which supports the introduction of legislation protecting and promoting Irish Language. The SDLP supports it as well and the Alliance Party is in favour of more comprehensive act which covers various languages.

<sup>112</sup> Dunbar, C. "Northern Ireland Assembly divided by Irish language." BBC. 28 June 2017.

<sup>113</sup> *Ibid.*



The Democratic Unionist Party (DUP) considers that the introduction of the Irish Language Act is not necessary because the Belfast Agreement of 1998 already grants enough protection to the linguistic diversity of Northern Ireland. The language legislation would breach the peaceful principles of tolerance and respect between communities set up in the Belfast Agreement. Moreover, the implementation of an Irish Language Act would be extremely expensive.<sup>114</sup>

At the beginning, the political debate was more about whether adopting the legislation or not rather than about the effective content of the Irish Language Act. Now it seems that the debate focuses on the content of the language legislation. On 18 February 2018, negotiations seem to go forward and there was hope that the political parties would reach an agreement. However, the Democratic Unionist Party (DUP) declared that they would not signed a free-standing Irish Language Act.

Sinn Féin seeks the introduction of a free-standing Irish Language Act. It means that the Irish Language Act must be a document solely regulates Irish and not Ulster Scots. Because that wider act would equalize Irish to Ulster Scots which has a linguistic situation totally different from Irish.<sup>115</sup> Thus, Sinn Féin looks to the Welsh Language Act as the example for language legislation in Northern Ireland, giving Irish equal official status with English. It would allow for a bilingual society where people would have the right to be educated in Irish or the right to use Irish in courts – like in the case of Catalonia and the Basque Country in Spain.

DUP opposes any legislation declaring Irish as an official language and leading to a bilingual society. Recently, DUP leader Arlene Foster has declared that “[t]here won’t be a

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<sup>114</sup> Manley, J. “What would an Irish language act actually mean?” The Irish Times. 8 February 2017. Available at: <http://www.irishnews.com/news/politicalnews/2017/02/08/news/what-would-an-irish-language-act-actually-mean--924164/>

<sup>115</sup> McDonald K. “Why the Irish language is getting in the way of a deal in Northern Ireland.” iNews UK, 15 February 2018. Available at: <https://inews.co.uk/news/politics/irish-language-getting-way-deal-northern-ireland/>

stand-alone Irish Language Act – we have always made that very clear, people aren’t going to be forced to learn Irish, there isn’t going to be Irish compulsory in schools, there’s not going to be bilingual signs or quotas in the civil service.”<sup>116</sup> “What we are trying to find is an accommodation and a way forward that values those people who are Irish speakers but doesn’t impinge on the lives of those who aren’t Irish speakers and I think that’s important.”<sup>117</sup> Instead, the DUP would only be in favor of a legal provision for Irish as part of a wider “Culture Act” which would also include Ulster-Scots.

On a comparative level, both positions represent different interpretations of the equality principle. The Sinn Féin position follows the Spanish interpretation of the principle of equality in regard to regional languages. In order to solve a conflict of identities, the first step is to recognize pluralism and then legally regulate the cultural and language issues of the different communities. Equality means that all citizens can use their own language in their private and public life – being treated equally by the State. In this sense, the Irish Language Act would grant Irish speakers with individual linguistic rights, such as using Irish in their relations with the public authorities. In addition, the Irish Language Act would result in equality with the other devolved nations, such as Wales or Scotland where their regional languages enjoy an official status and higher protection and promotion.

By contrast, DUP adopts a “French” interpretation of the principle of equality. Giving specific rights to Irish speakers would breach the principle of equality. It is true that Irish is part of Northern Irish culture but its usage cannot become an imposition for English speakers in Northern Ireland. According to Austen Morgan,<sup>118</sup> the adoption of the Irish Language Act as

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<sup>116</sup> Belfast Telegraph. “DUP won't sign off on Irish language act: No bilingual road signs, compulsory teaching or job quotas, says Arlene Foster.” Belfast Telegraph. 13 February 2018. Available at: <https://www.belfasttelegraph.co.uk/news/northern-ireland/dup-wont-sign-off-on-irish-language-act-no-bilingual-road-signs-compulsory-teaching-or-job-quotas-says-arlene-foster-36599110.html>

<sup>117</sup> *Ibid.*

<sup>118</sup> Barrister, legal adviser to David Trimble during the negotiations leading to the agreement in 1998 and author of “The Belfast Agreement – a Practical Legal Analysis.”

a free-standing act which excludes other languages and cultures, would breach the Belfast Agreement of 1998. Because it contains an equality clause that refers to “the importance of respect, understanding and tolerance in relation to linguistic diversity” and promotes the parity between all cultures and languages in Northern Ireland.<sup>119</sup>

In conclusion, there has not been a functioning executive body in Northern Ireland since January 2017 to this day. The implications of the battle over language has fitly described by SDLP leader Colum Eastwood: “This was not just a breakdown of a negotiation or of a relationship between two political parties – this now threatens to be a fundamental breakdown of all the progress that we have achieved since Good Friday 1998.”<sup>120</sup> Indeed, there is a fear to devolution reversion because there have been veiled threats from London to re-establish direct rule if compromises are not reached.

## Conclusion

The particular process of devolution that characterizes the United Kingdom has created an asymmetrical regulation of regional languages. While Welsh and Gaelic are official in their respective territories, Irish seems to be still far from becoming official in Northern Ireland. The process of devolution in Northern Ireland has been inspired by principles of equality, mutual respect and tolerance of the diverse communities. However, it seems that those principles have been left behind by the political parties. The current polarization over the language issue has left Northern Ireland without a functioning government since January 2017.

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<sup>119</sup> McDonald, H. “Proposed Irish language act could breach Good Friday deal, lawyer says.” Northern Ireland. The Guardian. 10 July 2017. Available at: <https://www.theguardian.com/uk-news/2017/jul/10/proposed-irish-language-act-could-breach-good-friday-northern-ireland-deal-lawyer-says>

<sup>120</sup> Colm Kelpie. “Irish and UK governments should legislate for an Irish Language Act in the North - SDLP leader.” New Politics. Independent.ie 22 February 2018. Available at: <https://www.independent.ie/irish-news/politics/irish-and-uk-governments-should-legislate-for-an-irish-language-act-in-the-north-sdip-leader-36632558.html>

The ratification of the European Charter for Minority or Regional Languages has not supposed big challenges for the United Kingdom. Because it has only ratified provisions that do not imply major changes in the existing legislation, except for the case of Northern Ireland. In this sense, the Charter becomes an additional pressure on the introduction of the Irish Language Act. However, the European pressure, as well as strains coming from civil society or judicial authorities, seems to be completely futile before lack of consensus between the political parties.

## **Brief comparative conclusions**

1. Spain, France and the United Kingdom are multilingual states.
2. The use of language throughout history has been different in all three countries. In Spain, Spanish language was continuously used as a unifying weapon against regional nationalists. In France, the creation of the French nation was closely linked to the rise of French as the only official language. In the United Kingdom, the spread of English at a global world brought with it the risk of forgetting about the regional languages.
3. All three countries regulate regional languages in a different way. Spain grants the higher protection to regional languages in comparison to the other two countries. At the other extreme, France respects the existence of regional languages but it does not grant any kind of protection to their speakers. This means that a language like Euskera enjoys different protection depending whether it is spoken in Spanish or French territory. Finally, the United Kingdom holds an asymmetrical regulation of regional languages. Because some of the nations – such as Wales and Scotland – have passed language regulation promoting the use of regional languages; while Irish in Northern Ireland just enjoys a formal recognition – like regional languages in France – to this day.
4. The principles of equality are interpreted in different ways. Spain sees the principle of equality as granting all the citizens with the right to use their own language not only in the private sphere, but also in the public sphere. By contrast, in France the principle of equality does not permit to give specific rights to specific groups of persons, such as speakers of regional languages. The United Kingdom does not have concerns about the principle of equality when it comes to languages. Rather, it follows a position of ‘laissez faire’ to the devolved administrations. It is not yet clear the interpretation of the principle of equality that Northern Ireland will finally adopt in order to restore the sharing-power system.

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